From: Barquin, JuanF
To: Munero, Armando
Subject: Fw: Police violence in your district
Date: Monday, December 21, 2020 9:12:01 PM
Attachments: OutlookEmoji-1568727030772552423df-1b02-4682-85c9-a558b4141294.png

What's up with that request we sent the MDPD?

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: deshawn.dsj.jackson@gmail.com
Sent: Monday, December 21, 2020 2:58 PM
To: Barquin, JuanF
Subject: Police violence in your district

Dear Juan Fernandez-Barquin,

My name is Deshawn Jackson and I would like to remind you of my request that I sent you about six weeks ago.

I am still concerned about police violence in your district.

I support the Black Lives Matter movement and I believe that blacks are killed overproportionally in police encounters compared to white citizens in any given encounter.

To investigate this issue with data from your district I would like to know how many police encounters with black and white citizens were recorded, respectively, in your district in 2019 and how many black and white citizens were killed in these encounters?

Thank you and kind regards,

Deshawn Jackson

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: Time-sensitive interview request from USA Today Florida network
Date: Monday, November 30, 2020 2:49:47 PM
Attachments: OutlookEmoji-1568727030772Oa2f339e-2065-4570-886c-978488c91d67.png

---

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From: Rhodes, Wendy
Sent: Monday, November 30, 2020 11:21 AM
To: Barquin, JuanF
Subject: Time-sensitive interview request from USA Today Florida network

Good morning,
I watched the speeches given in the Nov. 17 organizational meeting of the Legislature.
I noticed that while Chirs Sprowls' call for teaching patriotism in the schools was met with a standing ovation, Bobby B. DuBose's assertion that "Black Lives Matter" was met with relative silence.
I am requesting that the representative respond to a few questions no later than Wed. Dec. 2 as part of a survey of all members of the Florida House of Representatives.
My questions are:

1. What does patriotism mean to you?
2. What does the term "Black Lives Matter" mean to you?
3. Are the ideas of patriotism and BLM congruent or at odds with one another? Why or why not?
4. Is it possible to be a patriot who "loves America" and still support efforts aimed at social justice?

Thank you in advance for your responses.

Wendy Rhodes

561-820-3864 - direct

 @WendyRhodesFL

 WendyRhodes

 wrhodes@pbpost.com

From: Munero, Armando
To: Barquin, JuanF
Subject: RE: Police violence in your district
Date: Tuesday, December 22, 2020 3:07:34 PM
Attachments: image001.png

Juan,
They never got back to me, but I never got in contact with them again either, since you had told me not to check up on the matter until they get in contact with me. Would you like me to get in contact with them again?
Best,
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From: Barquin, JuanF
To: Hall, Whitney
Subject: Accepted: HB 1 Meeting
Start: Friday, January 22, 2021 9:30:00 AM
End: Friday, January 22, 2021 10:30:00 AM

From: Barquin, JuanF
To: Hall, Whitney
Subject: Accepted: HB 1 Meeting
Start: Friday, January 22, 2021 9:30:00 AM
End: Friday, January 22, 2021 10:30:00 AM

Subject:	Meeting with Senator Burgess
Location:	308 SOB
Start:	Wed 2/10/2021 1:00 PM
End:	Wed 2/10/2021 1:30 PM
Recurrence:	(none)
Organizer:	Barquin, JuanF

- **Meeting to discuss HB 1 and SB 484.**

Subject: Zoom with the League of Women Voters

Start: Tue 2/2/2021 10:00 AM
End: Tue 2/2/2021 10:30 AM

Recurrence: (none)

Organizer: Barquin, JuanF

- Meeting will be to discuss HB 1

Topic: HB 1
Time: Feb 2, 2021 10:00 AM Eastern Time (US and Canada)

Join Zoom Meeting
https://us05web.zoom.us/j/89549136880?pwd=UDNSajA1VnppTFNPUDBzQlVPbXIwUT09

Meeting ID: 895 4913 6880
Passcode: j82e3U

Subject:	Criminal Justice & Public Safety Subcommittee - Jan 27, 2021 - Webster Hall (212 Knott)
Location:	Webster Hall (212 Knott)
Start:	Wed 1/27/2021 4:00 PM
End:	Wed 1/27/2021 6:00 PM
Recurrence:	(none)
Organizer:	Munero, Armando

Meeting Overview/Summary:

The Chair requests that all amendments should be filed by 6 p.m. on Tuesday, January 26, 2021, including amendments filed by Members of the Subcommittee.

This meeting will be live-streamed on https://thefloridachannel.org/. Audience seating will be socially distanced and limited to the press and those persons wishing to provide substantive testimony on the filed bills or draft legislation. Seating will be available on a first-come, first-served basis. Persons who wish to attend must register at www.myfloridahouse.gov, and pick up a pass at the Legislative Welcome Center on the 4th Floor of the Capitol beginning two hours before the start of the meeting. Registration closes three hours before the meeting starts.

Consideration of the following bill(s):

HB 1 -- Combating Public Disorder

NOTICE: Event date and time is subject to change. For the latest event changes please check http://www.myfloridahouse.gov .

Subject:	Presenting HB 1 at the Criminal Justice Subcommittee
Location:	Webster Hall (212 Knott)
Start:	Wed 1/27/2021 4:00 PM
End:	Wed 1/27/2021 6:00 PM
Recurrence:	(none)
Organizer:	Barquin, JuanF

Subject: HB 1 Meeting

Start: Fri 1/22/2021 9:30 AM
End: Fri 1/22/2021 10:30 AM

Recurrence: (none)

Meeting Status: Accepted

Organizer: Hall, Whitney
Required Attendees: Barquin, JuanF; Kramer, Trina

-- Do not delete or change any of the following text. --

When it's time, join your Webex meeting here.

Join meeting

More ways to join:

Join from the meeting link
https://myfloridahouse.webex.com/myfloridahouse/j.php?MTID=m909483e0445a92445c5827b6e3f0e1b5

Join by meeting number
Meeting number (access code): 179 214 7227
Meeting password: 3JFnFViwQ93

Tap to join from a mobile device (attendees only)
+1-415-655-0002,,1792147227## United States Toll

Join by phone
+1-415-655-0002 United States Toll
Global call-in numbers

Join from a video system or application
Dial 1792147227@myfloridahouse.webex.com
You can also dial 173.243.2.68 and enter your meeting number.

Join using Microsoft Lync or Microsoft Skype for Business

Dial 1792147227.myfloridahouse@lync.webex.com

If you are a host, click here to view host information.

Need help? Go to https://help.webex.com

Subject: Zoom with Sun City Strategies
Location: https://us02web.zoom.us/j/85495198157?pwd=ZFNTaFJQSDJDMVJKTTV3M2xDU3BCUT09

Start: Tue 1/26/2021 11:00 AM
End: Tue 1/26/2021 11:30 AM

Recurrence: (none)

Meeting Status: Accepted

Organizer: Will McRea

(Meeting will be with Casey Cook and Amber Hughes from the Florida League of Cities, Along with Eddy Gonzalez and Will McRea from Sun City Strategies)

- Meeting will be to briefly discuss HB 1.

Will McRea is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting
https://us02web.zoom.us/j/85495198157?pwd=ZFNTaFJQSDJDMVJKTTV3M2xDU3BCUT09

Meeting ID: 854 9519 8157
Passcode: 137511
One tap mobile
+13126266799,,85495198157#,,,,*137511# US (Chicago)
+19292056099,,85495198157#,,,,*137511# US (New York)

Dial by your location
+1 312 626 6799 US (Chicago)
+1 929 205 6099 US (New York)
+1 301 715 8592 US (Washington D.C)
+1 346 248 7799 US (Houston)
+1 669 900 6833 US (San Jose)
+1 253 215 8782 US (Tacoma)
Meeting ID: 854 9519 8157
Passcode: 137511
Find your local number: https://us02web.zoom.us/u/kGi4HFC2V

From: Hall, Whitney
To: Barquin, JuanF; Kramer, Trina
Subject: HB 1 Meeting
Start: Friday, January 22, 2021 9:30:00 AM
End: Friday, January 22, 2021 10:30:00 AM

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Join from a video system or application
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Need help? Go to https://help.webex.com <https://help.webex.com>

From: Barquin, JuanF
Sent: Wednesday, January 20, 2021 8:43 PM
To: Munero, Armando
Subject: Fw: Bill 0001 (2021) -- Added to House Meeting Agenda : Criminal Justice & Public Safety Subcommittee
Attachments: CRM January_27_2021_04_00.ics

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From: Leagis.notify@myfloridahouse.gov
Sent: Wednesday, January 20, 2021 4:16 PM
To: Barquin, JuanF
Subject: Bill 0001 (2021) -- Added to House Meeting Agenda : Criminal Justice & Public Safety Subcommittee

The following Leagis event(s) have occurred:

HB 1 (2021) -- Combating Public Disorder

Added to House Meeting Agenda:

01/20/2021 4:16 PM H Added to **Criminal Justice & Public Safety Subcommittee** agenda, for meeting on 01/27/2021 4:00 PM, at Webster Hall (212 Knott)

Additional bill information ...

To add to your Outlook or Apple calendar open the calendar attachment named CRM January_27_2021_04_00.
Add to Google Calendar
Add to Yahoo Calendar

From:	Zegarra, Christopher
To:	Munero, Armando
Subject:	FW: Cap News Interview Request
Date:	Friday, January 08, 2021 1:36:00 PM

From: Jake

Sent: Friday, January 8, 2021 9:35 AM

To: Barquin, JuanF

Subject: Cap News Interview Request

Hello and good morning all,
This is Jake Stofan with Capitol News Service in Tallahassee. I'm doing a story today on Rep Fernandez-Barquin's Combating Public Disorder bill and was curious if he might have a few minutes to do a zoom interview before 1 pm on it?
Feel free to call/text or email back to coordinate.
Thanks!

Jake Stofan
Capitol News Service
www.flanews.com
Jake@flanews.com
Cell Phone 904-207-4245

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WZVN, Ft. Myers
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WCTV, Tallahassee
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From: Munero, Armando
To: "Jake"
Subject: RE: Cap News Interview Request
Date: Sunday, January 10, 2021 7:49:06 PM

Good afternoon Jake,
My apologies for the delayed response, I was traveling up to Tallahassee. The Representative will be traveling up tomorrow as well. Would you be interested in setting up a meeting for another time?
Thank you!
Armando

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To: Barquin, JuanF
Subject: Cap News Interview Request

Hey just following up on this. Is it looking like we may be able to set something up?

-Jake

On Jan 8, 2021, at 9:38 AM, Jake <jake@flanews.com> wrote:

Hello and good morning all,

This is Jake Stofan with Capitol News Service in Tallahassee. I'm doing a story today on Rep

Fernandez-Barquin's Combating Public Disorder bill and was curious if he might have a few minutes to do a zoom interview before 1 pm on it?

Feel free to call/text or email back to coordinate.

Thanks!

Jake Stofan
Capitol News Service
www.flanews.com
Jake@flanews.com
Cell Phone 904-207-4245

Where to See Us

WFLA, Tampa

WBBH, Ft. Myers

WZVN, Ft. Myers

WCJB, Gainesville

WCTV, Tallahassee

WJHG, Panama City

WEAR, Pensacola

WJXT, Jacksonville

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

Florida House of Representatives

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(850) 717-5119

From: Barquin, JuanF
To: Munero, Armando
Subject: Fw: Draft Request with Tracking Number 75370 submitted
Date: Monday, December 21, 2020 9:19:46 PM
Attachments: OutlookEmoji-1568727030772c00a8899-5e7c-4230-a21b-2102304f781e.png

[redacted]

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

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Tallahassee, FL 32399
(850) 717-5119

From: Leagis.notify@myfloridahouse.gov
Sent: Monday, December 21, 2020 2:11 PM
To: Barquin, JuanF
Subject: Draft Request with Tracking Number 75370 submitted

Draft Request Tracking #:75370
Draft Request Subject [redacted]
Draft Request Type :BILL

Made by user: FLHOUSE\Munero.Armando

Above referenced draft request was submitted.

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: materials for today"s meeting
Date: Monday, December 21, 2020 12:31:43 PM
Attachments: [redacted]
OutlookEmoji-1568727030772655576bde-0892-4859-a042-4726452b23b2.png

---

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District 119

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(850) 717-5119

From: Kramer, Trina
Sent: Monday, December 21, 2020 9:10 AM
To: Barquin, JuanF
Cc: Hall, Whitney
Subject: materials for today's meeting

Good morning, Attached is a draft copy of the bill and a one page summary for today's meeting at 1pm. Thanks!

From: Barquin, JuanF
To: Munero, Armando
Cc: Kramer, Trina
Subject: Fw: materials for today"s meeting
Date: Monday, December 21, 2020 2:04:45 PM
Attachments: [redacted]
OutlookEmoji-1568727030772265576bde-0892-4859-a042-4726452b23b2.png
OutlookEmoji-1568727030772b47e7d42-5a48-4ff2-9f06-5c184e016f95.png

---

Armando,

Please file in bill drafting.

Thank you,
Juan

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From: Barquin, JuanF
Sent: Monday, December 21, 2020 12:31 PM
To: Juan Fernandez-Barquin
Subject: Fw: materials for today's meeting

Florida House of Representatives

State Representative Juan Fernandez-Barquin

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(850) 717-5119

From: Kramer, Trina
Sent: Monday, December 21, 2020 9:10 AM
To: Barquin, JuanF
Cc: Hall, Whitney
Subject: materials for today's meeting

Good morning, Attached is a draft copy of the bill and a one page summary for today's meeting at 1pm. Thanks!

From: Juan Fernandez-Barquin
To: Munero, Armando
Subject: Fwd: PEACEFUL PROTEST PROTECTION ACT.docx
Date: Wednesday, February 03, 2021 2:07:21 PM
Attachments: [redacted]

please print

---------- Forwarded message ---------
From: **Barquin, Juan F.** <JFbarquin@gjb-law.com>
Date: Wed, Feb 3, 2021 at 1:08 PM
Subject: PEACEFUL PROTEST PROTECTION ACT.docx
To: Juan Fernandez-Barquin, Esq. <juan@jafblaw.com>

Juan Fernandez-Barquin

Please excuse any misspellings, this was sent from mobile.

--
Best regards,

Juan A. Fernandez-Barquin
Attorney-at-Law
3663 SW 8th Street Suite 200
Miami, Florida 33135
Office: (305) 446-4555 / Mobile: (305) 798-0550
Fax: (305) 446-4498
E-mail: juan@jafblaw.com

From: Juan Fernandez-Barquin
To: Munero, Armando
Subject: please print
Date: Wednesday, February 03, 2021 2:08:25 PM
Attachments: [redacted]

--
Best regards,

Juan A. Fernandez-Barquin
Attorney-at-Law
3663 SW 8th Street Suite 200
Miami, Florida 33135
Office: (305) 446-4555 / Mobile: (305) 798-0550
Fax: (305) 446-4498
E-mail: juan@jafblaw.com

From: Munero, Armando
To: Barquin, JuanF
Subject: RE: Draft Request with Tracking Number 75370 submitted
Date: Tuesday, December 22, 2020 3:14:28 PM
Attachments: image001.png

Juan,

[redacted]

Best,
Armando

From: Barquin, JuanF
Sent: Monday, December 21, 2020 9:20 PM
To: Munero, Armando
Subject: Fw: Draft Request with Tracking Number 75370 submitted

[redacted]

Florida House of Representatives
State Representative Juan Fernandez-Barquin
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Tallahassee Office:
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Tallahassee, FL 32399
(850) 717-5119

From: Leagis.notify@myfloridahouse.gov <Leagis.notify@myfloridahouse.gov>
Sent: Monday, December 21, 2020 2:11 PM
To: Barquin, JuanF
Subject: Draft Request with Tracking Number 75370 submitted

Draft Request Tracking #:75370
Draft Request Subject :Rioting Bill
Draft Request Type :BILL

Made by user: FLHOUSE\Munero.Armando

Above referenced draft request was submitted.

From: Barquin, JuanF
To: Kramer, Trina; Hall, Whitney; Munero, Armando
Subject: Re: HB 1 Meeting
Date: Friday, January 22, 2021 9:45:32 AM
Attachments: image001.png
[redacted]
OutlookEmoji-1568727030772c9585d33-735e-4c87-93f8-d5d0239bacaf.png

---

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

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From: Kramer, Trina
Sent: Friday, January 22, 2021 9:38 AM
To: Barquin, JuanF; Hall, Whitney; Munero, Armando
Subject: RE: HB 1 Meeting

https://myfloridahouse.webex.com/myfloridahouse/j.php?MTID=m909483e0445a92445c5827b6e3f0e1b5

Does this work?

From: Barquin, JuanF
Sent: Friday, January 22, 2021 9:36 AM
To: Hall, Whitney ; Munero, Armando
Cc: Kramer, Trina
Subject: Re: HB 1 Meeting

Hi Whitney,

I can't seem to find the webex link, can you please resend it.

Thank you!

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119
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From: Hall, Whitney
Sent: Thursday, January 21, 2021 1:36:53 PM
To: Barquin, JuanF; Munero, Armando
Cc: Kramer, Trina
Subject: RE: HB 1 Meeting

Great. I'll send a WebEx invite shortly. Talk to you in the morning.

Whitney Hall
Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

From: Barquin, JuanF <JuanF.Barquin@myfloridahouse.gov>
Sent: Thursday, January 21, 2021 1:07 PM
To: Hall, Whitney <Whitney.Hall@myfloridahouse.gov>; Munero, Armando <Armando.Munero@myfloridahouse.gov>
Cc: Kramer, Trina <Trina.Kramer@myfloridahouse.gov>
Subject: Re: HB 1 Meeting

Lets do 9:30 am tomorrow, that's fine with me.

JFB

Florida House of Representatives
State Representative Juan Fernandez-Barquin
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1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Hall, Whitney
Sent: Thursday, January 21, 2021 12:37:58 PM
To: Barquin, JuanF; Munero, Armando

Cc: Kramer, Trina
Subject: RE: HB 1 Meeting
Would either 9:30 am or after 2 pm sometime work for you? If not, just let me know what time does work for you and we'll make it work. The only time I am unavailable tomorrow that I can't move around is from 11 am- noon.
Thanks!

Whitney Hall
Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

From: Barquin, JuanF <JuanF.Barquin@myfloridahouse.gov>
Sent: Thursday, January 21, 2021 12:25 PM
To: Hall, Whitney <Whitney.Hall@myfloridahouse.gov>; Munero, Armando <Armando.Munero@myfloridahouse.gov>
Cc: Kramer, Trina <Trina.Kramer@myfloridahouse.gov>
Subject: Re: HB 1 Meeting
Hi Whitney,
Yes, can we schedule a meeting for tomorrow?

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

District Office:	Tallahassee Office:
2450 SW 137th Ave	1301 The Capitol
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(305) 222-4119	(850) 717-5119

From: Hall, Whitney
Sent: Thursday, January 21, 2021 10:04:57 AM
To: Barquin, JuanF; Munero, Armando
Cc: Munero, Armando; Kramer, Trina
Subject: HB 1 Meeting
Good morning, Representative,
I hope you're doing well. I wanted to reach out to see if there is anything the subcommittee can do to help you as you prepare to present HB 1 next week. We met last month via WebEx, but haven't had the chance to get back together to see if you had any questions on or spotted any issues with the bill. We are more than happy to schedule a time to meet via WebEx or in person anytime between now and early next week, whenever is convenient for you.
Please let us know how we can help!

Whitney Hall
Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives

(850) 717-4877

From: Munero, Armando
To: Barquin, JuanF; "Juan Fernandez-Barquin"
Subject: Riot Bill Draft 1
Date: Thursday, December 31, 2020 12:19:26 PM
Attachments: [redacted]

Juan,

The [redacted] was released for approval, and I have attached the draft above. Let me know if it is ready to file, or if you want any changes made.

Best,

Armando

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: 2/24/21 Zoom Event
Date: Monday, February 01, 2021 1:52:50 PM
Attachments: OutlookEmoji-1568727030772f0e648a0-8507-46ff-9a30-c4fb2d749d79.png

---

Juan,

Would you be interested in speaking during this?

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

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(850) 717-5119

From: Brendalyn V.A. Edwards
Sent: Monday, February 1, 2021 11:10 AM
To: Barquin, JuanF
Subject: 2/24/21 Zoom Event

Good morning Rep. Fernandez-Barquin,

On February 24, 2021 at 12:00 PM, the Broward County Bar Association Young Lawyers Division will host its annual Black History Month event. The event is a collaboration with various voluntary bar organizations such as the TJ Reddick Bar Association, Caribbean Bar Association, Haitian Lawyers Association, and the Gwen S. Cherry Black Women Lawyers Association. It will take place via Zoom and will be livestreamed across several social media platforms.

We are composing a panel of diverse stakeholders to explore the after-effects of the worldwide Summer 2020 protests, from the community impact, to resulting legislation/policy changes, and ways to effect change beyond the protests. We are particularly interested in hearing more about SB 484/HB 1.

As one of the bill's co-sponsors, we would be honored if you would speak during this event. Please let me know if you would be interested in participating and feel free to

call or e-mail me with any questions.

Best,

Brendalyn Edwards
Director, Broward County Bar Association Young Lawyers Section
305.200.2603 (cell)

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: ACLU of Florida's Written Testimony in Opposition to HB 1/SB 484 (Anti-Protest Bill)
Date: Monday, January 25, 2021 8:59:18 AM
Attachments: image001.png
ACLU of Florida Written Testimony in Opposition to HB 1.pdf
OutlookEmoji-1568727030772dd6067ae-c488-45af-819e-7a36ad199c14.png

---

Juan,

Would you want to talk to the ACLU about HB 1?

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
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402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Kara Gross
Sent: Friday, January 22, 2021 2:20 PM
To: Barquin, JuanF
Cc: Munero, Armando; Zegarra, Christopher
Subject: FW: ACLU of Florida's Written Testimony in Opposition to HB 1/SB 484 (Anti-Protest Bill)

Dear Representative Barquin,
I hope this email finds you well. I wanted to reach out to you with regard to ACLU of Florida's opposition to HB 1 (attached) and to see if you might have some availability to discuss our concerns. I look forward to talking with you at your convenience.
Best regards,
Kara

Kara Gross | Legislative Director & Senior Policy Counsel
American Civil Liberties Union of Florida
Direct 786.363.4436 | kgross@aclufl.org | **www.aclufl.org**
Pronouns: she, her, hers

From: Kara Gross

Sent: Friday, January 22, 2021 2:09 PM
To: Michael.Grieco@myfloridahouse.gov; James.Bush@myfloridahouse.gov; Kevin.Chambliss@myfloridahouse.gov; Dianne.Hart@myfloridahouse.gov; Andrew.Learned@myfloridahouse.gov; Pat.Williams@myfloridahouse.gov; cord.byrd@myfloridahouse.gov; chuck.brannan@myfloridahouse.gov; Webster.Barnaby@myfloridahouse.gov; Demi.BusattaCabrera@myfloridahouse.gov; Elizabeth.Fetterhoff@myfloridahouse.gov; Tommy.Gregory@myfloridahouse.gov; Brett.Hage@myfloridahouse.gov; Patt.Maney@myfloridahouse.gov; Alex.Rizo@myfloridahouse.gov; Spencer.Roach@myfloridahouse.gov; John.Snyder@myfloridahouse.gov; Kaylee.Tuck@myfloridahouse.gov; Whitney.Hall@myfloridahouse.gov; Lindsey.Harrell@myfloridahouse.gov
Cc: JuanF.Barquin@myfloridahouse.gov; Armando.Munero@myfloridahouse.gov; Gabriela.Navarro@myfloridahouse.gov; Joyce.Randall@myfloridahouse.gov; LaVencia.Alls@myfloridahouse.gov; Malik.Moore@myfloridahouse.gov; Morgan.Rodgers@myfloridahouse.gov; Nadlie.Charles@myfloridahouse.gov; Christian.Harvey@myfloridahouse.gov; Alisa.Bergmann@myfloridahouse.gov; Hilda.Quintero@myfloridahouse.gov; Hunter.Wilkins@myfloridahouse.gov; Damian.Cuesta@myfloridahouse.gov; Francesca.Audino@myfloridahouse.gov; Carolyn.Kolenda@myfloridahouse.gov; David.Ballard@myfloridahouse.gov; Dawn.Faherty@myfloridahouse.gov; Diane.Meredith@myfloridahouse.gov; Carmenchu.Mingo@myfloridahouse.gov; Juan.Porras@myfloridahouse.gov; Anastasia.Tyson@myfloridahouse.gov; Sarah.Craven@myfloridahouse.gov; Dana.Orr@myfloridahouse.gov; Pamela Burch Fort ; Kirk Bailey
Subject: ACLU of Florida's Written Testimony in Opposition to HB 1/SB 484 (Anti-Protest Bill)
Importance: High

Dear Chair Byrd and members of the House Criminal Justice & Public Safety Subcommittee:

Please see attached ACLU of Florida's Written Testimony in Opposition to HB 1/SB 484 (Anti-Protest Bill). As we will be unable to testify in person at the Criminal Justice and Public Safety Subcommittee hearing, we respectfully request that ACLU of Florida's attached written testimony in opposition to HB 1 (and this transmittal email) be included in the meeting packet for the committee hearing scheduled for next Wednesday, January 27, 2021, at 4pm, and any additional committee hearings on this bill.

Please do not hesitate to contact me if you have any questions or would like any additional information. I look forward to speaking with you at your convenience.

Best regards,

Kara Gross
Kara Gross | Legislative Director & Senior Policy Counsel
American Civil Liberties Union of Florida
Direct 786.363.4436 | kgross@aclufl.org **| www.aclufl.org**
Prounouns: she, her, hers

ACLU Florida

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From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: Amendment to HB 1
Date: Wednesday, January 27, 2021 9:32:34 AM
Attachments: HB1-line 379 (Rep. Chambliss).pdf
OutlookEmoji-1568727030772e4a81810-cc5f-451e-ae91-7a6d4090b688.png

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Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

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From: Hall, Whitney
Sent: Tuesday, January 26, 2021 8:43 PM
To: Barquin, JuanF
Subject: Amendment to HB 1

Hi Rep,

You're probably already aware, but Rep. Chambliss filed one amendment to HB 1 this evening. It is attached for your review. It only applies to the mob intimidation crime. Please feel free to give me a buzz if you have any questions.

Thanks!

Whitney Hall
Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

From:	Zegarra, Christopher
To:	christopher zegarra
Subject:	FW: FICTION/FACT: HB 1
Date:	Wednesday, January 27, 2021 4:50:00 PM
Attachments:	HB 1 Fiction Fact.pdf HB 1 Fiction Fact Graphic.jpg

---

From: House Majority Office
Sent: Wednesday, January 27, 2021 1:17 PM
To: House Majority Office
Subject: FICTION/FACT: HB 1

Members,

Earlier, you received a graphic with some of the fictitious claims made regarding HB 1, Combating Public disorder, along with the facts that highlight why the bill is so important for our state. Attached you will find a document with an extensive list of the "Fictions/Facts."

Please do not hesitate to contact my office with any questions.

Thank you,

Representative Michael Grant
Majority Leader

From:	Munero, Armando
To:	"Juan Fernandez-Barquin"
Subject:	FW: FICTION/FACT: HB 1
Date:	Wednesday, January 27, 2021 3:04:35 PM
Attachments:	HB 1 Fiction Fact.pdf HB 1 Fiction Fact Graphic.jpg

---

From: House Majority Office
Sent: Wednesday, January 27, 2021 1:17 PM
To: House Majority Office
Subject: FICTION/FACT: HB 1

Members,

Earlier, you received a graphic with some of the fictitious claims made regarding HB 1, Combating Public disorder, along with the facts that highlight why the bill is so important for our state. Attached you will find a document with an extensive list of the "Fictions/Facts."

Please do not hesitate to contact my office with any questions.

Thank you,

Representative Michael Grant
Majority Leader

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: HB 1 - SB 484 (Combating Public Disorder)
Date: Wednesday, January 27, 2021 10:45:48 AM
Attachments: 2021 FPCA Letter Supporting Public Disorder Bills HB 1 SB 484 FINAL.pdf
OutlookEmoji-1568727030772591054b0-75e2-4e34-83fb-f3c78945ce1a.png

---

Florida House of Representatives

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From: Pat Lange Faragasso
Sent: Wednesday, January 27, 2021 10:18 AM
To: Burgess, Danny; Barquin, JuanF
Cc: Amy Mercer; Tim Stanfield (stanfieldt@gtlaw.com)
Subject: HB 1 - SB 484 (Combating Public Disorder)

Good morning,

Attached is correspondence from the Florida Police Chiefs Association Executive Director Amy Mercer in support of your legislation.

Thank you,

Pat

Pat Lange Faragasso
Finance & Administration Manager
Florida Police Chiefs Association
Assistant Secretary/Treasurer
Florida Police Chiefs Education & Research Foundation
850.219.3631
pfaragasso@fpca.com

From:	Munero, Armando
To:	"Juan Fernandez-Barquin"
Subject:	FW: HB 1 Talking Points and Chart
Date:	Tuesday, January 26, 2021 4:29:25 PM
Attachments:	Rioting Bill-OSRC Chart.docx HB 1 CRM Talking Points.docx

---

From: Hall, Whitney
Sent: Tuesday, January 26, 2021 11:00 AM
To: Barquin, JuanF
Cc: Munero, Armando
Subject: HB 1 Talking Points and Chart

Hi Representative,

Attached are the talking points for the bill as well as a copy of the chart outlining the criminal penalties under the bill. Just let me know if there is anything else you need!

Thanks!

Whitney Hall
Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: HB 1; Caselaw regarding obstructing roadway
Date: Friday, February 05, 2021 11:12:15 AM
Attachments: OutlookEmoji-156872703077231b29ee9-4e92-4bba-9806-0d9d654fae2e.png
OutlookEmoji-1568727030772f798f8d2-cf60-4d90-ba90-0d74becdcf12.png

---

Florida House of Representatives

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1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Karen Woodall
Sent: Thursday, February 4, 2021 3:19 PM
To: Barquin, JuanF
Subject: Re: HB 1; Caselaw regarding obstructing roadway

Thank you Representative for following up. Sorry for my delayed response.

Court cases clarify the need for striking the language pertaining to permitting, it's actually a good thing. My question is does the elimination of permitting mean that a rally or vigil or gathering can take place on a sidewalk, for example, as long as traffic not impeded? As far as you understand it?

Assuming that's a yes here is a major concern of ours.

We read the language of the bill to say that 3 people can appear at a peaceful assembly with the intent of causing a disturbance, making a part of the peaceful assembly "unruly". It seems that the bill language asserts that everyone involved in the peaceful assembly is then committing a riot or is part of a mob.

"Mob intimidation"- "It is unlawful for a person, assembled with two or more other persons and acting with a common intent, to compel or induce, or attempt to compel or induce, another person to assume or abandon a particular viewpoint." Section 784.0495 of the bill.
Would this unruly disruption of a peaceful rally mean that all participants in the rally will be charged with committing a riot?
According to the bill "a person who participates in a public disturbance involving an assembly of three or more persons acting with a common intent to mutually assist each other in disorderly and violent conduct resulting in injury or damage to another person or property, or creating a clear and present danger of injury or damage to another person or property, commits a riot".

Am I participating because I am in attendance and 3 people cause a disturbance that I have nothing to do with?

These are issues that are unclear. None of the folks I work with support violence, rioting, looting. But, as you know, where large groups of people are gathered you can't always control what a few do, especially these days.

Again, I appreciate you getting back to me. I am happy to discuss further during committee meetings next week if you would like.

Thank you.

Karen Woodall
850-321-9386

Sent from Yahoo Mail for iPhone

On Friday, January 29, 2021, 5:40 PM, Barquin, JuanF wrote:

> Ms. Woodall,
>
> Hope this email finds you well. This email is in response to your question in the committee on Wednesday regarding why HB 1 had lines 163 to 236 stricken. Attached is the caselaw finding said portion of the statute unconstitutional. If you have any other questions, please do not hesitate to contact me.
>
> Thank you,
> Juan Fernandez-Barquin

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Barquin, JuanF
To: Munero, Armando
Subject: Fw: MEETING NOTICE - Criminal Justice & Public Safety Subcommittee - Wednesday, January 27, 2021 - 4:00-6:00 pm - Webster Hall (212 Knott)
Date: Wednesday, January 20, 2021 8:42:27 PM
Attachments: CRM MEETING Notice 1.27.21.pdf
OutlookEmoji-1568727030772cbb56ae2-e910-48b9-80f6-f6e369014e4b.png

I am presenting this bill Wednesday January 27 at 4 pm at the Criminal Justice Subcommittee, please make sure it's on my calendar.

JFB

Florida House of Representatives
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Tallahassee, FL 32399
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From: Collins, Lindsey
Sent: Wednesday, January 20, 2021 4:21 PM
To: #HDIST119 Rep & Staff; !HSE Democratic Office; !HSE Judiciary Committee; !HSE Republican Office; #HDIST004 Rep & Staff; #HDIST010 Rep & Staff; #HDIST011 Rep & Staff; #HDIST026 Rep & Staff; #HDIST027 Rep & Staff; #HDIST033 Rep & Staff; #HDIST055 Rep & Staff; #HDIST059 Rep & Staff; #HDIST061 Rep & Staff; #HDIST073 Rep & Staff; #HDIST079 Rep & Staff; #HDIST082 Rep & Staff; #HDIST092 Rep & Staff; #HDIST109 Rep & Staff; #HDIST110 Rep & Staff; #HDIST113 Rep & Staff; #HDIST114 Rep & Staff; #HDIST117 Rep & Staff; Barley, Debbie; Burkley, Wade; Canty, Amaura; Griffin, Dan; Krause, Jessica; Larson, Lisa; Medley, Lara; Randolph, Cheryl; Raschid, Omar; Sarkissian, Jenna; Scott, Nikki; Senate Committee - Criminal Justice; Senate Committee - Judiciary; Shockley, Ann; Switalski, Kim; Thomas, Janna; Turner, Kristi; Voran, Michelle
Subject: MEETING NOTICE - Criminal Justice & Public Safety Subcommittee - Wednesday, January 27, 2021 - 4:00-6:00 pm - Webster Hall (212 Knott)
Please see the attached notice for the Criminal Justice & Public Safety Subcommittee meeting on Wednesday, January 27, 2021.
You will be notified when the bill analysis for HB 1 becomes available.
Thank you,

Lindsey Collins

Administrative Assistant
Judiciary Committee
Florida House of Representatives
Suite 417, House Office Building
(850) 717-4850

From: Munero, Armando
To: "Juan Fernandez-Barquin"
Subject: FW: Meeting Request - HB 1/Criminal Justice Reform
Date: Tuesday, February 02, 2021 10:41:02 AM
Attachments: image001.png
ACLU of Florida Written Testimony in Opposition to HB 1-SB 484.pdf

---

Juan,
You wouldn't want to take this right?
Armando

From: Kara Gross
Sent: Monday, February 1, 2021 10:46 PM
To: Barquin, JuanF
Cc: Munero, Armando ; Zegarra, Christopher
Subject: Meeting Request - HB 1/Criminal Justice Reform

Hi Representative Fernandez-Barquin,
Hope you are doing well and staying Covid-safe. I was hoping to set up a time to virtually meet with you at your convenience regarding HB 1 and criminal justice reform efforts. Also, I wanted to be sure you have our opposition to HB 1/SB 484, as there is much in this bill that runs counter to criminal justice reform efforts by increasing sentence lengths for offenses that are already unlawful under current statutes and thus increasing costs to the state.
Please let me know if you have any availability to virtually meet and looking forward to connecting at your convenience.
Best regards,
Kara

Kara Gross | Legislative Director & Senior Policy Counsel
American Civil Liberties Union of Florida
Direct 786.363.4436 | kgross@aclufl.org | www.aclufl.org
Pronouns: she, her, hers

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From: Munero, Armando
To: Barquin, JuanF; "Juan Fernandez-Barquin"
Subject: FW: Meeting Request
Date: Tuesday, January 19, 2021 11:57:56 AM
Attachments: image001.png
image002.png

Juan,
Would you be interested in taking this meeting about HB 1?
Best,
Armando

From: Will McRea
Sent: Tuesday, January 19, 2021 11:40 AM
To: Munero, Armando
Subject: RE: Meeting Request

We are pretty flexible and simply want to meet this week or next committee week. The discussion would be focused on HB 1.
Will
Sent from my T-Mobile 4G LTE Device
-------- Original message --------
From: "Munero, Armando" <Armando.Munero@myfloridahouse.gov>
Date: 1/19/21 11:28 AM (GMT-05:00)
To: Will McRea <will@suncitystrategies.com>
Subject: RE: Meeting Request
Good Morning Will,
Is there a specific date or time that would work for Casey Cook. In addition, what would the meeting be regarding?
Thank you!
Armando

From: Will McRea <will@suncitystrategies.com>
Sent: Monday, January 18, 2021 7:21 PM
To: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Cc: Barquin, JuanF <JuanF.Barquin@myfloridahouse.gov>
Subject: Meeting Request

Good evening Armando,
Hope you had a great weekend. Just wanted to reach out to request a (zoom) meeting with Representative Fernandez-Barquin. The meeting request is on behalf of Casey Cook with the Florida League of Cities.
Please advise if the Representative has any availability.
Thank you for your time.
Regards,

Will McRea

Sun City Strategies, Associate

786.651.7653
will@suncitystrategies.com
http://suncitystrategies.com

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: Obstructing a Roadway- Federal case law- Stricken parts of HB 1
Date: Friday, January 29, 2021 11:44:39 AM
Attachments: Bischoff v Florida.pdf
Vigue v Shoar.pdf
OutlookEmoji-15687270307722d8b114c-8283-4684-bdd6-256eaef86b20.png

---

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

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402 South Monroe Street
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(850) 717-5119

From: Hall, Whitney
Sent: Friday, January 29, 2021 11:05 AM
To: Barquin, JuanF
Subject: FW: Obstructing a Roadway- Federal case law- Stricken parts of HB 1

Hi Rep.,

Here are the cases in response to your email last night. Please let me know if there is anything else you need.

Thanks!

Whitney Hall
Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

From: Hall, Whitney
Sent: Monday, December 21, 2020 4:25 PM
To: Barquin, JuanF
Cc: Kramer, Trina
Subject: Obstructing a Roadway- Federal case law

Hi Representative,

Attached are the two federal cases discussing the constitutionality of s. 316.2045, F.S., (Obstructing a roadway) that we briefly discussed today. Please let us know if you have any

questions after you have the chance to review.
Happy Holidays!

Whitney Hall
Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: Sign Up Confirmation
Date: Monday, January 25, 2021 1:44:48 PM
Attachments: 443C06D4B7410611F9396E4332328E28.ics
OutlookEmoji-1568727030772e9825c4b-92d5-43cf-8ab7-64051984e489.png

Florida House of Representatives
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From: Ryan Larson
Sent: Monday, January 25, 2021 9:50 AM
To: Barquin, JuanF
Subject: Sign Up Confirmation

Group Organizing Made Easy

Thank you, Juan!

You're all signed up for "HB 1 Short Video."

Appointment

01/26/2021 (Tue.) 1:00pm - 1:15pm EST
Location: House Majority Office

View Sign Up

Edit My Sign Up Contact Ryan Larson

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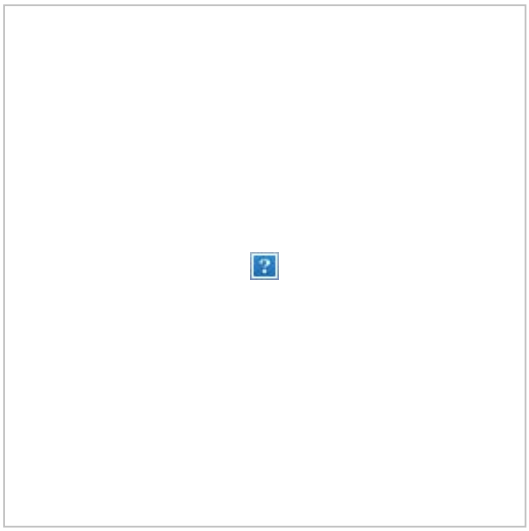

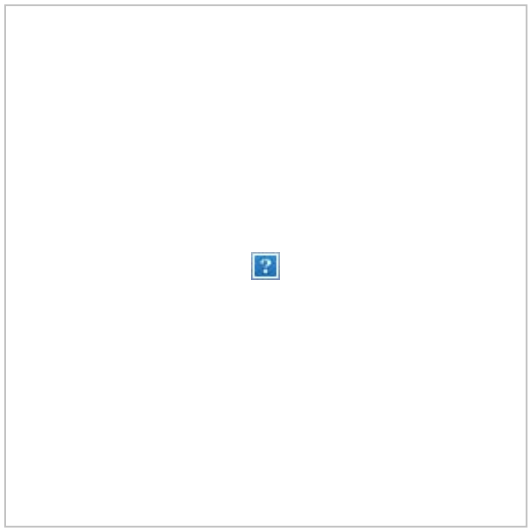

Share SignUpGenius with a friend or group! Share Now

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: The Florida Channel Interview
Date: Monday, January 25, 2021 3:55:23 PM
Attachments: image001.png
OutlookEmoji-1568727030772379e56b7-0efc-44ef-81cb-2c9c5abc86f2.png
OutlookEmoji-156872703077273c7ad1e-2dcf-4be3-a95a-84ed75e4799b.png

---

Juan,

Would you be interested in taking this interview with a reporter to discuss HB 1?

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

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From: Barquin, JuanF
Sent: Monday, January 25, 2021 1:45 PM
To: Munero, Armando
Subject: Fw: The Florida Channel Interview

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

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From: Javonni Hampton
Sent: Monday, January 25, 2021 11:23 AM
To: Barquin, JuanF
Subject: The Florida Channel Interview

Hello,

My name is Javonni Hampton, I am a reporter with the Florida Channel. Was wondering if it was possible to set up an interview with the Representative sometime tomorrow morning before committees to discuss his new proposed legislation HB1. Tuesday before 9am, does that work?

Best,

Javonni

Javonni Hampton
Reporter/Producer- Florida Channel Programming
The FLORIDA Channel | Office: 850-488-1281
Direct: 407-680-7606 | FAX: 850-488-4876
jhampton@fsu.edu www.TheFloridaChannel.org

From: Barquin, JuanF
To: Munero, Armando
Subject: HB 1 presentation
Date: Wednesday, January 20, 2021 9:10:29 PM
Attachments: OutlookEmoji-15687270307721d0663fb-e352-4c7d-a031-8bda6922aef2.png

---

Please send a letter on our letterhead addressed to Madame Chair Amber Mariano, get her address info on the house website, VIA E-Mail.

The following body:

Madame Chair Mariano:

Please be advised I am scheduled to present House Bill 1 at the Criminal Justice Subcommittee on January 27, 2021 at 4 pm, at the same time as our scheduled meeting for the Post-Secondary and Lifelong Learning Subcommittee. Please consider this a formal request to be excused from our subcommittee so I can present HB 1.

If you have any questions, please do not hesitate to contact me.

Signature block

Send me the draft when you are done.

Thank you!

Florida House of Representatives
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(850) 717-5119

From: Barquin, JuanF
To: Hall, Whitney
Subject: HB 1 stricken parts re permits
Date: Thursday, January 28, 2021 8:34:03 PM
Attachments: OutlookEmoji-15687270307723a03eeed-4307-4d87-aa78-b384003c7cb8.png

---

Hi Whitney,

Can you please provide me with case law that held the stricken parts of HB 1 unconstitutional? I mean in reference to the part of the bill that was just clean up.

Thank you!

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

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From: Barquin, JuanF
To: Bush, James
Subject: HB 1
Date: Friday, January 22, 2021 4:33:01 PM
Attachments: OutlookEmoji-1568727030772d4655364-22a6-4511-86a7-0f48cf43d2b4.png

---

Hi Rep,

How are you? I just called your mobile but went to voicemail. Please let me know when you are free to touch base re HB 1, would really like to talk to you about it.

Thank you,
Juan

Florida House of Representatives

State Representative Juan Fernandez-Barquin

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Tallahassee, FL 32399
(850) 717-5119

From:	Barquin, JuanF
To:	Munero, Armando
Subject:	HB 1
Date:	Friday, January 08, 2021 1:02:28 PM
Attachments:	OutlookEmoji-1568727030772906667ca-2c90-42ec-82b8-375db044e6e5.png

Please approve the people asking to co-sponsor HB 1. There is a difference between Prime Co-Sponsor and Co-Sponsor. Do NOT approve Prime Co-Sponsors.

JFB

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

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(305) 222-4119

Tallahassee Office:
1301 The Capitol
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Tallahassee, FL 32399
(850) 717-5119

From: Barquin, JuanF
To: fcfep@yahoo.com
Subject: HB 1; Caselaw regarding obstructing roadway
Date: Friday, January 29, 2021 5:40:50 PM
Attachments: Vigue v Shoar.pdf
Bischoff v Florida.pdf
OutlookEmoji-156872703077231b29ee9-4e92-4bba-9806-0d9d654fae2e.png

---

Ms. Woodall,

Hope this email finds you well. This email is in response to your question in the committee on Wednesday regarding why HB 1 had lines 163 to 236 stricken. Attached is the caselaw finding said portion of the statute unconstitutional. If you have any other questions, please do not hesitate to contact me.

Thank you,
Juan Fernandez-Barquin

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From: Munero, Armando
To: Miller, Brandon
Subject: RE: Co-Sponsor Approval
Date: Wednesday, January 13, 2021 10:22:59 AM

Good morning Brandon,
I just approved it!
Thank you!
Armando

From: Miller, Brandon
Sent: Wednesday, January 13, 2021 9:30 AM
To: Munero, Armando
Subject: Co-Sponsor Approval

Good morning Armando,
When you have a chance, can you approve our request to co-sponsor HB 1?
Thank you!
Best,
Brandon Miller, MPA
Legislative Assistant III – Rep. Spencer Roach (R-79)
District: 239-656-7790
Tallahassee: 850-717-5079

From: Munero, Armando
To: Schau, Eric
Subject: RE: Co-Sponsor Request HB 1
Date: Friday, January 15, 2021 11:56:33 AM
Attachments: image005.png
image007.png
image008.png

Good morning Eric,
Thank you for letting me know! I will approve the co-sponsor request right away.
Thank you!
Armando

From: Schau, Eric
Sent: Thursday, January 14, 2021 11:25 AM
To: Munero, Armando
Subject: Co-Sponsor Request HB 1
Good afternoon Armando,
I just wanted to let you know that I submitted a co-sponsor request in Leagis on behalf of Rep. Giallombardo for HB 1 (Combating Public Disorder).
Thanks!
Eric

Eric Schau
Legislative Assistant to
Rep. Mike Giallombardo
Florida House of Representatives, District 77
District
1039 SE 9th Place, Suite 310
Cape Coral, Florida 33990
239-772-1291
Capitol
402 South Monroe Street, Suite 1101
Tallahassee, Florida 32399
850-717-5077
myfloridahouse.gov
#FLHouse

From:	Barquin, JuanF
To:	Hall, Whitney; Munero, Armando
Cc:	Kramer, Trina
Subject:	Re: HB 1 Meeting
Date:	Thursday, January 21, 2021 1:06:53 PM
Attachments:	image001.png OutlookEmoji-1568727030772bce8c653-20ff-42ef-9224-06227468004a.png

Lets do 9:30 am tomorrow, that's fine with me.

JFB

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

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From: Hall, Whitney
Sent: Thursday, January 21, 2021 12:37:58 PM
To: Barquin, JuanF; Munero, Armando
Cc: Kramer, Trina
Subject: RE: HB 1 Meeting

Would either 9:30 am or after 2 pm sometime work for you? If not, just let me know what time does work for you and we'll make it work. The only time I am unavailable tomorrow that I can't move around is from 11 am- noon.
Thanks!

Whitney Hall
Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

From: Barquin, JuanF
Sent: Thursday, January 21, 2021 12:25 PM
To: Hall, Whitney ; Munero, Armando
Cc: Kramer, Trina
Subject: Re: HB 1 Meeting

Hi Whitney,
Yes, can we schedule a meeting for tomorrow?

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

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(850) 717-5119

From: Hall, Whitney
Sent: Thursday, January 21, 2021 10:04:57 AM
To: Barquin, JuanF; Munero, Armando
Cc: Munero, Armando; Kramer, Trina
Subject: HB 1 Meeting

Good morning, Representative,

I hope you're doing well. I wanted to reach out to see if there is anything the subcommittee can do to help you as you prepare to present HB 1 next week. We met last month via WebEx, but haven't had the chance to get back together to see if you had any questions on or spotted any issues with the bill. We are more than happy to schedule a time to meet via WebEx or in person anytime between now and early next week, whenever is convenient for you.

Please let us know how we can help!

Whitney Hall

Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

From: Barquin, JuanF
To: Hall, Whitney; Munero, Armando
Cc: Kramer, Trina
Subject: Re: HB 1 Meeting
Date: Friday, January 22, 2021 9:36:01 AM
Attachments: image001.png
OutlookEmoji-1568727030772677731e-0508-452a-98ff-cbd71735703e.png

---

Hi Whitney,

I can't seem to find the webex link, can you please resend it.

Thank you!

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

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(850) 717-5119

From: Hall, Whitney
Sent: Thursday, January 21, 2021 1:36:53 PM
To: Barquin, JuanF; Munero, Armando
Cc: Kramer, Trina
Subject: RE: HB 1 Meeting

Great. I'll send a WebEx invite shortly. Talk to you in the morning.

Whitney Hall
Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

From: Barquin, JuanF
Sent: Thursday, January 21, 2021 1:07 PM
To: Hall, Whitney ; Munero, Armando
Cc: Kramer, Trina
Subject: Re: HB 1 Meeting

Lets do 9:30 am tomorrow, that's fine with me.
JFB

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

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From: Hall, Whitney
Sent: Thursday, January 21, 2021 12:37:58 PM
To: Barquin, JuanF; Munero, Armando
Cc: Kramer, Trina
Subject: RE: HB 1 Meeting

Would either 9:30 am or after 2 pm sometime work for you? If not, just let me know what time does work for you and we'll make it work. The only time I am unavailable tomorrow that I can't move around is from 11 am- noon.

Thanks!

Whitney Hall

Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

From: Barquin, JuanF <JuanF.Barquin@myfloridahouse.gov>
Sent: Thursday, January 21, 2021 12:25 PM
To: Hall, Whitney <Whitney.Hall@myfloridahouse.gov>; Munero, Armando <Armando.Munero@myfloridahouse.gov>
Cc: Kramer, Trina <Trina.Kramer@myfloridahouse.gov>
Subject: Re: HB 1 Meeting

Hi Whitney,

Yes, can we schedule a meeting for tomorrow?

Florida House of Representatives

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District 119

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From: Hall, Whitney
Sent: Thursday, January 21, 2021 10:04:57 AM
To: Barquin, JuanF; Munero, Armando
Cc: Munero, Armando; Kramer, Trina

Subject: HB 1 Meeting

Good morning, Representative,

I hope you're doing well. I wanted to reach out to see if there is anything the subcommittee can do to help you as you prepare to present HB 1 next week. We met last month via WebEx, but haven't had the chance to get back together to see if you had any questions on or spotted any issues with the bill. We are more than happy to schedule a time to meet via WebEx or in person anytime between now and early next week, whenever is convenient for you.

Please let us know how we can help!

Whitney Hall

Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

From: Barquin, JuanF
To: Hall, Whitney; Munero, Armando
Cc: Kramer, Trina
Subject: Re: HB 1 Meeting
Date: Thursday, January 21, 2021 12:25:24 PM
Attachments: OutlookEmoji-1568727030772125262 9a-d30b-4e39-8f99-b2ecf5a3a41e.png

Hi Whitney,

Yes, can we schedule a meeting for tomorrow?

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

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(850) 717-5119

From: Hall, Whitney
Sent: Thursday, January 21, 2021 10:04:57 AM
To: Barquin, JuanF; Munero, Armando
Cc: Munero, Armando; Kramer, Trina
Subject: HB 1 Meeting

Good morning, Representative,

I hope you're doing well. I wanted to reach out to see if there is anything the subcommittee can do to help you as you prepare to present HB 1 next week. We met last month via WebEx, but haven't had the chance to get back together to see if you had any questions on or spotted any issues with the bill. We are more than happy to schedule a time to meet via WebEx or in person anytime between now and early next week, whenever is convenient for you.

Please let us know how we can help!

Whitney Hall

Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

From: Munero, Armando
To: Padgett, Ryan
Subject: RE: HB 67 Background
Date: Wednesday, January 27, 2021 3:35:40 PM

Ryan,
Would 11 am work?
Best,
Armando

From: Padgett, Ryan
Sent: Wednesday, January 27, 2021 2:39 PM
To: Munero, Armando
Subject: RE: HB 67 Background

Absolutely. Any time after 9 works.

RGP

Ryan G. Padgett
Attorney
Judiciary Committee
Florida House of Representatives
Suite 417, House Office Building
(850) 717-4850

From: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Sent: Wednesday, January 27, 2021 2:37 PM
To: Padgett, Ryan <Ryan.Padgett@myfloridahouse.gov>
Subject: RE: HB 67 Background

Ryan,
Would you be available for the zoom Friday, January 28 in the morning?
Best,
Armando

From: Padgett, Ryan <Ryan.Padgett@myfloridahouse.gov>
Sent: Wednesday, January 27, 2021 11:26 AM
To: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Subject: RE: HB 67 Background

That would be helpful. I know he is busy with HB 1 later today and there is no immediate rush on this. If later this week or next works better for him, that's great.

RGP

Ryan G. Padgett
Attorney
Judiciary Committee
Florida House of Representatives
Suite 417, House Office Building
(850) 717-4850

From: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Sent: Wednesday, January 27, 2021 11:23 AM
To: Padgett, Ryan <Ryan.Padgett@myfloridahouse.gov>
Subject: RE: HB 67 Background

Good morning Ryan,
Would you be interested in having a brief zoom meeting with the Representative? That way he could provide you with the background you need on HB 67.
Thank you!
Armando

From: Padgett, Ryan <Ryan.Padgett@myfloridahouse.gov>
Sent: Wednesday, January 27, 2021 9:39 AM
To: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Subject: HB 67 Background

Good morning,
I'm just starting to do some preliminary research into the filed bills and was hoping you could provide me with some background on HB 67 relating to public defenders. Please let me know if there is a good time to give you a call to discuss the bill.
Thanks in advance!

RGP
Ryan G. Padgett
Attorney
Judiciary Committee
Florida House of Representatives
Suite 417, House Office Building
(850) 717-4850

From: Munero, Armando
To: Padgett, Ryan
Subject: RE: HB 67 Background
Date: Wednesday, January 27, 2021 5:22:11 PM

Ryan,

That would be perfect! What number would you like the Representative to call you at?

Best,

Armando

From: Padgett, Ryan

Sent: Wednesday, January 27, 2021 3:38 PM

To: Munero, Armando

Subject: RE: HB 67 Background

11 is perfect. If it's easier for the Representative to call on the phone, that's fine as well.

RGP

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Attorney
Judiciary Committee
Florida House of Representatives
Suite 417, House Office Building
(850) 717-4850

From: Munero, Armando <Armando.Munero@myfloridahouse.gov>

Sent: Wednesday, January 27, 2021 3:36 PM

To: Padgett, Ryan <Ryan.Padgett@myfloridahouse.gov>

Subject: RE: HB 67 Background

Ryan,

Would 11 am work?

Best,

Armando

From: Padgett, Ryan <Ryan.Padgett@myfloridahouse.gov>

Sent: Wednesday, January 27, 2021 2:39 PM

To: Munero, Armando <Armando.Munero@myfloridahouse.gov>

Subject: RE: HB 67 Background

Absolutely. Any time after 9 works.

RGP

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Judiciary Committee
Florida House of Representatives
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From: Munero, Armando <Armando.Munero@myfloridahouse.gov>

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Subject: RE: HB 67 Background

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Florida House of Representatives
Suite 417, House Office Building
(850) 717-4850

From: Munero, Armando
To: Padgett, Ryan
Subject: RE: HB 67 Background
Date: Wednesday, January 27, 2021 5:44:40 PM

Ryan,

Of course, not a problem! In addition, I will have the Representative call you Friday at 11.

Best,

Armando

From: Padgett, Ryan
Sent: Wednesday, January 27, 2021 5:24 PM
To: Munero, Armando
Subject: RE: HB 67 Background

Armando,
My direct line is 850-717-5457.
Thanks for your help setting this up.

RGP

Ryan G. Padgett
Attorney
Judiciary Committee
Florida House of Representatives
Suite 417, House Office Building
(850) 717-4850

From: Munero, Armando <Armando.Munero@myfloridahouse.gov>
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From: Munero, Armando
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RGP

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Attorney
Judiciary Committee
Florida House of Representatives
Suite 417, House Office Building
(850) 717-4850

From: Munero, Armando
To: "Kara Gross"
Subject: RE: Meeting Request - HB 1/Criminal Justice Reform
Date: Wednesday, February 03, 2021 4:45:20 PM
Attachments: image001.png

Kara,
This Thursday I will be taking the Representative to the airport for his flight at 1 pm. Would you be willing to have the meeting next week?
Best,
Armando

From: Kara Gross
Sent: Wednesday, February 3, 2021 2:47 PM
To: Munero, Armando
Cc: Zegarra, Christopher ; Barquin, JuanF
Subject: RE: Meeting Request - HB 1/Criminal Justice Reform

Hi Armando,
Thank you for your email and that would be great. Please let me know when is a convenient time for you. I am available Thursday between 1-3pm, if you have any time slots in there available. In the meantime, I wanted to be sure the Representative saw the following recent piece by constitutional law scholar, Erwin Chemerinsky, on the bill's impact on peaceful protesters https://www.nbcnews.com/think/opinion/republican-lawmakers-want-use-pro-trump-rioters-undermine-peaceful-protest-ncna1256232. I understand that it is not the Representative's intent to chill speech and nonviolent assembly, but unfortunately the bill that he has filed with have that impact.
Thank you so much and looking forward to talking with you.
Best regards,
Kara

Kara Gross | Legislative Director & Senior Policy Counsel
American Civil Liberties Union of Florida
Direct 786.363.4436 | kgross@aclufl.org | **www.aclufl.org**
Pronouns: she, her, hers

From: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Sent: Tuesday, February 2, 2021 3:47 PM
To: Kara Gross <KGross@aclufl.org>
Subject: RE: Meeting Request - HB 1/Criminal Justice Reform
Good afternoon Kara,
The Representative is extremely busy at the time, and doesn't have any openings for meetings. However, if you would like to have the meeting with me, we could figure out a date and time that works best for both of us.
Thank you!
Armando

From: Kara Gross <KGross@aclufl.org>
Sent: Monday, February 1, 2021 10:46 PM

To: Barquin, JuanF <JuanF.Barquin@myfloridahouse.gov>
Cc: Munero, Armando <Armando.Munero@myfloridahouse.gov>; Zegarra, Christopher <Christopher.Zegarra@myfloridahouse.gov>
Subject: Meeting Request - HB 1/Criminal Justice Reform

Hi Representative Fernandez-Barquin,

Hope you are doing well and staying Covid-safe. I was hoping to set up a time to virtually meet with you at your convenience regarding HB 1 and criminal justice reform efforts. Also, I wanted to be sure you have our opposition to HB 1/SB 484, as there is much in this bill that runs counter to criminal justice reform efforts by increasing sentence lengths for offenses that are already unlawful under current statutes and thus increasing costs to the state.

Please let me know if you have any availability to virtually meet and looking forward to connecting at your convenience.

Best regards,

Kara

Kara Gross | Legislative Director & Senior Policy Counsel
American Civil Liberties Union of Florida
Direct 786.363.4436 | kgross@aclufl.org | **www.aclufl.org**
Pronouns: she, her, hers
ACLU
Florida

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From: Munero, Armando
To: "Kara Gross"
Subject: RE: Meeting Request - HB 1/Criminal Justice Reform
Date: Friday, February 05, 2021 12:07:50 PM
Attachments: image001.png

Kara,
Would Wednesday at 11:30 am work? If not, I am free anytime on Thursday.
Best,
Armando

From: Kara Gross
Sent: Thursday, February 4, 2021 4:12 PM
To: Munero, Armando
Subject: RE: Meeting Request - HB 1/Criminal Justice Reform

EXTERNAL EMAIL: This email originated from outside of the Legislature. USE CAUTION when clicking links or opening attachments unless you recognize the sender and know the content is safe.

Hi Armando,
Yes, that would be great. I have availability Wednesday at 11am if that works for you? If not, please suggest some other days/times that might work (I don't have availability on Monday or Tuesday, so Wednesday or thereafter is better).
Thank you so much and have a nice weekend.
Best regards,
Kara

Kara Gross | Legislative Director & Senior Policy Counsel
American Civil Liberties Union of Florida
Direct 786.363.4436 | kgross@aclufl.org | **www.aclufl.org**
Pronouns: she, her, hers

From: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Sent: Wednesday, February 3, 2021 4:45 PM
To: Kara Gross <KGross@aclufl.org>
Subject: RE: Meeting Request - HB 1/Criminal Justice Reform
Kara,
This Thursday I will be taking the Representative to the airport for his flight at 1 pm. Would you be willing to have the meeting next week?
Best,
Armando

From: Kara Gross <KGross@aclufl.org>
Sent: Wednesday, February 3, 2021 2:47 PM
To: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Cc: Zegarra, Christopher <Christopher.Zegarra@myfloridahouse.gov>; Barquin, JuanF <JuanF.Barquin@myfloridahouse.gov>
Subject: RE: Meeting Request - HB 1/Criminal Justice Reform

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Hi Armando,

Thank you for your email and that would be great. Please let me know when is a convenient time for you. I am available Thursday between 1-3pm, if you have any time slots in there available. In the meantime, I wanted to be sure the Representative saw the following recent piece by constitutional law scholar, Erwin Chemerinsky, on the bill's impact on peaceful protesters https://www.nbcnews.com/think/opinion/republican-lawmakers-want-use-pro-trump-rioters-undermine-peaceful-protest-ncna1256232. I understand that it is not the Representative's intent to chill speech and nonviolent assembly, but unfortunately the bill that he has filed with have that impact.

Thank you so much and looking forward to talking with you.

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Good afternoon Kara,

The Representative is extremely busy at the time, and doesn't have any openings for meetings. However, if you would like to have the meeting with me, we could figure out a date and time that works best for both of us.

Thank you!

Armando

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Sent: Monday, February 1, 2021 10:46 PM
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Cc: Munero, Armando <Armando.Munero@myfloridahouse.gov>; Zegarra, Christopher <Christopher.Zegarra@myfloridahouse.gov>
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From: Munero, Armando
To: "Kara Gross"
Subject: RE: Meeting Request - HB 1/Criminal Justice Reform
Date: Tuesday, February 02, 2021 3:47:22 PM
Attachments: image001.png

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Thank you!
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From: Munero, Armando
To: "Lauren Gallo"
Subject: RE: Meeting Request
Date: Friday, January 29, 2021 12:08:05 PM

Lauren,
Can we schedule for Tuesday at 11 am? The Representative will be traveling up to Tallahassee on Monday, which makes it a little complicated for him.
Thank you!
Armando

From: Lauren Gallo
Sent: Friday, January 29, 2021 11:27 AM
To: Munero, Armando
Subject: Re: Meeting Request

Monday any time from 10am-1pm or after 2pm! If that doesn't work for the Representative we have time on Tuesday and Wednesday as well. Let me know what works best for you, I know he is busy so we will work around his schedule.
On Fri, Jan 29, 2021 at 10:50 AM Munero, Armando <Armando.Munero@myfloridahouse.gov> wrote:

> Good morning Lauren,
> Yes, a zoom would be perfect for the Representative. Is there any date or time in specific next week that would work for you guys?
> Best,
> Armando
>
> **From:** Lauren Gallo <lngallocag@gmail.com>
> **Sent:** Thursday, January 28, 2021 10:08 AM
> **To:** Munero, Armando <Armando.Munero@myfloridahouse.gov>
> **Subject:** Meeting Request
>
>
>
> Good Morning Armando,
> Last night I spoke with the Representative about scheduling a meeting with him and the League of Women Voters to discuss HB 1. He told me to reach out to you to get something on the calendar. If possible we are looking to do a zoom call due to COVID. Thank you in advance!
> --
> Best Wishes,
> Lauren Gallo
> Capitol Alliance Group, Inc
> 106 E. College Ave, Suite 1110
> Tallahassee, FL 32301
> Office: (850)224-1660
> Cell: (407)797-7796

--
Best Wishes,
Lauren Gallo
Capitol Alliance Group, Inc
106 E. College Ave, Suite 1110
Tallahassee, FL 32301
Office: (850)224-1660
Cell: (407)797-7796

From: Munero, Armando
To: "Lauren Gallo"
Subject: RE: Meeting Request
Date: Friday, January 29, 2021 12:38:22 PM

Lauren,
Yes, 10 am would work. Would you be able to send the zoom invitation, we have been having issues sending them out lately.
Best,
Armando

From: Lauren Gallo
Sent: Friday, January 29, 2021 12:20 PM
To: Munero, Armando
Subject: Re: Meeting Request

Would it be possible to do 10am instead? Thanks!

Lauren Gallo
Cell: (407)797-7796

On Jan 29, 2021, at 12:08 PM, Munero, Armando <Armando.Munero@myfloridahouse.gov> wrote:

Lauren,
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Tallahassee, FL 32301
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Cell: (407)797-7796

--
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Tallahassee, FL 32301
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To: "Lauren Gallo"
Subject: RE: Meeting Request
Date: Friday, January 29, 2021 3:32:18 PM

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Best,
Armando
From: Lauren Gallo
Sent: Friday, January 29, 2021 2:42 PM
To: Munero, Armando
Subject: Re: Meeting Request

Lauren Gallo is inviting you to a scheduled Zoom meeting.

Topic: HB 1
Time: Feb 2, 2021 10:00 AM Eastern Time (US and Canada)

Join Zoom Meeting
https://us05web.zoom.us/j/89549136880?pwd=UDNSajA1VnppTFNPUDBzQlVPbXIwUT09

Meeting ID: 895 4913 6880
Passcode: j82e3U

Here you go! I will be on the call as well as the President of the League of Women voters and one of their committee members. We are looking forward to it.
On Fri, Jan 29, 2021 at 12:56 PM Lauren Gallo <lngallocag@gmail.com> wrote:

> Yes, I will send one shortly.
>
> Lauren Gallo
> Cell: (407)797-7796
>
> On Jan 29, 2021, at 12:38 PM, Munero, Armando <Armando.Munero@myfloridahouse.gov> wrote:
>
> Lauren,
> Yes, 10 am would work. Would you be able to send the zoom invitation, we have been having issues sending them out lately.
> Best,
> Armando
>
> **From:** Lauren Gallo <lngallocag@gmail.com>
> **Sent:** Friday, January 29, 2021 12:20 PM

To: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Subject: Re: Meeting Request

Would it be possible to do 10am instead? Thanks!

Lauren Gallo
Cell: (407)797-7796

> On Jan 29, 2021, at 12:08 PM, Munero, Armando <Armando.Munero@myfloridahouse.gov> wrote:
>
> Lauren,
> Can we schedule for Tuesday at 11 am? The Representative will be traveling up to Tallahassee on Monday, which makes it a little complicated for him.
> Thank you!
> Armando
> **From:** Lauren Gallo <lngallocag@gmail.com>
> **Sent:** Friday, January 29, 2021 11:27 AM
> **To:** Munero, Armando <Armando.Munero@myfloridahouse.gov>
> **Subject:** Re: Meeting Request
>
>
>
> Monday any time from 10am-1pm or after 2pm! If that doesn't work for the Representative we have time on Tuesday and Wednesday as well. Let me know what works best for you, I know he is busy so we will work around his schedule.
> On Fri, Jan 29, 2021 at 10:50 AM Munero, Armando <Armando.Munero@myfloridahouse.gov> wrote:
>
> > Good morning Lauren,
> > Yes, a zoom would be perfect for the Representative. Is there any date or time in specific next week that would work for you guys?
> > Best,
> > Armando
> > **From:** Lauren Gallo <lngallocag@gmail.com>
> > **Sent:** Thursday, January 28, 2021 10:08 AM
> > **To:** Munero, Armando <Armando.Munero@myfloridahouse.gov>
> > **Subject:** Meeting Request
> >
> >
> >
> > Good Morning Armando,
> > Last night I spoke with the Representative about scheduling a

> meeting with him and the League of Women Voters to discuss HB 1. He told me to reach out to you to get something on the calendar. If possible we are looking to do a zoom call due to COVID. Thank you in advance!
> --
> Best Wishes,
> Lauren Gallo
> Capitol Alliance Group, Inc
> 106 E. College Ave, Suite 1110
> Tallahassee, FL 32301
> Office: (850)224-1660
> Cell: (407)797-7796

--
Best Wishes,
Lauren Gallo
Capitol Alliance Group, Inc
106 E. College Ave, Suite 1110
Tallahassee, FL 32301
Office: (850)224-1660
Cell: (407)797-7796

--
Best Wishes,
Lauren Gallo
Capitol Alliance Group, Inc
106 E. College Ave, Suite 1110
Tallahassee, FL 32301
Office: (850)224-1660
Cell: (407)797-7796

From: Munero, Armando
To: "Lauren Gallo"
Subject: RE: Meeting Request
Date: Friday, January 29, 2021 10:50:57 AM

Good morning Lauren,

Yes, a zoom would be perfect for the Representative. Is there any date or time in specific next week that would work for you guys?

Best,

Armando

From: Lauren Gallo

Sent: Thursday, January 28, 2021 10:08 AM

To: Munero, Armando

Subject: Meeting Request

Good Morning Armando,

Last night I spoke with the Representative about scheduling a meeting with him and the League of Women Voters to discuss HB 1. He told me to reach out to you to get something on the calendar. If possible we are looking to do a zoom call due to COVID. Thank you in advance!

--

Best Wishes,
Lauren Gallo
Capitol Alliance Group, Inc
106 E. College Ave, Suite 1110
Tallahassee, FL 32301
Office: (850)224-1660
Cell: (407)797-7796

From: Barquin, JuanF
To: Munero, Armando; "Juan Fernandez-Barquin"
Subject: Re: Meeting Request
Date: Tuesday, January 19, 2021 4:15:48 PM
Attachments: image001.png
image002.png
OutlookEmoji-1568727030772bae74683-b2f7-40e5-8a10-466c42a72c0a.png

---

Yeah, I'll take that meeting.

JFB

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Munero, Armando
Sent: Tuesday, January 19, 2021 11:57:55 AM
To: Barquin, JuanF; 'Juan Fernandez-Barquin'
Subject: FW: Meeting Request

Juan,
Would you be interested in taking this meeting about HB 1?
Best,
Armando

From: Will McRea
Sent: Tuesday, January 19, 2021 11:40 AM
To: Munero, Armando
Subject: RE: Meeting Request

We are pretty flexible and simply want to meet this week or next committee week. The discussion would be focused on HB 1.
Will
Sent from my T-Mobile 4G LTE Device
-------- Original message --------
From: "Munero, Armando" <Armando.Munero@myfloridahouse.gov>
Date: 1/19/21 11:28 AM (GMT-05:00)

To: Will McRea <will@suncitystrategies.com>
Subject: RE: Meeting Request
Good Morning Will,
Is there a specific date or time that would work for Casey Cook. In addition, what would the meeting be regarding?
Thank you!
Armando

From: Will McRea <will@suncitystrategies.com>
Sent: Monday, January 18, 2021 7:21 PM
To: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Cc: Barquin, JuanF <JuanF.Barquin@myfloridahouse.gov>
Subject: Meeting Request

Good evening Armando,
Hope you had a great weekend. Just wanted to reach out to request a (zoom) meeting with Representative Fernandez-Barquin. The meeting request is on behalf of Casey Cook with the Florida League of Cities.
Please advise if the Representative has any availability.
Thank you for your time.
Regards,

Will McRea
Sun City Strategies, Associate

SUN CITY STRATEGIES

786.651.7653
will@suncitystrategies.com
http://suncitystrategies.com

From:	Barquin, JuanF
To:	Hall, Whitney
Subject:	Sheriff Grady Judd suggested amendments
Date:	Wednesday, February 03, 2021 1:14:04 PM
Attachments:	Sheriff Grady Judd suggested amendments to HB 1.docx OutlookEmoji-1568727030772d5a126e7-51f0-416e-8196-3836de817ef5.png

Hi Whitney,

Here are the suggested amendments Sheriff Judd had. I am not crazy about the distance limitation since I don't think anything like that exists. But it should be a crime to possess those items during a riot or inciting a riot.

Juan

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Barquin, JuanF
To: Chambliss, Kevin
Subject: Touch base re HB 1
Date: Friday, January 22, 2021 4:35:56 PM
Attachments: OutlookEmoji-1568727030772e5d04023-e397-4dcb-b510-d77eacac619f.png

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Hi Rep,

Just called your confidential line, I hope you don't mind I got it from Rep Vance Aloupis. Wanted to touch base with you re HB 1, and get your input. My door is always open to talk. I left my personal mobile on your voicemail. Please advise when you are free to touch base.

Thank you,
Juan

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: Sheriff Grady Judd suggested amendments
Date: Monday, February 08, 2021 4:46:14 PM
Attachments: image001.png
OutlookEmoji-1568727030772cb25dd7f-658f-4f0a-b238-17f0ad586d47.png

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Florida House of Representatives

State Representative Juan Fernandez-Barquin
District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Hall, Whitney
Sent: Sunday, February 7, 2021 7:34 AM
To: Barquin, JuanF
Subject: RE: Sheriff Grady Judd suggested amendments

Hi Representative,

Sorry it's taken me a few days to get back to you on this. As to the prohibited items, I believe those items would be covered under HB 1 and punishable as aggravated rioting (for possessing a deadly weapon while committing a riot-Lines 741-742) if the person used or threatened to use the item in a dangerous way. See explanation below from case law:

When undefined in statute, Florida courts have defined a "deadly weapon" as an instrument that will likely cause death or great bodily harm when used in the ordinary and usual manner contemplated by its design or an object that is used or threatened to be used in a way likely to produce death or great bodily harm. See Brown v. State, 86 So.3d 569, 571 (Fla. 5th DCA 2012)

Under the bill, a person would not be punished simply for possessing an object that is not commonly recognized as a weapon, like a leaf blower or a rock, during a riot, but they would be punished if they used that leaf blower or a rock in a way that would likely hurt someone.

Please let me know if you want to discuss further.

Thanks!

Whitney Hall
Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives

(850) 717-4877

From: Barquin, JuanF
Sent: Wednesday, February 3, 2021 1:14 PM
To: Hall, Whitney
Subject: Sheriff Grady Judd suggested amendments

Hi Whitney,

Here are the suggested amendments Sheriff Judd had. I am not crazy about the distance limitation since I don't think anything like that exists. But it should be a crime to possess those items during a riot or inciting a riot.

Juan

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Barquin, JuanF
To: Munero, Armando
Subject: pls print
Date: Wednesday, January 27, 2021 3:39:53 PM
Attachments: 1-25-21 presentation for HB 1.docx
OutlookEmoji-1568727030772efbf5a1a-5e3e-4e8f-b100-c0d1967d3ac9.png

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[1568727030772]

Personal, then going out. Older couples harassed.
From the moment I decided to run for office, and my first day in the Florida House, my number one focus and responsibility has been to safeguard and protect our families and loved ones. That is what HB 1 aims to do. I ask you to join me in protecting our communities. This afternoon I will introduce this bill to my colleagues in the Florida House, and look forward to a constructive debate to bring this forward as law in the State of Florida. My hope is this policy will unite and protect our communities throughout Florida.

MLK quote for interview.

Specific incidence, to discussing about mob,

Mob mentality – in a mob distribution of responsibility because everyone is faceless. What keeps people sane is being held for their actions. In a mob you can be faceless, and in that the worst parts can manifest without being called for your actions. Allows people to hide. That's why you can't apologize to a mob. Can apologize to a person, but not to a mob. You cannot hold a mob responsible.

The Crowd, Gustave Le Bon – when part of crowd, individuals behave on instinct. Behave like that in a crowd but not as an individual.

- Anonymity they lose their fear of consequences, feeling invincibility, and lose moral responsibility
- Contagion - every act is contagious in a crowd, individual will sacrifice self interest, emotions contagious
- Demagogue – after being part of crowd, individual enters a state of hypnosis, leader can influence crowds to behave a certain way.

I think we can agree: violence committed by an individual is not acceptable.

Let's take it a step further - violence committed by a large group of people together, is even worse, and definitely not acceptable in a civilized society.

The large group of people – adds a special dangerous element.
An element that I think is over looked in this day in age.

When an individual is in a group, the individual loses their personal responsibility, and is more likely to lash out, and do things they wouldn't otherwise do if they were by themselves.

The majority of my bill takes crimes that are already illegal like the following:

- Assault
- Aggravated Assault
- Battery
- Aggravated Battery
- Battery of a Law Enforcement Officer
- Burglary
- Theft

And puts it in the context of a riot, and increases the penalties for these crimes, including a 6 month mandatory minimum for Battery on LEO during a riot or agg riot. (by increasing the level ranking on several of these crimes on the Criminal Punishment Code scoresheet.)

It takes criminal mischief of a memorial – already in law depending on the amount of damage to the property, and makes any damage greater than $200 + memorial = 3F.

This bill requires law enforcement to hold many of those arrested for:

- Mob Intimidation
- Burglary during a riot or aggravated riot
- Grand Theft during a riot or aggravated riot
- Riot
- Aggravated Riot
- Inciting a Riot / Aggravated Riot
- Aggravated Inciting Riot / Aggravated Riot

- Unlawful Assembly

first appearance – the idea behind that is make sure the individuals are booked, not immediately released, and go back to the riot.

Re-phrases non criminal violation

- **Obstruction of roads** – cannot intentionally block traffic, non pedestrian violation.
- July 2020 ambulance in St. Petersburg could not proceed because of protestors.
- Unlawful assembly – superficial change to the definition in statute.

Creates the crime:

- Aggravated Riot – larger riot,
- mob intimidation – the key here is the threat of violence.
- cyber intimidation – prevents someone from publishing your personal information for the purpose of people harassing you

We have to strengthen our laws when it comes to mob violence to make sure individuals are unequivocally dissuaded from committing violence in large groups.

We need to hold the individuals in groups to a higher sense of responsibility, hence the harsher sentences.

I do not condone violence, and I hope none of you condone violence either.

So lets condemn violence together, I ask for your support. Vote yes, and join me in combatting mob violence.

Florida Police Chiefs Association

Serving Florida's Law Enforcement Since 1952

January 27, 2021

The Honorable Juan Fernandez-Barquin
The Florida House of Representatives
315 House Office Building
402 South Monroe Street
Tallahassee, FL 32399-1300

The Honorable Danny Burgess
The Florida Senate
308 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Rep. Fernandez-Barquin and Sen. Burgess:

On behalf of the Florida Police Chiefs Association and over 900 of Florida's top law enforcement executives from across every region of the state, we applaud your sponsorship of HB 1 and SB 484, respectively, that are intended to maintain public order and keep the peace.

The Florida Police Chiefs Association believes that peaceful protest is a defining hallmark of our society. The member agencies of the Florida Police Chiefs Association are committed to defending every citizen's right to peacefully protest. At the same time, violent protests endanger lives and threaten the rights of every other citizen whom law enforcement officers swear an oath to protect. Violent and disorderly assembly, destroying property, harassing, and threatening citizens going about their business, and attacking law enforcement are all unacceptable behavior that your legislation aims to prevent.

Finally, while we've long called for additional funding for mental health and social service support, we staunchly oppose any disproportionate reduction in funding for law enforcement that would jeopardize public safety.

Thank you for your leadership on these issues and your unwavering support for Florida's law enforcement and the rule of law.

Sincerely,

Amy Mercer

Amy Mercer
Executive Director

cc: Senator Wilton Simpson, Senate President
Representative Chris Sprowls, Speaker of the House
Criminal Justice & Public Safety Committee Members and Committee Staff

P.O. Box 14038 • Tallahassee, FL 32317-4038 / 2636 Mitcham Drive • Tallahassee, FL 32308
Phone: (850) 219-3631 • Fax: (850) 219-3640 • Website: www.fpca.com

Unable to Process

OPPOSE HB 1/SB 484

Alicia Devine/Tallahassee Democrat

The ACLU of Florida opposes this bill because it is designed to further silence, punish, and criminalize those advocating for racial justice and an end to law enforcement's excessive use of force against Black and brown people.

Silencing Dissent and Punishing Protesters Seeking Racial Justice

The murders of George Floyd, Breonna Taylor, and so many others at the hands of police reinvigorated Floridians' calls for police reform and accountability. Millions took to the streets to exercise their First Amendment rights and demand justice.

Under existing law, these peaceful protests were met with tear gas, rubber bullets, and mass arrests. *Under existing law*, armed officers in full riot gear repeatedly used excessive force against peaceful unarmed protesters.

Florida's militaristic response against Black protesters and their allies demanding racial justice stands in stark contrast to the lackluster, and at times complicit, police response we saw to the failed coup by white supremacist terrorists in D.C.

This bill would further exacerbate the disparate police treatment of protesters and the injustices of our criminal legal system.

Floridians wishing to exercise their constitutional rights would have to weigh their ability to spend a night in jail if the protest is deemed an "unlawful assembly." Peaceful protesters could be arrested and charged with a third-degree felony for "committing a riot" even if they didn't engage in any disorderly and violent conduct.

Floridians need justice – real police accountability and criminal justice reform. Florida's law enforcement and criminal legal system have no shortage of tools to keep the peace and punish violent actors, and they've proven their tendency time and time again to misapply these tools to punish Black and brown peaceful protesters.

Vote NO on HB 1/SB 484.

ACLU Florida
786.363.2700
www.aclufl.org

Contents

The Bill is Overbroad and Vague and Will Chill Speech and Assembly

As we have seen over the last year, people's interpretation of where to draw a line between protest and riot depends heavily on their interpretation of dissenters' positions. Vague and overly broad key definitions in this bill will only further the discriminatory use of police tactics on protesters and unconstitutionally threaten our First Amendment rights of free speech and assembly. The bill will chill protected speech and result in widespread discretionary arrests and prosecutions disproportionately impacting Black Floridians.

Committing a "Riot"
HB 1/SB 484, Section 15

This bill creates a new statutory definition for "riot" that is so broad and unworkable that it allows for an individual to be arrested for "committing a riot" without any requirement that the individual's conduct be disorderly and violent or that they commit any actual damage or injury.

Under the bill, a person "commits a riot" if he or she "participates" in a public disturbance which involves an assembly of three or more people engaging in violent conduct resulting in injury or damage or creating a clear and present danger of personal injury or property damage.

It is important to note that the bill's definition is broader than under current case law. As outlined by the Florida Supreme Court, "the term "riot" at common law is defined as 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.*"[1] (emphasis added). Under current law, to be guilty of a riot the individual and at least three others need to intentionally execute a tumultuous disturbance of the peace by acting in a violent and turbulent manner to the terror of the people.

In contrast, under the bill, mere participation in an otherwise peaceful protest where there are three other people engaging in disorderly and violent conduct would subject all those present at the protest to a third-degree felony, punishable by up to five years in prison, a $5,000 fine, felony disenfranchisement, and all the lifelong collateral consequences of a felony conviction – including significant barriers to employment, education, and housing.

Under the bill, once an assembly is deemed a "riot" *anyone participating* in the assembly, regardless of the individual's intent or conduct, is captured by the bill's harsh consequences. It does not matter whether the assembly was mostly peaceful or peaceful at its inception, whether any property damage or personal injuries actually occurred, or the role – or lack thereof – the participant had in any disorderly and violent conduct. It is enough that a peaceful protest was infiltrated by a group of three people intent on creating disorder. This framework applies many of the injustices of the felony murder rule to the exercise of First Amendment rights to assemble and dissent, while going even further in not requiring any criminal intent at all.

The bill would result in the arrest of nonviolent individuals lawfully exercising their First Amendment rights for "committing a riot" based on the riotous conduct of some others in attendance at the event. The impact of this is to chill speech and discourage individuals from publicly speaking out against systemic racism, as we know too well who will be arrested under this broadly worded bill.

Instead of clearly requiring intentionally violent and destructive conduct, the bill's definitions leave it entirely discretionary for law enforcement to determine who is and who is not "participating" in a riot, and thus who is and who is not subject to the harsher penalties. As we know from what we witnessed in the violent attempted takeover of our nation's Capitol, the "rule of law" is enforced against some more readily than others.

"Aggravated Rioting"
HB 1/SB 484, Section 15

The bill creates a new second degree felony offense of "aggravated rioting,"[ii] so broadly and incoherently defined that an individual could be punished by up to 15 years in prison for participating in a public disturbance of ten or more people even though the individual did not engage in any violent acts or injure any person or property and no person or property was injured by anyone else.

Additionally, under the bill, an individual could be arrested for "aggravated rioting" by merely participating in a public disturbance of three or more people deemed a "riot" and blocking traffic by "threat of force." Threat of force is undefined in the bill. If a protester were to yell "if you drive into my fellow protesters, I'm going to kick your car?," could they be arrested for a second-degree felony? What if they stood firm in the street and refused to let a car pass? Is that preventing the safe movement of a vehicle? Under the bill, large groups of nonviolent protesters or ones that block traffic, even temporarily, could face up to 15 years in prison.

This means that a large group of people that block traffic, even momentarily, would be subject to the same criminal penalty as if they had committed a sexual assault. The potential of a peaceful protest turning violent or being deemed a riot and exposing someone to criminal sanctions, including up to 15 years in prison, would lead any reasonable person to reconsider marching for causes they are passionate about – an unacceptable chilling of constitutionally protected speech.

Encouraging a Riot
HB 1/SB 484, Section 15

The bill criminalizes mere encouragement of someone else's participation in a public assembly, rather than actual incitement of riotous conduct, and thus goes beyond what is constitutionally permissible.[iii]

Under the broadly worded bill, a person would be guilty of inciting a riot (a third-degree felony, punishable by up to 5 years in prison), if they "encourage" another person to "participate" in a public disturbance deemed a "riot," even if the individual did not intend for anyone to engage in any disorderly and violent acts. Encouraging an individual's participation in an event is not akin to directly inciting imminent lawless and violent action and should not be penalized as if they were the same.[iv]

"Mob Intimidation"
HB 1/SB 484, Section 8

Mob Intimidation, a newly created first-degree misdemeanor, is defined even more broadly, covering any group of three or more acting together to "compel or induce, or attempt to compel or induce, another person by force, or threat of force, to do any act or to assume or abandon a particular viewpoint."

"Force" is not defined by Florida statute. Black's Law Dictionary defines "force" as "power, violence, or pressure directed against a person or thing." The bill could be read to include physical force, verbal or physical threats, intimidation, or even peer pressure.

It is telling, and problematic, that the "force" required by this provision is open to interpretation. It is intended to silence otherwise constitutionally protected speech and to give police a highly discretionary "tool" for arrest. It is entirely within the words of this definition that the following could be deemed mob intimidation if done by a group of three or more: picketing that blocks a person's path to a health clinic or business, a threat to mount a legal - or political - challenge, a public relations pressure campaign, three students pressuring another person to join a fraternity, cheat on an exam, drink a beer, wear a mask, or break up with a girlfriend.

Allison Shelley/ACLU

The Bill Thwarts Criminal Justice Reform Efforts

This bill would result in more people, primarily Black and brown individuals, being incarcerated in jails and prisons for longer periods of time.

We are in the midst of a worldwide pandemic, wherein thousands of Floridians have lost loved ones and livelihoods. Nearly 200 people have died in Florida's prisons of COVID, and over 17,000 incarcerated individuals (approximately 1 in 5 individuals in prison) have been infected. Jails and prisons are petri-dishes for COVID infection as it is nearly impossible to prevent spread and maintain CDC social distance guidelines.

This has only complicated the dire situation in our prisons, jails and communities, as our outsized, overly crowded jails and prisons are already buckling under decades of unwillingness to correct the failed overincarceration policies of the 1980s and 1990s that disparately impacted marginalized communities. As a result, Black Floridians make up 47 percent of the prison population, yet comprise only 17 percent of Florida's overall population. Adding to this travesty of justice, the Governor wants to send more people to prison for longer periods of time – all to silence calls for racial justice and police accountability.

We know from experience of Florida law enforcement's militaristic tactics at BLM protests, these burdens will disproportionately fall on Black and brown people and their families. Police have, and will, respond to Black protesters with violence, then use these new statutory 'tools' when they are met with resistance or outrage.

Specifically, among other things, the bill would create higher level felonies and misdemeanors for the already existing offenses of simple assault (Section 1), battery (Section 3), theft (Section 13), and burglary (Section 11); it would increase sentencing points by ranking offenses one level higher on the criminal scoresheet[v] for aggravated assault and aggravated battery (Sections 2 and 4); and it would establish a new minimum mandatory sentence for battery on law enforcement or other officials (Section 6, 7) – if any of these offenses were committed during a protest that was labeled a "riot," regardless of whether the individual had engaged in any riotous conduct.

The supposed justification for these sentencing enhancements and increased criminal sanctions is that they occur during a "riot." However, as discussed above, the newly created definition of committing a riot is so broad and vague that it would appear to capture any person who participates in a peaceful protest that turns violent, even if the individual did not engage in any riotous or violent conduct.

Under the bill's overly broad definitions, even if the individual did not engage in any riotous conduct, prison sentences would be doubled or tripled, and fines would increase by thousands of dollars. Misdemeanor offenses would be reclassified as felonies and result in all of the life-long collateral consequences of a felony conviction – loss of voting rights, inability to serve on a jury or run for public office, significant barriers to employment, housing, education, and financial loans.

See page 12 for a section-by-section breakdown of the impacts of SB 484/HB 1.
The below are just a few examples:

Creates Harsher Misdemeanors and Felonies for Existing Offenses

If committed during a gathering deemed a "riot" under the bill's broad definition:

- A simple assault, which is typically a second-degree misdemeanor (punishable by up to 60 days in jail), would be a first-degree misdemeanor (***punishable by up to an additional 300 days in jail***) (Section 4).
- A simple battery, which is typically a first-degree misdemeanor (punishable by up to 1 year in jail), would be a third-degree felony (***punishable by up to 5 years in prison, $5,000 fine***) (Section 6).

  Thus, an additional 4 years of incarceration, and up to approximately $80,000 ($20,000 per/year x 4 years) more in taxpayer spending on incarceration if a misdemeanor battery took place during a peaceful protest where violence erupted. Additionally, the individual would be saddled with a felony conviction for life, including loss of voting rights and all other collateral consequences of a felony conviction – housing, employment, educational opportunities, etc.
- Burglary that is a second-degree felony (up to 15 years) would be a first-degree felony (punishable by up 30 years, ***thus an additional 15 years in prison – at taxpayer expense of up to $300,000 ($20,000 x 15 years***) (Section 12).
- Burglary that is a third-degree felony (up to 5 years) would be a second-degree felony ***(punishable by up to an additional 10 years in prison) – at taxpayer expense of up to $200,000 ($20,000 x 10 years***) (Section 12).

- Theft that is a second-degree felony (up to 15 years) would be a first-degree felony (punishable by up to 30 years, ***an additional 15 years in prison – at taxpayer expense of up to $300,000 ($20,000 x 15***) (Section 13).
- Theft that is a third-degree felony (up to 5 years) would be a second-degree felony (punishable by up to 15 years in prison, ***an additional 10 years in prison***) – ***at taxpayer expense of up to $200,000 ($20,000 x 10 years***) (Section 13).

Creates Several Brand-New Offenses

Below are a few of the new offenses created:

- **Mob Intimidation** punished by up to one year in jail: A group of 3 or more that tries to compel others by force or threat of force to do any act or assume or abandon a viewpoint (Section 8).
- **Destroying a Memorial**, second-degree felony punished by up to 15 years in prison: Destroying or pulling down a confederate or other memorial, including a flag (Section 11).
- **Damaging a Memorial**, third-degree felony punished by up to 5 years in prison: Causing $200 in damage to a confederate or other memorial (Section 10).
- **Cyberintimidation**, punished by up to a year in jail: Publishing a person's identifying information, such as name, with the intent to intimidate or have others intimidate or harass (Section 14).
- **Aggravated Riot**, second-degree felony punished by up to 15 years in prison: a "riot" that includes one of the following: at least 10 people; displays deadly weapons; endangers traffic by force or threat of force; causes more than $5,000 in property damage; or causes great bodily harm to a nonparticipant (Section 15).
- **Inciting a Riot,** third-degree felony punished by up to 5 years in prison for "encouraging" another to "participate" in a riot.
- **Aggravated Inciting a Riot**, punished by up to 15 years in prison: encouraging a riot that results in more than $5,000 in property damage OR great bodily harm OR supplies a deadly weapon or teaches another person to prepare a deadly weapon with the intent that it be used in a riot (Section 15).

Raises the Felony Ranking Level and Increases Sentencing Points

Additionally, the bill raises the felony offense level thus increasing sentencing points for numerous offenses that Black individuals are disproportionately arrested for, if they are done during an assembly deemed a riot.

- Aggravated Assault: offense level raised from 6 to 7 on the sentencing scoresheet and mandates at least 21 months of prison. Under current law, there is no mandatory prison time and probation is permissible.
- Aggravated Battery: offense level raised from 7 to 8 on the sentencing scoresheet, resulting in an increase of more than 13 months in prison for the same offense.
- Theft & Burglary: offense level increased in addition to being reclassified as a higher degree felony.

By harshly increasing penalties and prison sentence lengths and creating new felonies and deeming misdemeanors to be felonies resulting in felony disenfranchisement and

all the collateral consequences of felony convictions, this heavy-handed bill will exacerbate our overly high incarceration rates and undermine our criminal justice reform efforts.

The Bill is Unnecessary: Florida Statutes Already Criminalize Violence and Destruction of Property

This bill is unnecessary. The vast majority of protests, including those in Florida, in the wake of George Floyd's murder were overwhelming peaceful, save for excessive force by law enforcement in dispersing peaceful protests and arresting individuals for curfew and traffic and permit violations.[vi]

Moreover, current Florida law already criminalizes unlawful assembly, violence, property damage, traffic violations, violence directed at law enforcement, riots and sedition. This bill increases penalties on these already illegal offenses when they occur in the context of a protest, making it easier for law enforcement and prosecutors to have unbridled discretion to charge harsher penalties during a protest where law enforcement disagrees with the protesters' message (e.g., police accountability in the wake of George Floyd's murder) and chilling vital First Amendment speech.

Police officers and prosecutors do not need more tools to impose harsher penalties. Current statutes already criminalize unlawful assembly (section 870.02, Fla. Stat.), riots (sections 870.01 and 870.03), assault (section 784.011), aggravated assault (section 784.021), battery (section 784.03), aggravated battery (section 784.045), assault or battery of law enforcement (section 784.07), criminal mischief/property damage (section 806.13), theft (section 812.014), burglary (section 810.02), and defacing a flag (section 876.52). Law enforcement has no shortage of tools at their disposal, as evidenced by the mass arrests this summer of peaceful BLM protesters.

While the state has a responsibility to maintain public safety, Florida has more than enough laws currently on the books that punish the behaviors described in SB 484/HB 1, highlighting how unnecessary this bill is for any legitimate public safety purpose.

To be clear, under current law, rioting is a third-degree felony, punishable by up to five years in prison. What this bill does is allows law enforcement to arrest you for "rioting," punishable by up to five years in prison, for merely being present at a protest that turns violent or destructive, even if you did not engage in any riotous, violent, or destructive conduct.

Additionally, under this bill a person can be arrested and imprisoned for "aggravated riot," punishable by up to 15 years in prison, even if they did not engage in any violent or riotous conduct.

As to the Governor's disingenuous rebranding of his priority bill to crack down on racial justice protesters as necessary in light of the attempted white supremacist coup on our nation's capital, in addition to the above, Chapter 876, Florida Statutes, "Criminal Anarchy, Treason, and Other Crimes Against Public Disorder" provide law enforcement with all the tools they need to punish those who seek to violently overthrow our government. Tellingly, this bill does not touch these statutes.

The Bill Protects Confederate Monuments

Further evidencing the bill's effect of punishing those calling for racial justice and sustaining white supremacy, the bill seeks to protect confederate monuments by creating a new second-degree felony offense, punished by up to 15 years imprisonment, for pulling down or destroying 'memorials' that honor or recount "the military service of any past or present United States Armed Forces military personnel," or public service of a resident of the United States. 'Memorial' is defined broadly to include everything from flags and religious symbols to tombstones and statues. (Sections 10 and 11).

Additionally, the bill provides that any person who defaces or otherwise damages a memorial resulting in over $200 or more damage would be subject to a third-degree felony, punishable by up to 5 years in prison. As "deface" is not defined in the bill, protesters who apply paint or graffiti to a monument at a protest could face up to five years in prison.

It is beyond ridiculous that while the rest of the country is acknowledging the harms caused by state displays of confederate monuments and many localities are actively removing such symbols of white supremacy, Florida's governor has made it his number one priority to protect monuments honoring those who were willing to die to defend the institution of slavery.

Current statutes already protect against damage to property; the purpose of this bill is to elevate the protection of confederate monuments and criminalize and disenfranchise those who seek their removal.

The Bill Prohibits Release Until First Appearance for Individuals Exercising Their First Amendment Rights

The bill divests local circuit courts of the authority to adopt a local bond schedule allowing county sheriffs to release people who've been arrested but pose no risk to the community. Typically, courts and law enforcement have discretion to decide which offenses are dangerous enough to require a "cooling off" period after a person is arrested. This bill eliminates that discretion and requires mandatory custody until first appearance. (Sections 8, 12-13, 15-17).

Most outrageously, under SB 484/HB 1, people arrested for the minor offense of unlawful assembly "shall be held in custody until brought before the court for admittance to bail." Thus, under this bill, anyone peacefully protesting should be prepared to spend the night in jail.

As a result, the bill would fill up our jails with people who do not need to be there, aggravating the spread of COVID-19 and unnecessarily disrupting families. It would also chill dissent by further intimidating individuals from exercising their First Amendment rights out of fear that they will end up in jail without the option to post bail.

The Bill Usurps Local Control of Policing Decisions and Waives Sovereign Immunity

This bill usurps local authority over public safety decisions. It allows the Governor, with the Cabinet, to essentially reject a city budget and amend it to their liking at the appeal of *any* city resident, regardless of whether the local police chief approves changes in the police budget (Section 1).

This provision will require municipalities to spend taxpayer and staff resources to defend any appeal that is brought by any resident for any reduction in funding, even if requested by law enforcement. With the current economic realities, municipalities need flexibility to address public health and safety. The local budget process should not be made into a platform for statewide political posturing.

The bill also waives sovereign immunity for municipalities deemed to interfere with law enforcement's ability to provide "reasonable" protection during a riot or unlawful assembly (Section 3). This would allow individuals to bring civil lawsuits against municipalities for any amount of damages for personal injury, wrongful death or property damage based on an after-the-fact determination of whether law enforcement's response to the unlawful assembly or riot was reasonable.

Rather than damages being capped at $200,000, as is typical, this bill would expose municipalities to unlimited amounts of damages. This is likely intended to pressure municipalities to adopt overly militaristic law enforcement responses to peaceful protests in order to avoid the prospect of civil liability for unlimited damages.

The Bill Will Increase Violence Against Protesters

The bill will embolden and encourage violence against protesters peacefully exercising their First Amendment rights. It allows a counter-protester to escape civil liability for injuring or killing a protester.

It specifically creates an affirmative defense for a counter-protester to raise in any civil action for damages against them for personal injury, wrongful death or property damage, if the injury arose from the protester's participation in an unlawful assembly or an assembly deemed a "riot" (Section 18).

Under this bill, an individual peacefully protesting who is injured or killed or whose property is damaged by a counter-protester would be unable to recover damages in a civil action. A white supremacist who maliciously drove his car into protesters, for example, like the one in Charlottesville that killed Heather Heyer, would be able to assert an affirmative defense under this bill.[vii]

We have seen time and time again that white supremacists are emboldened by law enforcement's complicity with their violent actions toward Black protesters. They know they will likely not be held criminally liable for their actions, either through lack of police action or Florida's broad stand your ground statute. However, under current law, they can still be held civilly liable, and thus there is an incentive to not act on their worse instincts. This bill would remove that incentive.

[i] See State v. Beasley, 317 So. 2d 750, 752 (Fl. Sup. Ct. 1975) ("The term "riot" at common law is defined as 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.* (emphasis added).

[ii] The bill deems a riot "aggravated" if an assembly deemed a riot meets *only one* of the following:

a. ten or more people assembled,
b. traffic endangered by force or threat of force,
c. deadly weapons, such as firearms, present,
d. property damage of more than $5,000, or
e. great bodily harm to a nonparticipant.

[iii] See United States v. Miselis, 972 F.3d 518, 537 (4th Cir. 2020); see also Dakota Rural Action v. Noem, 416 F. Supp. 3d 874, 885 (D.S.D. 2019) (providing that statutory provision criminalizing encouraging participation in a riot was unconstitutionally overbroad; "The many words or expressive activities that arise within these three terms, to advise, encourage or solicit, might in some instances be offensive to some or to many people, but they are protected by the First Amendment and cannot be the subject of felony prosecution or of tort liability and damages.").

[iv] See United States v. Miselis, 972 F.3d 518, 540 (4th Cir. 2020) ("Having found that the Anti-Riot Act is overbroad vis-à-vis *Brandenburg* insofar as it proscribes speech tending to "encourage" or "promote" a riot, as well as speech "urging" others to riot or "involving" mere advocacy of violence, we turn now to consider whether the amount of overbreadth is substantial, "not only in an absolute sense, but also relative to the statute's plainly legitimate sweep." *Williams*, 553 U.S. at 292, 128 S.Ct. 1830. We conclude that it is.")

[v] Section 921.0022, Florida Statutes (Criminal Punishment Code; offense severity ranking chart).

[vi] Armed Conflict Location & Event Data Project (ACLED), "Demonstrations & Political Violence in America: New Data for Summer 2020;" Sept. 9, 2020, https://acleddata.com/2020/09/03/demonstrations-political-violence-in-america-new-data-for-summer-2020/

[vii] See Asher Stockler, "Heather Heyer's Mom Files $12 Million Lawsuit to Ensure James Fields Doesn't "Profit" From Daughter's Killing," Newsweek (Sept. 5, 2019), https://www.newsweek.com/susan-bro-heather-heyer-james-fields-lawsuit-wrongful-death-1457922 (Heather Heyer's mom, saying she hopes to send "a strong message to others who would use murder as a hate crime, that there are ongoing financial consequences on top of criminal consequences," brought a civil lawsuit for $12 million damages against the white supremacist who drove into and killed her daughter who was peacefully protesting for racial justice).

Section-By-Section Breakdown

Section 1: Prevents Municipalities from Reallocating Funding from Law Enforcement

Summary: Allows any resident of a municipality to file an appeal with the Executive Office of the Governor if the proposed municipal budget contains a funding reduction to the municipal law enforcement agency. The Governor's Office reviews the budget, provides for a hearing, and issues a report and recommendation to the Administration Commission (Governor and Cabinet). The Administration Commission then can amend the budget, which is final.

Analysis/Impact: Bill will effectively prevent municipalities from reallocating any amount of funds from law enforcement agencies to other municipal agencies or community priorities and will embolden and empower a single resident to bring an appeal of the municipal budget to the Office of the Governor. Raises concerns over local law enforcement and municipality's ability to set their own budgets and allows any resident in the municipality to set in motion a budget appeal process to overturn the budget priorities set by the municipality, regardless of the position of local law enforcement.

This provision will require the municipality to spend taxpayer and staff resources to defend any appeal that is brought by any resident with regard to any amount of reduction in funding. The provision contains strict timelines requiring the municipality to file a reply within 5 days to the Governor, and thereafter the municipality will need to defend their budget at a hearing, whereby their originally proposed budget will ultimately be approved, amended, or modified by the Administration Commission.

Given the economic realities stemming from COVID, municipalities need flexibility within their budget to address public health and safety, and do not need to be spending additional resources at the bequest of any resident who is unhappy with the municipality's budgetary decisions.

Section 2: Makes it Easier for Law Enforcement to Issue Citations to Protesters

Summary: Current law requires that obstruction of traffic must be "willfully" done in order violate Florida's traffic obstruction statute, this bill lowers the threshold by deleting the willful requirement and replacing it with the lesser "may not intentionally" requirement.[1] Additionally, the language is so broad that it appears to allow for law enforcement to issue pedestrian citations to any and all individuals peacefully protesting by merely standing on a street and temporarily hindering traffic.

[1] See Thunderbird Drive-In Theatre, Inc. v. Reed By & Through Reed, 571 So. 2d 1341, 1344 (Fla. Dist. Ct. App. 1990) (providing that "Prosser and Keeton's definition of willfulness requires that three elements be established: (1) the actor do an intentional act of an unreasonable character (2) in disregard of a *known or obvious risk* that was great (3) as to make it *highly probable* that harm would follow.") (emphasis in original).

Also appears to repeal statutory authority for local governments to issue permits to allow pedestrian use of roads.

Analysis/Impact: These changes will make it much easier for officers to cite protesters for "pedestrian violations" by lowering the necessary threshold from willful obstruction to allowing the citation for merely intentionally standing in a street or road or highway as compared to willfully and purposely obstructing traffic. The provision is vulnerable to discretionary enforcement aimed at suppressing protesters whose views the local authorities disagree with and panhandlers.

Section 3: Waives Sovereign Immunity for Municipalities and Opens Door to Civil Liability

Summary: Creates a previously unavailable civil cause of action against a city for a person who is injured or suffers property damage during an unlawful assembly when the city interfered with the law enforcement's ability to respond. The bill waives any sovereign immunity that would otherwise protect the city and eliminates any cap on the amount of damages.

Analysis/Impact: Opens the door to civil lawsuits against the city for unlimited damage liability. Significantly increases costs to the city to defend against such lawsuits and allocate resources to satisfy judgments and settlements. For example, a city's decision to sell an armored vehicle or instructions to police about using less-lethal force may result in civil liability, including punitive damages.

Section 4: Increases Penalties for Assault

Summary: The bill increases the penalty for assault from a 2nd degree misdemeanor to a 1st degree misdemeanor if the assault is done in furtherance of a "riot" or "aggravated riot."

Analysis/Impact: Under current law, the maximum penalty for an assault (e.g., threat of violence) is 60 days in county jail. SB 484/HB 1 provides that the maximum penalty for an assault (threat of violence) is 365 days (1 year) if committed during a "riot." That's approximately 300 days more jail time for a threat of violence if committed during a "riot," which is defined broadly in SB 484/HB 1 to consist of three or more people engaging in disorderly and violent conduct that would likely result in property damage.

To be clear, current law already provides tools for law enforcement to arrest individuals for assault and hold them in jail for up to 60 days. This bill allows police to arrest and jail individuals for up to 365 days.

Section 5: Increases Penalties for Aggravated Assault

Summary: This bill increases the penalty for aggravated assault if done in furtherance of a riot or aggravated riot. Aggravated assault is a third-degree felony punishable by up to 5 years in prison and a $5,000 fine. Under SB 484/HB 1, for the purpose of sentencing and gain-time eligibility, aggravated assault would be ranked one level above the ranking for the offense committed.

Analysis/Impact: Under current law, the maximum penalty for aggravated assault is 5 years in prison and there is no minimum sentence. This bill would require at least 21 months in prison if the assault happened during a riot. While SB 484/HB 1 provides that the maximum penalty of five years in prison for an aggravated assault would remain the same, the felony level would go from a 6 to a 7 on the sentencing scoresheet. Practically, that means that a crime that would normally give someone 36 points (allowing, but not requiring prison) on their scoresheet would now give someone 56 points (requiring prison). As a level 7 crime worth 56 points, the lowest permissible prison sentence, if this were the only crime on the person's scoresheet, would be 21 months in prison. Whereas before someone could potentially get probation for the crime, now they would face at least 21 months in prison.[2]

Current law already provides tools for law enforcement to arrest individuals for aggravated assault and hold them in jail or prison, but it doesn't mandate prison. The change in law would now raise someone's scoresheet points to be so high that prison is required for at least 21 months.

Section 6: Makes Battery a Felony Instead of a Misdemeanor

Summary: Increases the penalty for a battery from a 1st degree misdemeanor to a 3rd degree felony if it is committed in furtherance of a "riot" or "aggravated riot," whereby "riot" is broadly defined in the bill to include 3 or more people engaging in disorderly or violent conduct.

Analysis/Impact: Under current law, a battery is a misdemeanor with the maximum penalty of 1 year in county jail. SB 484/HB 1 provides that the battery would be a felony with a maximum penalty of 5 years in prison if committed during a "riot." That's 4 more years of prison and a felony record for the same offense (battery) if committed during a "riot," which, as mentioned above, is defined broadly in SB 484/HB 1 to consist of three or more people engaging in disorderly and violent conduct that would likely result in property damage.

Current law already provides tools for law enforcement to arrest individuals for battery and incarcerate them in jail for 1 year. This bill would make it a felony, which has lifelong consequences in terms of voting rights, ability to get a job, get loans, housing, education, etc. Additionally, the individual may be sentenced to up to 5 years in prison, rather than 1 year in county jail. It costs the state approximately $20,000 for each year an individual is incarcerated. Thus, the costs to the state for this provision could be an additional $80,000-$90,000 for each individual arrested for simple battery during a "riot."

[2] See the Criminal Punishment Code, http://www.dc.state.fl.us/pub/sen_cpcm/cpc_manual.pdf.

Section 7: Increases Penalties for Aggravated Battery

Summary: This bill increases the penalty for aggravated battery if done in furtherance of a riot or aggravated riot. Aggravated battery is a second-degree felony punishable by up to 15 years in prison and a $10,000 fine. Under SB 484/HB 1, for the purpose of increasing the sentencing and limiting gain-time eligibility, aggravated battery would be ranked one level above the ranking under s. 921.0022 for the offense committed.

Analysis/Impact: Aggravated battery is currently a level 7 on the scoresheet, worth 56 points and requiring a minimum of 21 months in prison. This proposed bill would change it from a level 7 to a level 8 on the scoresheet, which is worth 74 points, or a minimum of 34.5 months in prison, for an increase of 13.5 months in prison for the same crime.

Section 8: Creates New Crime of "Mob Intimidation"

Summary: Creates a new crime of "mob intimidation," whereby it is a first-degree misdemeanor, punishable by up to one year in county jail, for a person, assembled with two or more people, to compel or attempt to compel another by force or threat of force to do any act or assume/abandon a particular viewpoint. Further provides that the individual must be held in custody and not released until brought before the court for a bail hearing.

Analysis/Impact: Unnecessary and overly broad and vague. There is no need to create a new crime called "mob intimidation" to criminalize threats of force. Threats of force are already criminalized under "assault," which is a second-degree misdemeanor punishable by up to 60 days in jail. SB 484/HB 1 could result in an individual serving an additional 300 days in jail, at taxpayer expense, for the same offense.

- Confusing application/discretionary enforcement: If one person threatens "give me your backpack or else" it's an "assault" and up to 60 days in jail, but if that person is with two others and they make the same threat: "give me your backpack or else," it's considered "mob intimidation" and up to 365 days in jail?

Section 9: Creates a New Mandatory Minimum

Summary: Creates a mandatory minimum sentence of 6 months in prison for individuals convicted of battery on a law enforcement officer if the battery is in furtherance of a riot.

Under SB 484/HB 1, for the purpose of increasing the sentence and limiting gain-time eligibility, battery on a law enforcement officer during a riot would be ranked one level above the ranking under s. 921.0022 for the offense committed.

Analysis/Impact: Under current law, assault and battery on law enforcement officers are prohibited under Section 784.07, Florida Statutes. Battery on a law enforcement officer is a felony in the third degree, punishable by up to 5 years in prison. Judges have discretion depending on the

specific individual circumstances to sentence the individual to five years in prison. This bill takes away the judge's ability to sentence the defendant according to the individual circumstances presented and requires the judge to incarcerate the individual for a minimum of six months.

Section 10: Creates a Third-Degree Felony for Damaging a Confederate Memorial

Summary: Expands criminal mischief statute to provide that any person who willfully and maliciously defaces, injures, or otherwise damages a "memorial," with damage in excess of $200, commits a third-degree felony, punishable by up to five years in prison. Additionally, requires restitution of the full cost of repair or replacement.

SB 484/HB 1 defines "memorial" broadly as a "plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that is constructed and located with the intent of being permanently displayed or perpetually maintained" that *"honors or recounts the military service of any past or present United States Armed Forces Military personnel"* or any past or present public service of a United States resident.

Analysis/Impact: Current statutes already provide that damage to property of over $200 is a misdemeanor in the first degree, punishable by up to one year in county jail. SB 484/HB 1 would make it a third-degree felony, punishable by up to five years in jail, if the property that was damaged is considered a "memorial," as broadly defined in the bill. Thus, under SB 484/HB 1, an individual could spend an additional four years in prison at taxpayer expense of up to $80,000 ($20,000/year x 4 years) if the property damaged was a confederate memorial. Additionally, because the offense would be a felony conviction (instead of a misdemeanor), the individual would be subject to the numerous life-long collateral consequences of voting disenfranchisement, difficulty securing loans, housing, education, and employment.

As "deface" is not defined in the bill, protesters who apply paint or graffiti to a monument during a peaceful protest could face up to 5 years in prison.

Section 11: Creates a Second-Degree Felony for Destroying a Confederate Memorial

Summary: Creates new crime of destroying or demolishing a "memorial" that *honors or recounts the military service of any past or present United States Armed Forces Military personnel"* or any past or present public service of a United States resident. Provides that such offense is a second-degree felony, punishable by up to 15 years in prison, and $10,000 fine. Requires restitution of the full cost of repair or replacement.

Analysis/Impact: Current Florida statutes already protect against destruction of property, and penalties are commensurate with the value of the damage to the property. SB 484/HB 1 would make it a second-degree felony, punishable up to 15 years and prison, and $10,000 fine, if the property that was damaged was a confederate memorial or other memorial honoring past military

personnel or service, regardless of the assessed value of the property damage. Additionally, because the offense would be a felony conviction, the individual would be subject to the numerous life-long collateral consequences of voting disenfranchisement, difficulty securing loans, housing, education, and employment.

Sections 12 & 13: Increases Penalties for Burglary and Theft

Summary:

Burglary - Enhances the criminal penalty for burglary if committed during a riot or aggravated riot from a second-degree felony to a first-degree felony, or from a third degree felony to a second degree felony, depending on the circumstances. Requires individual to be held in custody and cannot be released on bail until first appearance. (Treats burglary during a riot the same as enhanced penalty for burglary during a state of emergency).

Theft- Enhances penalty for theft during a riot or aggravated riot from a second degree to a first-degree felony, or from a third degree to a second-degree felony, depending on the circumstances. Requires individual to be held in custody and cannot be released on bail until first appearance. (Treats theft during a riot the same as enhanced penalty for theft during a state of emergency).

Analysis/Impact: Burglary is already punishable by up to 15 years in prison, and $10,000 fine. SB 484/HB 1 would double that sentence, forcing the individual to be imprisoned up to 30 years – an additional 15 years – at taxpayer expense of up to $300,000 ($20,000 x 15) just because it occurred while three or more people were engaged in disorderly and violent conduct. Same with theft.

Treats a "riot" of three or more people the same as a "state of emergency" for the purpose of imposing harsher penalties on protesters. There is no rational or legitimate basis to equate three or more people engaged in disorderly conduct to "a state of emergency declared by the Governor under chapter 252." The Governor declares a "state of emergency," whereas the determination of whether an assembly is deemed a riot is entirely up to the discretion of law enforcement and prosecutors.

Section 14: Creates a New Crime of "Cyberintimidation by Publication"

Summary: Creates a new first-degree misdemeanor for the electronic publication of a person's personal identification information with the intent to threaten, intimidate, incite violence, etc.

Analysis/Impact: This bill is unnecessary as current criminal statutes already protect against threats, harassment, and inciting violence. Additionally, "intimidate" is undefined, vague, overly broad, and thus likely to chill protected speech.

Section 15: Broadly Defines "Riot" and Creates New Felony "Aggravated Riot."

Summary: Provides that a person commits a riot if he or she "*participates* in a public disturbance involving an assembly of three of more people acting with a common intent to mutually assist each other in disorderly and violent conduct resulting in injury or damage to another person or property or creating a clear and present danger of injury to another person or property." (emphasis added). Provides that it's a third-degree felony, punishable by up to 5 years in prison.

Creates a new crime of "aggravated rioting," which includes rioting with any of the following: (a) 9 or more people, (b) causing great bodily harm to nonparticipant, (c) causing property damage >$5,000, (d) displaying deadly weapons, or (e) endangering traffic by force or threat of force. Provides that it's a second-degree felony, punishable by up to 15 years in prison.

Creates new crime of inciting or encouraging "another to participate" in a riot. Provides that it's a third-degree felony.

Creates new crime of aggravated inciting or encouraging a riot. (Second degree felony).

Individuals arrested under these sections are required to be held until a bail hearing.

Analysis/Impact: Overbroad and vague; already covered by existing Florida law. Current Florida statutes provide that those guilty of a riot or inciting a riot are guilty of a third-degree felony, but the statutes do not define "riot." Instead, riot is defined through case law. The definition in SB 484/HB 1 is unclear and confusing. It provides that someone commits a riot if they participate in a public disturbance involving three or more people engaging in violent and disorderly conduct, but it does not define what it means to participate. Is attending a protest that turns violent participating in a riot? Under this definition it is unclear and entirely discretionary for law enforcement to determine who is and who is not "participating" in a riot, and thus who is and who is not subject to the harsher penalties.

This same problematic language arises with regard to the new offense of inciting or "encouraging" "another to participate" in a riot. What does it mean to encourage another to participate?

Section 16 & Section 17: Requires First Appearance Before Release on Bail

Summary: Adds language to the existing unlawful assembly and riot statutes requiring that individuals arrested for unlawful assembly or riot be held in custody without bail until brought before a judge for a bail determination.

Analysis/Impact: Chills speech/requires individuals be held in custody for protesting. Unlawful assembly is a second-degree misdemeanor, the lowest level state criminal offense. There is no rationale or legitimate reason that a person should be held in custody and denied bail for this low-level offense. Being denied the right to post bail before going in front of a judge is usually reserved for more serious or violent crimes, not low-level offenses such as unlawful assembly.

Section 18: Allows Counter-Protester to Avoid Liability for Civil Damages for Injuring or Killing a Protester

Summary: Creates affirmative defense in a civil action for personal injury, wrongful death, or property damage if the action arose from injury sustained in furtherance of a riot or unlawful assembly. When a defendant raises the affirmative defense, the action is stayed pending the outcome of the criminal action.

Analysis/Impact: Endangers peaceful protesters and chills dissent by emboldening counter-protesters to injure or kill protesters by shielding them from civil damages liability. Under this bill, counter-protesters who drive their car into protesters injuring or killing them, or otherwise inflict violence or damage personal property will be able to escape liability from a civil lawsuit brought by protesters they injured.

Section 19: Increases Sentencing Offense Level

Increases sentencing points by increasing the sentence severity level ranking for offense of defacing or removing monuments if committed in furtherance of a "riot" or "aggravated riot."

Section 20: Adds the New Crimes Created in SB 484/HB 1 to the Criminal Punishment Code

Adds as a Level 2 offense: Third degree felony for battery during a riot or aggravated riot; third degree felony damage of $200 or more to a memorial in honor of United States Armed Forces.

Adds as a Level 3 offense: Third degree felony of encouraging or inciting a riot.

Adds as a Level 4 offense: Second degree felony destroying memorial; third degree felony aggravated riot; third degree felony aggravated encouraging or inciting a riot.

Resources:

ACLU of Florida Denounces Gov. DeSantis' Proposal to Criminalize Protests, Jan. 8, 2021, https://www.aclufl.org/en/press-releases/aclu-florida-denounces-gov-desantis-proposal-criminalize-protests

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OPPOSE HB 1/SB 484

Alicia Devine/Tallahassee Democrat

The ACLU of Florida opposes this bill because it is designed to further silence, punish, and criminalize those advocating for racial justice and an end to law enforcement's excessive use of force against Black and brown people.

Silencing Dissent and Punishing Protesters Seeking Racial Justice

The murders of George Floyd, Breonna Taylor, and so many others at the hands of police reinvigorated Floridians' calls for police reform and accountability. Millions took to the streets to exercise their First Amendment rights and demand justice.

Under existing law, these peaceful protests were met with tear gas, rubber bullets, and mass arrests. *Under existing law*, armed officers in full riot gear repeatedly used excessive force against peaceful unarmed protesters.

Florida's militaristic response against Black protesters and their allies demanding racial justice stands in stark contrast to the lackluster, and at times complicit, police response we saw to the failed coup by white supremacist terrorists in D.C.

This bill would further exacerbate the disparate police treatment of protesters and the injustices of our criminal legal system.

Floridians wishing to exercise their constitutional rights would have to weigh their ability to spend a night in jail if the protest is deemed an "unlawful assembly." Peaceful protesters could be arrested and charged with a third-degree felony for "committing a riot" even if they didn't engage in any disorderly and violent conduct.

Floridians need justice – real police accountability and criminal justice reform. Florida's law enforcement and criminal legal system have no shortage of tools to keep the peace and punish violent actors, and they've proven their tendency time and time again to misapply these tools to punish Black and brown peaceful protesters.

Vote NO on HB 1/SB 484.

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The Bill is Overbroad and Vague and Will Chill Speech and Assembly

As we have seen over the last year, people's interpretation of where to draw a line between protest and riot depends heavily on their interpretation of dissenters' positions. Vague and overly broad key definitions in this bill will only further the discriminatory use of police tactics on protesters and unconstitutionally threaten our First Amendment rights of free speech and assembly. The bill will chill protected speech and result in widespread discretionary arrests and prosecutions disproportionately impacting Black Floridians.

Committing a "Riot"
HB 1/SB 484, Section 15

This bill creates a new statutory definition for "riot" that is so broad and unworkable that it allows for an individual to be arrested for "committing a riot" without any requirement that the individual's conduct be disorderly and violent or that they commit any actual damage or injury.

Under the bill, a person "commits a riot" if he or she "participates" in a public disturbance which involves an assembly of three or more people engaging in violent conduct resulting in injury or damage or creating a clear and present danger of personal injury or property damage.

It is important to note that the bill's definition is broader than under current case law. As outlined by the Florida Supreme Court, "the term "riot" at common law is defined as 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.*"[1] (emphasis added). Under current law, to be guilty of a riot the individual and at least three others need to intentionally execute a tumultuous disturbance of the peace by acting in a violent and turbulent manner to the terror of the people.

In contrast, under the bill, mere participation in an otherwise peaceful protest where there are three other people engaging in disorderly and violent conduct would subject all those present at the protest to a third-degree felony, punishable by up to five years in prison, a $5,000 fine, felony disenfranchisement, and all the lifelong collateral consequences of a felony conviction – including significant barriers to employment, education, and housing.

Under the bill, once an assembly is deemed a "riot" *anyone participating* in the assembly, regardless of the individual's intent or conduct, is captured by the bill's harsh consequences. It does not matter whether the assembly was mostly peaceful or peaceful at its inception, whether any property damage or personal injuries actually occurred, or the role – or lack thereof – the participant had in any disorderly and violent conduct. It is enough that a peaceful protest was infiltrated by a group of three people intent on creating disorder. This framework applies many of the injustices of the felony murder rule to the exercise of First Amendment rights to assemble and dissent, while going even further in not requiring any criminal intent at all.

The bill would result in the arrest of nonviolent individuals lawfully exercising their First Amendment rights for "committing a riot" based on the riotous conduct of some others in attendance at the event. The impact of this is to chill speech and discourage individuals from publicly speaking out against systemic racism, as we know too well who will be arrested under this broadly worded bill.

Instead of clearly requiring intentionally violent and destructive conduct, the bill's definitions leave it entirely discretionary for law enforcement to determine who is and who is not "participating" in a riot, and thus who is and who is not subject to the harsher penalties. As we know from what we witnessed in the violent attempted takeover of our nation's Capitol, the "rule of law" is enforced against some more readily than others.

"Aggravated Rioting"
HB 1/SB 484, Section 15

The bill creates a new second degree felony offense of "aggravated rioting,"[ii] so broadly and incoherently defined that an individual could be punished by up to 15 years in prison for participating in a public disturbance of ten or more people even though the individual did not engage in any violent acts or injure any person or property and no person or property was injured by anyone else.

Additionally, under the bill, an individual could be arrested for "aggravated rioting" by merely participating in a public disturbance of three or more people deemed a "riot" and blocking traffic by "threat of force." Threat of force is undefined in the bill. If a protester were to yell "if you drive into my fellow protesters, I'm going to kick your car?," could they be arrested for a second-degree felony? What if they stood firm in the street and refused to let a car pass? Is that preventing the safe movement of a vehicle? Under the bill, large groups of nonviolent protesters or ones that block traffic, even temporarily, could face up to 15 years in prison.

This means that a large group of people that block traffic, even momentarily, would be subject to the same criminal penalty as if they had committed a sexual assault. The potential of a peaceful protest turning violent or being deemed a riot and exposing someone to criminal sanctions, including up to 15 years in prison, would lead any reasonable person to reconsider marching for causes they are passionate about – an unacceptable chilling of constitutionally protected speech.

Encouraging a Riot
HB 1/SB 484, Section 15

The bill criminalizes mere encouragement of someone else's participation in a public assembly, rather than actual incitement of riotous conduct, and thus goes beyond what is constitutionally permissible.[iii]

Under the broadly worded bill, a person would be guilty of inciting a riot (a third-degree felony, punishable by up to 5 years in prison), if they "encourage" another person to "participate" in a public disturbance deemed a "riot," even if the individual did not intend for anyone to engage in any disorderly and violent acts. Encouraging an individual's participation in an event is not akin to directly inciting imminent lawless and violent action and should not be penalized as if they were the same.[iv]

"Mob Intimidation"
HB 1/SB 484, Section 8

Mob Intimidation, a newly created first-degree misdemeanor, is defined even more broadly, covering any group of three or more acting together to "compel or induce, or attempt to compel or induce, another person by force, or threat of force, to do any act or to assume or abandon a particular viewpoint."

"Force" is not defined by Florida statute. Black's Law Dictionary defines "force" as "power, violence, or pressure directed against a person or thing." The bill could be read to include physical force, verbal or physical threats, intimidation, or even peer pressure.

It is telling, and problematic, that the "force" required by this provision is open to interpretation. It is intended to silence otherwise constitutionally protected speech and to give police a highly discretionary "tool" for arrest. It is entirely within the words of this definition that the following could be deemed mob intimidation if done by a group of three or more: picketing that blocks a person's path to a health clinic or business, a threat to mount a legal - or political - challenge, a public relations pressure campaign, three students pressuring another person to join a fraternity, cheat on an exam, drink a beer, wear a mask, or break up with a girlfriend.

Allison Shelley/ACLU

The Bill Thwarts Criminal Justice Reform Efforts

This bill would result in more people, primarily Black and brown individuals, being incarcerated in jails and prisons for longer periods of time.

We are in the midst of a worldwide pandemic, wherein thousands of Floridians have lost loved ones and livelihoods. Nearly 200 people have died in Florida's prisons of COVID, and over 17,000 incarcerated individuals (approximately 1 in 5 individuals in prison) have been infected. Jails and prisons are petri-dishes for COVID infection as it is nearly impossible to prevent spread and maintain CDC social distance guidelines.

This has only complicated the dire situation in our prisons, jails and communities, as our outsized, overly crowded jails and prisons are already buckling under decades of unwillingness to correct the failed overincarceration policies of the 1980s and 1990s that disparately impacted marginalized communities. As a result, Black Floridians make up 47 percent of the prison population, yet comprise only 17 percent of Florida's overall population. Adding to this travesty of justice, the Governor wants to send more people to prison for longer periods of time – all to silence calls for racial justice and police accountability.

We know from experience of Florida law enforcement's militaristic tactics at BLM protests, these burdens will disproportionately fall on Black and brown people and their families. Police have, and will, respond to Black protesters with violence, then use these new statutory 'tools' when they are met with resistance or outrage.

Specifically, among other things, the bill would create higher level felonies and misdemeanors for the already existing offenses of simple assault (Section 1), battery (Section 3), theft (Section 13), and burglary (Section 11); it would increase sentencing points by ranking offenses one level higher on the criminal scoresheet[v] for aggravated assault and aggravated battery (Sections 2 and 4); and it would establish a new minimum mandatory sentence for battery on law enforcement or other officials (Section 6, 7) – if any of these offenses were committed during a protest that was labeled a "riot," regardless of whether the individual had engaged in any riotous conduct.

The supposed justification for these sentencing enhancements and increased criminal sanctions is that they occur during a "riot." However, as discussed above, the newly created definition of committing a riot is so broad and vague that it would appear to capture any person who participates in a peaceful protest that turns violent, even if the individual did not engage in any riotous or violent conduct.

Under the bill's overly broad definitions, even if the individual did not engage in any riotous conduct, prison sentences would be doubled or tripled, and fines would increase by thousands of dollars. Misdemeanor offenses would be reclassified as felonies and result in all of the life-long collateral consequences of a felony conviction – loss of voting rights, inability to serve on a jury or run for public office, significant barriers to employment, housing, education, and financial loans.

See page 12 for a section-by-section breakdown of the impacts of SB 484/HB 1.
The below are just a few examples:

Creates Harsher Misdemeanors and Felonies for Existing Offenses

If committed during a gathering deemed a "riot" under the bill's broad definition:

- A simple assault, which is typically a second-degree misdemeanor (punishable by up to 60 days in jail), would be a first-degree misdemeanor (***punishable by up to an additional 300 days in jail***) (Section 4).
- A simple battery, which is typically a first-degree misdemeanor (punishable by up to 1 year in jail), would be a third-degree felony (***punishable by up to 5 years in prison, $5,000 fine***) (Section 6).

  Thus, an additional 4 years of incarceration, and up to approximately $80,000 ($20,000 per/year x 4 years) more in taxpayer spending on incarceration if a misdemeanor battery took place during a peaceful protest where violence erupted. Additionally, the individual would be saddled with a felony conviction for life, including loss of voting rights and all other collateral consequences of a felony conviction – housing, employment, educational opportunities, etc.
- Burglary that is a second-degree felony (up to 15 years) would be a first-degree felony (punishable by up 30 years, ***thus an additional 15 years in prison – at taxpayer expense of up to $300,000 ($20,000 x 15 years***) (Section 12).
- Burglary that is a third-degree felony (up to 5 years) would be a second-degree felony ***(punishable by up to an additional 10 years in prison) – at taxpayer expense of up to $200,000 ($20,000 x 10 years***) (Section 12).

- Theft that is a second-degree felony (up to 15 years) would be a first-degree felony (punishable by up to 30 years, ***an additional 15 years in prison – at taxpayer expense of up to $300,000 ($20,000 x 15***) (Section 13).
- Theft that is a third-degree felony (up to 5 years) would be a second-degree felony (punishable by up to 15 years in prison, ***an additional 10 years in prison***) – ***at taxpayer expense of up to $200,000 ($20,000 x 10 years***) (Section 13).

Creates Several Brand-New Offenses

Below are a few of the new offenses created:

- **Mob Intimidation** punished by up to one year in jail: A group of 3 or more that tries to compel others by force or threat of force to do any act or assume or abandon a viewpoint (Section 8).
- **Destroying a Memorial**, second-degree felony punished by up to 15 years in prison: Destroying or pulling down a confederate or other memorial, including a flag (Section 11).
- **Damaging a Memorial**, third-degree felony punished by up to 5 years in prison: Causing $200 in damage to a confederate or other memorial (Section 10).
- **Cyberintimidation**, punished by up to a year in jail: Publishing a person's identifying information, such as name, with the intent to intimidate or have others intimidate or harass (Section 14).
- **Aggravated Riot**, second-degree felony punished by up to 15 years in prison: a "riot" that includes one of the following: at least 10 people; displays deadly weapons; endangers traffic by force or threat of force; causes more than $5,000 in property damage; or causes great bodily harm to a nonparticipant (Section 15).
- **Inciting a Riot,** third-degree felony punished by up to 5 years in prison for "encouraging" another to "participate" in a riot.
- **Aggravated Inciting a Riot**, punished by up to 15 years in prison: encouraging a riot that results in more than $5,000 in property damage OR great bodily harm OR supplies a deadly weapon or teaches another person to prepare a deadly weapon with the intent that it be used in a riot (Section 15).

Raises the Felony Ranking Level and Increases Sentencing Points

Additionally, the bill raises the felony offense level thus increasing sentencing points for numerous offenses that Black individuals are disproportionately arrested for, if they are done during an assembly deemed a riot.

- Aggravated Assault: offense level raised from 6 to 7 on the sentencing scoresheet and mandates at least 21 months of prison. Under current law, there is no mandatory prison time and probation is permissible.
- Aggravated Battery: offense level raised from 7 to 8 on the sentencing scoresheet, resulting in an increase of more than 13 months in prison for the same offense.
- Theft & Burglary: offense level increased in addition to being reclassified as a higher degree felony.

By harshly increasing penalties and prison sentence lengths and creating new felonies and deeming misdemeanors to be felonies resulting in felony disenfranchisement and

all the collateral consequences of felony convictions, this heavy-handed bill will exacerbate our overly high incarceration rates and undermine our criminal justice reform efforts.

The Bill is Unnecessary: Florida Statutes Already Criminalize Violence and Destruction of Property

This bill is unnecessary. The vast majority of protests, including those in Florida, in the wake of George Floyd's murder were overwhelming peaceful, save for excessive force by law enforcement in dispersing peaceful protests and arresting individuals for curfew and traffic and permit violations.[vi]

Moreover, current Florida law already criminalizes unlawful assembly, violence, property damage, traffic violations, violence directed at law enforcement, riots and sedition. This bill increases penalties on these already illegal offenses when they occur in the context of a protest, making it easier for law enforcement and prosecutors to have unbridled discretion to charge harsher penalties during a protest where law enforcement disagrees with the protesters' message (e.g., police accountability in the wake of George Floyd's murder) and chilling vital First Amendment speech.

Police officers and prosecutors do not need more tools to impose harsher penalties. Current statutes already criminalize unlawful assembly (section 870.02, Fla. Stat.), riots (sections 870.01 and 870.03), assault (section 784.011), aggravated assault (section 784.021), battery (section 784.03), aggravated battery (section 784.045), assault or battery of law enforcement (section 784.07), criminal mischief/property damage (section 806.13), theft (section 812.014), burglary (section 810.02), and defacing a flag (section 876.52). Law enforcement has no shortage of tools at their disposal, as evidenced by the mass arrests this summer of peaceful BLM protesters.

While the state has a responsibility to maintain public safety, Florida has more than enough laws currently on the books that punish the behaviors described in SB 484/HB 1, highlighting how unnecessary this bill is for any legitimate public safety purpose.

To be clear, under current law, rioting is a third-degree felony, punishable by up to five years in prison. What this bill does is allows law enforcement to arrest you for "rioting," punishable by up to five years in prison, for merely being present at a protest that turns violent or destructive, even if you did not engage in any riotous, violent, or destructive conduct.

Additionally, under this bill a person can be arrested and imprisoned for "aggravated riot," punishable by up to 15 years in prison, even if they did not engage in any violent or riotous conduct.

As to the Governor's disingenuous rebranding of his priority bill to crack down on racial justice protesters as necessary in light of the attempted white supremacist coup on our nation's capital, in addition to the above, Chapter 876, Florida Statutes, "Criminal Anarchy, Treason, and Other Crimes Against Public Disorder" provide law enforcement with all the tools they need to punish those who seek to violently overthrow our government. Tellingly, this bill does not touch these statutes.

The Bill Protects Confederate Monuments

Further evidencing the bill's effect of punishing those calling for racial justice and sustaining white supremacy, the bill seeks to protect confederate monuments by creating a new second-degree felony offense, punished by up to 15 years imprisonment, for pulling down or destroying 'memorials' that honor or recount "the military service of any past or present United States Armed Forces military personnel," or public service of a resident of the United States. 'Memorial' is defined broadly to include everything from flags and religious symbols to tombstones and statues. (Sections 10 and 11).

Additionally, the bill provides that any person who defaces or otherwise damages a memorial resulting in over $200 or more damage would be subject to a third-degree felony, punishable by up to 5 years in prison. As "deface" is not defined in the bill, protesters who apply paint or graffiti to a monument at a protest could face up to five years in prison.

It is beyond ridiculous that while the rest of the country is acknowledging the harms caused by state displays of confederate monuments and many localities are actively removing such symbols of white supremacy, Florida's governor has made it his number one priority to protect monuments honoring those who were willing to die to defend the institution of slavery.

Current statutes already protect against damage to property; the purpose of this bill is to elevate the protection of confederate monuments and criminalize and disenfranchise those who seek their removal.

The Bill Prohibits Release Until First Appearance for Individuals Exercising Their First Amendment Rights

The bill divests local circuit courts of the authority to adopt a local bond schedule allowing county sheriffs to release people who've been arrested but pose no risk to the community. Typically, courts and law enforcement have discretion to decide which offenses are dangerous enough to require a "cooling off" period after a person is arrested. This bill eliminates that discretion and requires mandatory custody until first appearance. (Sections 8, 12-13, 15-17).

Most outrageously, under SB 484/HB 1, people arrested for the minor offense of unlawful assembly "shall be held in custody until brought before the court for admittance to bail." Thus, under this bill, anyone peacefully protesting should be prepared to spend the night in jail.

As a result, the bill would fill up our jails with people who do not need to be there, aggravating the spread of COVID-19 and unnecessarily disrupting families. It would also chill dissent by further intimidating individuals from exercising their First Amendment rights out of fear that they will end up in jail without the option to post bail.

The Bill Usurps Local Control of Policing Decisions and Waives Sovereign Immunity

This bill usurps local authority over public safety decisions. It allows the Governor, with the Cabinet, to essentially reject a city budget and amend it to their liking at the appeal of *any* city resident, regardless of whether the local police chief approves changes in the police budget (Section 1).

This provision will require municipalities to spend taxpayer and staff resources to defend any appeal that is brought by any resident for any reduction in funding, even if requested by law enforcement. With the current economic realities, municipalities need flexibility to address public health and safety. The local budget process should not be made into a platform for statewide political posturing.

The bill also waives sovereign immunity for municipalities deemed to interfere with law enforcement's ability to provide "reasonable" protection during a riot or unlawful assembly (Section 3). This would allow individuals to bring civil lawsuits against municipalities for any amount of damages for personal injury, wrongful death or property damage based on an after-the-fact determination of whether law enforcement's response to the unlawful assembly or riot was reasonable.

Rather than damages being capped at $200,000, as is typical, this bill would expose municipalities to unlimited amounts of damages. This is likely intended to pressure municipalities to adopt overly militaristic law enforcement responses to peaceful protests in order to avoid the prospect of civil liability for unlimited damages.

The Bill Will Increase Violence Against Protesters

The bill will embolden and encourage violence against protesters peacefully exercising their First Amendment rights. It allows a counter-protester to escape civil liability for injuring or killing a protester.

It specifically creates an affirmative defense for a counter-protester to raise in any civil action for damages against them for personal injury, wrongful death or property damage, if the injury arose from the protester's participation in an unlawful assembly or an assembly deemed a "riot" (Section 18).

Under this bill, an individual peacefully protesting who is injured or killed or whose property is damaged by a counter-protester would be unable to recover damages in a civil action. A white supremacist who maliciously drove his car into protesters, for example, like the one in Charlottesville that killed Heather Heyer, would be able to assert an affirmative defense under this bill.[vii]

We have seen time and time again that white supremacists are emboldened by law enforcement's complicity with their violent actions toward Black protesters. They know they will likely not be held criminally liable for their actions, either through lack of police action or Florida's broad stand your ground statute. However, under current law, they can still be held civilly liable, and thus there is an incentive to not act on their worse instincts. This bill would remove that incentive.

[i] See State v. Beasley, 317 So. 2d 750, 752 (Fl. Sup. Ct. 1975) ("The term "riot" at common law is defined as 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.* (emphasis added).

[ii] The bill deems a riot "aggravated" if an assembly deemed a riot meets *only one* of the following:

a. ten or more people assembled,
b. traffic endangered by force or threat of force,
c. deadly weapons, such as firearms, present,
d. property damage of more than $5,000, or
e. great bodily harm to a nonparticipant.

[iii] See United States v. Miselis, 972 F.3d 518, 537 (4th Cir. 2020); see also Dakota Rural Action v. Noem, 416 F. Supp. 3d 874, 885 (D.S.D. 2019) (providing that statutory provision criminalizing encouraging participation in a riot was unconstitutionally overbroad; "The many words or expressive activities that arise within these three terms, to advise, encourage or solicit, might in some instances be offensive to some or to many people, but they are protected by the First Amendment and cannot be the subject of felony prosecution or of tort liability and damages.").

[iv] See United States v. Miselis, 972 F.3d 518, 540 (4th Cir. 2020) ("Having found that the Anti-Riot Act is overbroad vis-à-vis *Brandenburg* insofar as it proscribes speech tending to "encourage" or "promote" a riot, as well as speech "urging" others to riot or "involving" mere advocacy of violence, we turn now to consider whether the amount of overbreadth is substantial, "not only in an absolute sense, but also relative to the statute's plainly legitimate sweep." *Williams*, 553 U.S. at 292, 128 S.Ct. 1830. We conclude that it is.")

[v] Section 921.0022, Florida Statutes (Criminal Punishment Code; offense severity ranking chart).

[vi] Armed Conflict Location & Event Data Project (ACLED), "Demonstrations & Political Violence in America: New Data for Summer 2020;" Sept. 9, 2020, https://acleddata.com/2020/09/03/demonstrations-political-violence-in-america-new-data-for-summer-2020/

[vii] See Asher Stockler, "Heather Heyer's Mom Files $12 Million Lawsuit to Ensure James Fields Doesn't "Profit" From Daughter's Killing," Newsweek (Sept. 5, 2019), https://www.newsweek.com/susan-bro-heather-heyer-james-fields-lawsuit-wrongful-death-1457922 (Heather Heyer's mom, saying she hopes to send "a strong message to others who would use murder as a hate crime, that there are ongoing financial consequences on top of criminal consequences," brought a civil lawsuit for $12 million damages against the white supremacist who drove into and killed her daughter who was peacefully protesting for racial justice).

Section-By-Section Breakdown

Section 1: Prevents Municipalities from Reallocating Funding from Law Enforcement

Summary: Allows any resident of a municipality to file an appeal with the Executive Office of the Governor if the proposed municipal budget contains a funding reduction to the municipal law enforcement agency. The Governor's Office reviews the budget, provides for a hearing, and issues a report and recommendation to the Administration Commission (Governor and Cabinet). The Administration Commission then can amend the budget, which is final.

Analysis/Impact: Bill will effectively prevent municipalities from reallocating any amount of funds from law enforcement agencies to other municipal agencies or community priorities and will embolden and empower a single resident to bring an appeal of the municipal budget to the Office of the Governor. Raises concerns over local law enforcement and municipality's ability to set their own budgets and allows any resident in the municipality to set in motion a budget appeal process to overturn the budget priorities set by the municipality, regardless of the position of local law enforcement.

This provision will require the municipality to spend taxpayer and staff resources to defend any appeal that is brought by any resident with regard to any amount of reduction in funding. The provision contains strict timelines requiring the municipality to file a reply within 5 days to the Governor, and thereafter the municipality will need to defend their budget at a hearing, whereby their originally proposed budget will ultimately be approved, amended, or modified by the Administration Commission.

Given the economic realities stemming from COVID, municipalities need flexibility within their budget to address public health and safety, and do not need to be spending additional resources at the bequest of any resident who is unhappy with the municipality's budgetary decisions.

Section 2: Makes it Easier for Law Enforcement to Issue Citations to Protesters

Summary: Current law requires that obstruction of traffic must be "willfully" done in order violate Florida's traffic obstruction statute, this bill lowers the threshold by deleting the willful requirement and replacing it with the lesser "may not intentionally" requirement.[1] Additionally, the language is so broad that it appears to allow for law enforcement to issue pedestrian citations to any and all individuals peacefully protesting by merely standing on a street and temporarily hindering traffic.

[1] See Thunderbird Drive-In Theatre, Inc. v. Reed By & Through Reed, 571 So. 2d 1341, 1344 (Fla. Dist. Ct. App. 1990) (providing that "Prosser and Keeton's definition of willfulness requires that three elements be established: (1) the actor do an intentional act of an unreasonable character (2) in disregard of a *known or obvious risk* that was great (3) as to make it *highly probable* that harm would follow.") (emphasis in original).

Also appears to repeal statutory authority for local governments to issue permits to allow pedestrian use of roads.

Analysis/Impact: These changes will make it much easier for officers to cite protesters for "pedestrian violations" by lowering the necessary threshold from willful obstruction to allowing the citation for merely intentionally standing in a street or road or highway as compared to willfully and purposely obstructing traffic. The provision is vulnerable to discretionary enforcement aimed at suppressing protesters whose views the local authorities disagree with and panhandlers.

Section 3: Waives Sovereign Immunity for Municipalities and Opens Door to Civil Liability

Summary: Creates a previously unavailable civil cause of action against a city for a person who is injured or suffers property damage during an unlawful assembly when the city interfered with the law enforcement's ability to respond. The bill waives any sovereign immunity that would otherwise protect the city and eliminates any cap on the amount of damages.

Analysis/Impact: Opens the door to civil lawsuits against the city for unlimited damage liability. Significantly increases costs to the city to defend against such lawsuits and allocate resources to satisfy judgments and settlements. For example, a city's decision to sell an armored vehicle or instructions to police about using less-lethal force may result in civil liability, including punitive damages.

Section 4: Increases Penalties for Assault

Summary: The bill increases the penalty for assault from a 2nd degree misdemeanor to a 1st degree misdemeanor if the assault is done in furtherance of a "riot" or "aggravated riot."

Analysis/Impact: Under current law, the maximum penalty for an assault (e.g., threat of violence) is 60 days in county jail. SB 484/HB 1 provides that the maximum penalty for an assault (threat of violence) is 365 days (1 year) if committed during a "riot." That's approximately 300 days more jail time for a threat of violence if committed during a "riot," which is defined broadly in SB 484/HB 1 to consist of three or more people engaging in disorderly and violent conduct that would likely result in property damage.

To be clear, current law already provides tools for law enforcement to arrest individuals for assault and hold them in jail for up to 60 days. This bill allows police to arrest and jail individuals for up to 365 days.

Section 5: Increases Penalties for Aggravated Assault

Summary: This bill increases the penalty for aggravated assault if done in furtherance of a riot or aggravated riot. Aggravated assault is a third-degree felony punishable by up to 5 years in prison and a $5,000 fine. Under SB 484/HB 1, for the purpose of sentencing and gain-time eligibility, aggravated assault would be ranked one level above the ranking for the offense committed.

Analysis/Impact: Under current law, the maximum penalty for aggravated assault is 5 years in prison and there is no minimum sentence. This bill would require at least 21 months in prison if the assault happened during a riot. While SB 484/HB 1 provides that the maximum penalty of five years in prison for an aggravated assault would remain the same, the felony level would go from a 6 to a 7 on the sentencing scoresheet. Practically, that means that a crime that would normally give someone 36 points (allowing, but not requiring prison) on their scoresheet would now give someone 56 points (requiring prison). As a level 7 crime worth 56 points, the lowest permissible prison sentence, if this were the only crime on the person's scoresheet, would be 21 months in prison. Whereas before someone could potentially get probation for the crime, now they would face at least 21 months in prison.[2]

Current law already provides tools for law enforcement to arrest individuals for aggravated assault and hold them in jail or prison, but it doesn't mandate prison. The change in law would now raise someone's scoresheet points to be so high that prison is required for at least 21 months.

Section 6: Makes Battery a Felony Instead of a Misdemeanor

Summary: Increases the penalty for a battery from a 1st degree misdemeanor to a 3rd degree felony if it is committed in furtherance of a "riot" or "aggravated riot," whereby "riot" is broadly defined in the bill to include 3 or more people engaging in disorderly or violent conduct.

Analysis/Impact: Under current law, a battery is a misdemeanor with the maximum penalty of 1 year in county jail. SB 484/HB 1 provides that the battery would be a felony with a maximum penalty of 5 years in prison if committed during a "riot." That's 4 more years of prison and a felony record for the same offense (battery) if committed during a "riot," which, as mentioned above, is defined broadly in SB 484/HB 1 to consist of three or more people engaging in disorderly and violent conduct that would likely result in property damage.

Current law already provides tools for law enforcement to arrest individuals for battery and incarcerate them in jail for 1 year. This bill would make it a felony, which has lifelong consequences in terms of voting rights, ability to get a job, get loans, housing, education, etc. Additionally, the individual may be sentenced to up to 5 years in prison, rather than 1 year in county jail. It costs the state approximately $20,000 for each year an individual is incarcerated. Thus, the costs to the state for this provision could be an additional $80,000-$90,000 for each individual arrested for simple battery during a "riot."

[2] See the Criminal Punishment Code, http://www.dc.state.fl.us/pub/sen_cpcm/cpc_manual.pdf.

Section 7: Increases Penalties for Aggravated Battery

Summary: This bill increases the penalty for aggravated battery if done in furtherance of a riot or aggravated riot. Aggravated battery is a second-degree felony punishable by up to 15 years in prison and a $10,000 fine. Under SB 484/HB 1, for the purpose of increasing the sentencing and limiting gain-time eligibility, aggravated battery would be ranked one level above the ranking under s. 921.0022 for the offense committed.

Analysis/Impact: Aggravated battery is currently a level 7 on the scoresheet, worth 56 points and requiring a minimum of 21 months in prison. This proposed bill would change it from a level 7 to a level 8 on the scoresheet, which is worth 74 points, or a minimum of 34.5 months in prison, for an increase of 13.5 months in prison for the same crime.

Section 8: Creates New Crime of "Mob Intimidation"

Summary: Creates a new crime of "mob intimidation," whereby it is a first-degree misdemeanor, punishable by up to one year in county jail, for a person, assembled with two or more people, to compel or attempt to compel another by force or threat of force to do any act or assume/abandon a particular viewpoint. Further provides that the individual must be held in custody and not released until brought before the court for a bail hearing.

Analysis/Impact: Unnecessary and overly broad and vague. There is no need to create a new crime called "mob intimidation" to criminalize threats of force. Threats of force are already criminalized under "assault," which is a second-degree misdemeanor punishable by up to 60 days in jail. SB 484/HB 1 could result in an individual serving an additional 300 days in jail, at taxpayer expense, for the same offense.

- Confusing application/discretionary enforcement: If one person threatens "give me your backpack or else" it's an "assault" and up to 60 days in jail, but if that person is with two others and they make the same threat: "give me your backpack or else," it's considered "mob intimidation" and up to 365 days in jail?

Section 9: Creates a New Mandatory Minimum

Summary: Creates a mandatory minimum sentence of 6 months in prison for individuals convicted of battery on a law enforcement officer if the battery is in furtherance of a riot.

Under SB 484/HB 1, for the purpose of increasing the sentence and limiting gain-time eligibility, battery on a law enforcement officer during a riot would be ranked one level above the ranking under s. 921.0022 for the offense committed.

Analysis/Impact: Under current law, assault and battery on law enforcement officers are prohibited under Section 784.07, Florida Statutes. Battery on a law enforcement officer is a felony in the third degree, punishable by up to 5 years in prison. Judges have discretion depending on the

specific individual circumstances to sentence the individual to five years in prison. This bill takes away the judge's ability to sentence the defendant according to the individual circumstances presented and requires the judge to incarcerate the individual for a minimum of six months.

Section 10: Creates a Third-Degree Felony for Damaging a Confederate Memorial

Summary: Expands criminal mischief statute to provide that any person who willfully and maliciously defaces, injures, or otherwise damages a "memorial," with damage in excess of $200, commits a third-degree felony, punishable by up to five years in prison. Additionally, requires restitution of the full cost of repair or replacement.

SB 484/HB 1 defines "memorial" broadly as a "plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that is constructed and located with the intent of being permanently displayed or perpetually maintained" that *"honors or recounts the military service of any past or present United States Armed Forces Military personnel"* or any past or present public service of a United States resident.

Analysis/Impact: Current statutes already provide that damage to property of over $200 is a misdemeanor in the first degree, punishable by up to one year in county jail. SB 484/HB 1 would make it a third-degree felony, punishable by up to five years in jail, if the property that was damaged is considered a "memorial," as broadly defined in the bill. Thus, under SB 484/HB 1, an individual could spend an additional four years in prison at taxpayer expense of up to $80,000 ($20,000/year x 4 years) if the property damaged was a confederate memorial. Additionally, because the offense would be a felony conviction (instead of a misdemeanor), the individual would be subject to the numerous life-long collateral consequences of voting disenfranchisement, difficulty securing loans, housing, education, and employment.

As "deface" is not defined in the bill, protesters who apply paint or graffiti to a monument during a peaceful protest could face up to 5 years in prison.

Section 11: Creates a Second-Degree Felony for Destroying a Confederate Memorial

Summary: Creates new crime of destroying or demolishing a "memorial" that *honors or recounts the military service of any past or present United States Armed Forces Military personnel"* or any past or present public service of a United States resident. Provides that such offense is a second-degree felony, punishable by up to 15 years in prison, and $10,000 fine. Requires restitution of the full cost of repair or replacement.

Analysis/Impact: Current Florida statutes already protect against destruction of property, and penalties are commensurate with the value of the damage to the property. SB 484/HB 1 would make it a second-degree felony, punishable up to 15 years and prison, and $10,000 fine, if the property that was damaged was a confederate memorial or other memorial honoring past military

personnel or service, regardless of the assessed value of the property damage. Additionally, because the offense would be a felony conviction, the individual would be subject to the numerous life-long collateral consequences of voting disenfranchisement, difficulty securing loans, housing, education, and employment.

Sections 12 & 13: Increases Penalties for Burglary and Theft

Summary:

Burglary - Enhances the criminal penalty for burglary if committed during a riot or aggravated riot from a second-degree felony to a first-degree felony, or from a third degree felony to a second degree felony, depending on the circumstances. Requires individual to be held in custody and cannot be released on bail until first appearance. (Treats burglary during a riot the same as enhanced penalty for burglary during a state of emergency).

Theft- Enhances penalty for theft during a riot or aggravated riot from a second degree to a first-degree felony, or from a third degree to a second-degree felony, depending on the circumstances. Requires individual to be held in custody and cannot be released on bail until first appearance. (Treats theft during a riot the same as enhanced penalty for theft during a state of emergency).

Analysis/Impact: Burglary is already punishable by up to 15 years in prison, and $10,000 fine. SB 484/HB 1 would double that sentence, forcing the individual to be imprisoned up to 30 years – an additional 15 years – at taxpayer expense of up to $300,000 ($20,000 x 15) just because it occurred while three or more people were engaged in disorderly and violent conduct. Same with theft.

Treats a "riot" of three or more people the same as a "state of emergency" for the purpose of imposing harsher penalties on protesters. There is no rational or legitimate basis to equate three or more people engaged in disorderly conduct to "a state of emergency declared by the Governor under chapter 252." The Governor declares a "state of emergency," whereas the determination of whether an assembly is deemed a riot is entirely up to the discretion of law enforcement and prosecutors.

Section 14: Creates a New Crime of "Cyberintimidation by Publication"

Summary: Creates a new first-degree misdemeanor for the electronic publication of a person's personal identification information with the intent to threaten, intimidate, incite violence, etc.

Analysis/Impact: This bill is unnecessary as current criminal statutes already protect against threats, harassment, and inciting violence. Additionally, "intimidate" is undefined, vague, overly broad, and thus likely to chill protected speech.

Section 15: Broadly Defines "Riot" and Creates New Felony "Aggravated Riot."

Summary: Provides that a person commits a riot if he or she "*participates* in a public disturbance involving an assembly of three of more people acting with a common intent to mutually assist each other in disorderly and violent conduct resulting in injury or damage to another person or property or creating a clear and present danger of injury to another person or property." (emphasis added). Provides that it's a third-degree felony, punishable by up to 5 years in prison.

Creates a new crime of "aggravated rioting," which includes rioting with any of the following: (a) 9 or more people, (b) causing great bodily harm to nonparticipant, (c) causing property damage >$5,000, (d) displaying deadly weapons, or (e) endangering traffic by force or threat of force. Provides that it's a second-degree felony, punishable by up to 15 years in prison.

Creates new crime of inciting or encouraging "another to participate" in a riot. Provides that it's a third-degree felony.

Creates new crime of aggravated inciting or encouraging a riot. (Second degree felony).

Individuals arrested under these sections are required to be held until a bail hearing.

Analysis/Impact: Overbroad and vague; already covered by existing Florida law. Current Florida statutes provide that those guilty of a riot or inciting a riot are guilty of a third-degree felony, but the statutes do not define "riot." Instead, riot is defined through case law. The definition in SB 484/HB 1 is unclear and confusing. It provides that someone commits a riot if they participate in a public disturbance involving three or more people engaging in violent and disorderly conduct, but it does not define what it means to participate. Is attending a protest that turns violent participating in a riot? Under this definition it is unclear and entirely discretionary for law enforcement to determine who is and who is not "participating" in a riot, and thus who is and who is not subject to the harsher penalties.

This same problematic language arises with regard to the new offense of inciting or "encouraging" "another to participate" in a riot. What does it mean to encourage another to participate?

Section 16 & Section 17: Requires First Appearance Before Release on Bail

Summary: Adds language to the existing unlawful assembly and riot statutes requiring that individuals arrested for unlawful assembly or riot be held in custody without bail until brought before a judge for a bail determination.

Analysis/Impact: Chills speech/requires individuals be held in custody for protesting. Unlawful assembly is a second-degree misdemeanor, the lowest level state criminal offense. There is no rationale or legitimate reason that a person should be held in custody and denied bail for this low-level offense. Being denied the right to post bail before going in front of a judge is usually reserved for more serious or violent crimes, not low-level offenses such as unlawful assembly.

Section 18: Allows Counter-Protester to Avoid Liability for Civil Damages for Injuring or Killing a Protester

Summary: Creates affirmative defense in a civil action for personal injury, wrongful death, or property damage if the action arose from injury sustained in furtherance of a riot or unlawful assembly. When a defendant raises the affirmative defense, the action is stayed pending the outcome of the criminal action.

Analysis/Impact: Endangers peaceful protesters and chills dissent by emboldening counter-protesters to injure or kill protesters by shielding them from civil damages liability. Under this bill, counter-protesters who drive their car into protesters injuring or killing them, or otherwise inflict violence or damage personal property will be able to escape liability from a civil lawsuit brought by protesters they injured.

Section 19: Increases Sentencing Offense Level

Increases sentencing points by increasing the sentence severity level ranking for offense of defacing or removing monuments if committed in furtherance of a "riot" or "aggravated riot."

Section 20: Adds the New Crimes Created in SB 484/HB 1 to the Criminal Punishment Code

Adds as a Level 2 offense: Third degree felony for battery during a riot or aggravated riot; third degree felony damage of $200 or more to a memorial in honor of United States Armed Forces.

Adds as a Level 3 offense: Third degree felony of encouraging or inciting a riot.

Adds as a Level 4 offense: Second degree felony destroying memorial; third degree felony aggravated riot; third degree felony aggravated encouraging or inciting a riot.

Resources:

ACLU of Florida Denounces Gov. DeSantis' Proposal to Criminalize Protests, Jan. 8, 2021, https://www.aclufl.org/en/press-releases/aclu-florida-denounces-gov-desantis-proposal-criminalize-protests

Adora Obi Nweze, "DeSantis' latest proposal would harm the Black community", Tampa Bay Times, Nov. 29, 2020, https://www.tampabay.com/opinion/2020/11/29/desantis-latest-proposal-would-harm-the-black-community-letters/

Alleen Brown & Akela Lacy, "In Wake of Capitol Riot, GOP Legislatures "Rebrand" Old Anti-BLM Protest Laws," The Intercept, Jan. 12, 2021, Https://Theintercept.Com/2021/01/12/Capitol-Riot-Anti-Protest-Blm-Laws/

Russel Meyer, "Criminalizing protests in Florida is not the Christian thing to do," Tampa Bay Times, Dec. 16, 2020, https://www.tampabay.com/opinion/2020/12/16/criminalizing-protests-in-florida-is-not-the-christian-thing-to-do-column/

"Capitol Reax: SPLC Action Fund rails against anti-protest bill," Florida Politics, Jan. 11, 2021, https://floridapolitics.com/archives/394126-capitol-reax-splc-action-fund-rails-against-anti-protest-bill

Melba Pearson, "New Anti-Protest Bill is An Attack on Free Speech," Jan. 21, 2021, https://www.miamitimesonline.com/opinion/new-anti-protest-bill-is-an-attack-on-free-speech/article_3013c35e-5aa3-11eb-931c-bf425b0b9c3e.html

Gregory Lemos & Allen Kim, Florida Gov. Ron DeSantis calls for legislation aimed at cracking down on disorderly protests," Sept. 21, 2020, https://www.cnn.com/2020/09/21/politics/florida-desantis-protests-legislation-trnd/index.html

Armed Conflict Location & Event Data Project (ACLED), Demonstrations & Political Violence In America: New Data For Summer 2020; Sept. 9, 2020, https://acleddata.com/2020/09/03/demonstrations-political-violence-in-america-new-data-for-summer-2020/

242 F.Supp.2d 1226
United States District Court,
M.D. Florida.
Orlando Division.

Cheryl BISCHOFF, Vicky Stites, Seth Spangle, Plaintiffs,

v.

State of FLORIDA, Robert Butterworth, in his official capacity as Attorney General of the State of Florida, Sheriff Charles C. Aycock, in his Official Capacity, Defendants.

No. 6:98CV583–ORL–28JGG.
|
Jan. 3, 2003.

Synopsis
Protesters, who were threatened with arrest for engaging in a demonstration against company's support of homosexuality, brought action challenging constitutionality of Florida statutes prohibiting obstruction of public streets, highways, and roads and prohibiting the throwing advertising materials in motor vehicles. After remand, 222 F.3d 874, the District Court, Antoon, II, J., adopted the report and recommendation of United States Magistrate Judge Glazebrook, holding that: (1) protesters had standing to contest the constitutionality of Florida statutes, and (2) challenged statutes were facially invalid under First Amendment.

Judgment for plaintiffs.

West Headnotes (17)

[1] **Constitutional Law** Criminal Law

Although they were not arrested during demonstration, protesters, who were threatened with arrest for engaging in a demonstration against company's support of homosexuality and who refrained from exercising their First Amendment rights in order to avoid arrest, had standing to contest the constitutionality of Florida statutes prohibiting obstruction of public streets, highways, and roads and prohibiting the throwing advertising materials in motor vehicles. West's F.S.A. §§ 316.2045, 316.2055.

[2] **Federal Courts** Law of the case in general

Law of the case doctrine stands for the proposition that an appellate decision on an issue must be followed in all subsequent trial court proceedings unless the presentation of new evidence or an intervening change in the controlling law dictates a different result, or the appellate decision is clearly erroneous and, if implemented, would work a manifest injustice.

[3] **Federal Courts** Law of the case in general

Law of the case doctrine is primarily concerned with the duty of lower courts to follow what has already been decided in a case; it does not, however, extend to issues the appellate court does not address.

[4] **Constitutional Law** Streets and highways

Highways Obstruction of use of highway in general

Municipal Corporations Mode of Use and Regulation Thereof in General

Florida statute prohibiting obstruction of public streets, highways, and roads was content-based and vague, and therefore violated First Amendment free speech rights; statute facially preferred the viewpoints expressed by registered charities and political campaigners by allowing ubiquitous and free dissemination of their views, but restricted discussion of all other issues and subjects. U.S.C.A. Const.Amend. 1; West's F.S.A. § 316.2045.

4 Cases that cite this headnote

[5] **Constitutional Law** Streets and highways

Highways Obstruction of use of highway in general

Municipal Corporations Mode of Use and Regulation Thereof in General

Florida statute prohibiting obstruction of public streets, highways, and roads was not narrowly tailored to meet a significant state interest, but rather it was overbroad in violation of First Amendment; nothing in statute's content-based charity—non-charity distinction or political nonpolitical distinction has any bearing whatsoever on road safety or uniformity. U.S.C.A. Const.Amend. 1; West's F.S.A. § 316.2055.

1 Cases that cite this headnote

[6] **Constitutional Law** Advertising

Constitutional Law Particular Offenses

Highways Obstruction of use of highway in general

Florida statute prohibiting the throwing of advertising materials in motor vehicles was not narrowly tailored to meet a significant state interest as required by First Amendment; in addition, it was impermissibly vague in that it failed to define the terms "advertising or soliciting materials" and thus did not provide sufficient warning as to what conduct was proscribed by the law. U.S.C.A. Const.Amends. 1, 14; West's F.S.A. § 316.2055.

1 Cases that cite this headnote

[7] **Constitutional Law** Avoidance of constitutional questions

Court interprets statutes to avoid constitutional difficulties.

[8] **Constitutional Law** Justification for exclusion or limitation

In public fora, the government may regulate the time, place and manner of expression under First Amendment so long as the restrictions are: 1) content-neutral; 2) narrowly tailored to serve a significant government interest; and 3) leave open alternative channels of communication; content-neutral regulations are those that are justified without reference to the content of the regulated speech. U.S.C.A. Const.Amend. 1.

[9] **Constitutional Law** Justification for exclusion or limitation

Under First Amendment, a valid time, place and manner restriction must also be narrowly tailored to serve a significant government interest; government's interest in protecting the safety of persons using a public forum is a valid government objective. U.S.C.A. Const.Amend. 1.

2 Cases that cite this headnote

[10] **Constitutional Law** Time, Place, or Manner Restrictions

Under First Amendment, a valid time, place and manner restriction must allow for alternative channels of communication; government may not, however, abridge a citizen's right to exercise liberty of expression in an appropriate place simply because that same expression may be exercised in another place. U.S.C.A. Const.Amend. 1.

[11] **Constitutional Law** Content-Based Regulations or Restrictions

A content-based restriction, which regulates speech on the basis of the ideas expressed, is presumptively invalid under First Amendment. U.S.C.A. Const.Amend. 1.

2 Cases that cite this headnote

[12] **Constitutional Law** Strict or exacting scrutiny; compelling interest test

For a state to enforce a content-based restriction under First Amendment, it must show that the regulation is necessary to serve a compelling state interest and is narrowly drawn to achieve that end. U.S.C.A. Const.Amend. 1.

[13] **Constitutional Law** Facial invalidity

Statutes Effect of Total Invalidity

If a facial challenge is successful, the court will strike down the invalid statute; for a facial challenge to be successful, a plaintiff generally must establish that no set of circumstances exists under which the law would be valid.

[14] **Constitutional Law** Rules and regulations in general

Constitutional Law Statutes in general

Statutes or regulations may not sweep unnecessarily broadly and thereby invade the area of protected freedoms.

[15] **Constitutional Law** Overbreadth in General

A plaintiff may facially challenge an overly broad statute even though a more narrowly drawn statute would be valid as applied against the plaintiff.

1 Cases that cite this headnote

[16] **Constitutional Law** Prior Restraints

Plaintiffs may challenge statutes involving prior restraints on speech as facially invalid under First Amendment without demonstrating that there are no conceivable set of facts where the application of the particular government regulation might or would be constitutional. U.S.C.A. Const.Amend. 1.

1 Cases that cite this headnote

[17] **Constitutional Law** Prior Restraints

Constitutional Law Time limits on decision-making

A facially valid prior restraint on First Amendment protected expression contains procedural safeguards that obviate the dangers of censorship; first, burden of going to court to suppress the speech, and the burden of proof once in court, must rest with the government, second, any restraint prior to a judicial determination may only be for a specified brief time period in order to preserve the status quo., and third, an avenue for prompt judicial review of the censor's decision must be available. U.S.C.A. Const.Amend. 1.

West Codenotes

Held Unconstitutional
West's F.S.A. §§ 316.2045, 316.2055

Attorneys and Law Firms

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Alison L. Becker, Office of the Attorney General, Civil Litigation Div., Tampa, FL, Jeffrey F. Mahl, Attorney General's Office, West Palm Beach, FL, for Robert A. Butterworth.

Alison L. Becker, Office of the Attorney General, Civil Litigation Div., Tampa, FL, Jeffrey F. Mahl, Attorney General's Office, West Palm Beach, FL, for State of Florida.

ORDER

ANTOON, District Judge.

This cause is before the Court on Defendant Sheriff Aycock's Motion to Dismiss against Plaintiffs Cheryl Bischoff, Vicky Stites and Seth Spangle (Doc. 79, filed ***1229** January 9, 2002); and Defendant Robert Butterworth's ("Mr. Butterworth") Motion to Dismiss against Plaintiffs. (Doc. 81, filed January 29, 2002). The United States Magistrate Judge has submitted a Report and Recommendation (Doc. 100, filed September 19, 2002) providing that both Defendant Aycock's and Defendant Butterworth's Motion to Dismiss against Plaintiff be denied.

After an independent review of the record in this matter, including the Objections filed by all Defendants (Doc. 102, filed October 3, 2002 and Doc. 103, filed October 7, 2002)

and the response filed by Plaintiffs (Doc. 105 filed October 22, 2002), the Court agrees with the findings of fact and conclusions of law in the Report and Recommendation.

I. *Procedural History*

On December 29, 1997 religious activists gathered at the heavily trafficked intersection of Irlo Bronson Memorial Highway and Old Vineland Road in Osceola County, Florida for a demonstration. The activists were protesting Walt Disney's alleged support of homosexuality. The demonstrators carried signs and distributed handbills that articulated their criticism of Walt Disney's policies. In response to the demonstration, the Osceola County Sheriff's Deputies arrested three of the protesters, Phillip Benham ("Mr. Benham"), Matthew Bowman ("Mr. Bowman") and Seth Spangle ("Mr. Spangle"). They were each charged with violating section **316.2045**(2), Florida Statutes, for obstruction of traffic without a permit and section 316.2055 for throwing advertising material into vehicles.

Cheryl Bischoff ("Ms. Bischoff") and Vicky Stites ("Ms. Stites") were among the activists protesting against Walt Disney. On May 18, 1998 both Ms. Bischoff and Ms. Stites filed the instant action alleging that sections **316.2045** and 316.2055 were unconstitutional, both on their face and as applied to Plaintiffs.

Initially, this case was assigned to the Honorable Judge G. Kendall Sharp who dismissed the entire case because the Plaintiffs could not establish that they suffered an actual or threatened injury and therefore did not have standing to bring an as-applied challenge to the statute. With regard to the facial challenges, Judge Sharp declared the contested Florida Statutes constitutional and denied all outstanding motions as moot. (Doc. 48). However, on appeal the Eleventh Circuit reversed and remanded Judge Sharp's decision, ordering this court "to either hold an evidentiary hearing on the issue of standing or consider the merits of Plaintiff's as applied challenge." *Bischoff v. Osceola County, Fla.*, 222 F.3d 874, 876 (11th Cir.2000). According to the Eleventh Circuit, "the court erred in making findings of disputed facts and judgments regarding credibility, on which it then based its standing conclusion, without holding an evidentiary hearing." *Bischoff,* 222 F.3d at 885. Upon remand from the court of appeals, the case was reassigned to the undersigned United States district judge.

On February 7, 2001 Robert Butterworth ("Mr. Butterworth"), the Attorney General of the State of Florida, intervened as a Defendant (Doc. 60) and in late August Osceola County was dismissed from the case pursuant to agreement of the parties. (Doc. 72). A second amended complaint was filed on December 20, 2001 which added Mr. Spangle as a Plaintiff and substituted Sheriff Aycock for Sheriff Croft as a Defendant. (Doc. 76). Defendants filed a motion to dismiss the second ***1230** amended complaint (Docs. 79 & 81) to which Plaintiffs responded in opposition. (Docs. 80 & 82). In addition, the Plaintiffs filed a motion to set their facial challenge for summary judgment briefing. (Doc. 82).

This court referred these motions to Magistrate Judge James G. Glazebrook for a Report and Recommendation. Since the parties offered evidence outside the pleadings, on August 2, 2002 the Magistrate Judge converted the motions to dismiss to motions for summary judgment. An evidentiary hearing was held on August 27, 2002 on the issue of standing as well as on the facial challenges to sections **316.2045** and 316.2055. At oral argument the parties conceded that Plaintiffs' as-applied challenges were not ripe for summary judgment and that no sovereign immunity or qualified immunity issues remained. (Doc. 98 at 283–89). A Report and Recommendation was filed by Magistrate Judge Glazebrook on September 19, 2002 recommending denial of defendant's motions to dismiss and further recommending that Plaintiffs be found to have standing to pursue their First Amendment challenges to sections **316.2045** and 316.2055. Most significantly, the Magistrate Judge recommended that the relevant statutes be found facially unconstitutional and declared invalid. The Defendants subsequently filed objections to the Report and Recommendation (Docs. 102 & 103) and the Plaintiffs filed a response (Doc. 105).

II. *Defendants' Objections*

A. *The arrest of three protesters caused the termination of the demonstration.*

The Defendants object to the Magistrate Judge's use of the word "disbanded" in the following sentence: "On December 29, 1997, the Osceola County Sheriff's Office *disbanded* an organized protest at the heavily-trafficked intersection of Irlo Bronson Memorial Highway and Old Vineland Road in unincorporated Osceola County, Florida." (Doc. 100 at 2) (emphasis added). According to the Defendants, the use of the word "disbanded" can be interpreted to mean that Sheriff's officers told or instructed protestors to leave the demonstration. The Defendants argue that there is no evidence in the record to suggest that any officer instructed a

protestor to leave the area. Defendants however, do concede that the arrest of three of the protestors did result in the departure of other demonstrators. (Doc. 102 at 9).

The Court does not interpret the word "disbanded" in the Report and Recommendation to mean that the Sheriff's officers instructed the activists to leave the demonstration. However, the Court does interpret the Report and Recommendation to read that the December 29, 1997 demonstration was essentially disbanded by the arrest of three religious activists. Upon witnessing the arrest of three protesters the remaining activists feared the possibility of their own arrest and thus refrained from exercising their First Amendment right. The Magistrate Judge's Report and Recommendation does not in any way suggest that the Sheriff's officers instructed any demonstrators to leave. In fact, the Magistrate Judge explains that "Plaintiffs presented no evidence demonstrating that any Osceola County Deputy Sheriffs acted unprofessionally or in a manner inconsistent with their difficult responsibility of enforcing thousands of state and federal statutes." (Doc. 100 at 18 n. 8) Moreover, the interpretation of the word "disbanded" has no significance in the legal analysis of this case. This Court finds the use of the ***1231** word "disbanded" in the Report and Recommendation to be proper and agrees with the Magistrate Judge's finding of fact.

B. *The parties conceded at oral argument that no sovereign immunity or qualified immunity issues remained.*

The State of Florida and Mr. Butterworth object to the Magistrate Judge's finding that Defendants conceded that there are no issues as to sovereign immunity or qualified immunity remaining in the case.[1] It is clear from the transcript of the hearing that all Parties agreed that no sovereign immunity or qualified immunity issues remained:

(Doc. 98 at 286–87). The Court then proceeded to inquire about qualified immunity:

The Court:	All right. So there's really no issue as to sovereign immunity. And as to qualified immunity in that it's a declaratory judgment action, Attorney General's position.
Ms. Becker:	Your Honor, we didn't raise qualified immunity.
The Court:	Did the Sheriff raise that?
Mr. Poulton:	I don't think so.
The Court:	I'm sorry. That's not an issue.

(Doc. 98 at 287). The parties clearly conceded at oral argument that there were no sovereign or qualified immunity issues to be settled during oral argument. Therefore, the Magistrate Judge's conclusion with regard to these issues in the Report and Recommendation is proper and adopted by this Court.

C. *The Magistrate Judge properly converted the Defendants' Motions to Dismiss to Motions for Summary Judgment.*

The State of Florida and Mr. Butterworth also object to the Magistrate Judge's conversion of their motion to dismiss to a motion for summary judgment. (Doc. 103 at 12). Typically a court converts a motion to dismiss to a motion for summary judgment when the moving parties ask the court to resolve issues and consider evidence that are beyond the complaint. ***1232** Federal Rule of Civil Procedure 12(b) gives a court discretion to treat a motion to dismiss for failure to state a claim as a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. However, upon conversion of a motion to dismiss to a motion for summary judgment "[n]otice must be given to each party that the status of the action is now changed, and they must be given a 'reasonable opportunity' to present legal and factual material in support of or in opposition to the motion for summary judgment." *U.S. v. Gottlieb,* 424 F.Supp. 417, 418 (S.D.Fla.1976) (quoting *Sims v. Mercy Hosp.,* 451 F.2d 171 (6th Cir.1971)). "It is well established in this circuit that the ten day notice requirement of Fed. R. Civ. P. 56(c) is strictly enforced." *Herron v. Beck,*

693 F.2d 125 (11th Cir.1982) (citations and footnote omitted). Federal Rule of Civil Procedure 56(c) reads "[t]he motion [for summary judgment] shall be served at least 10 days before the time fixed for the hearing."

On August 2, 2002 the Magistrate Judge issued an Amended Order and Notice of Hearing which notified the parties of the court's conversion of Defendants' motions to dismiss to motions for summary judgment. (Doc. 87, filed August 2, 2002). The Magistrate Judge provided that "[o]n or before August 22, 2002, either party (or the intervener) may also file additional affidavits and exhibits within the purview of Fed. R. Civ. P. 56 as to matters that remain contested —as well as a Notice of Supplemental Authorities with explanatory parentheticals—in support of or in opposition to the motions." (Doc. 87 at 3). The Magistrate Judge further explained that "[t]he Court will hear oral argument on the motions, as well as any necessary evidence not otherwise presented (to the extent required by law), on Tuesday, August 27, 2002 at 9:30 a.m." (Doc. 87 at 3–4).

The parties were notified twenty-five days prior to the evidentiary hearing of the court's conversion of the pending motions to dismiss to motions for summary judgment. This notice was well within the ten-day requirement and certainly provided the parties with a reasonable opportunity to present legal and factual material in support of or in opposition to the motions for summary judgment. The conversion of the motions in this instance was proper and complied with the notice requirement of Federal Rule of Civil Procedure 56(c).

D. *The Plaintiffs have standing to bring their claims.*

[1] The State of Florida and Mr. Butterworth object to the Magistrate Judge's recommendation that Ms. Bischoff and Ms. Stites have standing to bring their claim.[3] The State of Florida and Mr. Butterworth argue that Ms. Bischoff and Ms. Stites do not have standing because they were not arrested during the demonstration and have not suffered an injury.

The Supreme Court in *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992), articulated the necessary requirements a Plaintiff must show to establish standing:

> First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection ***1233** between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative that the injury will be redressed by a favorable decision.

504 U.S. at 560–561, 112 S.Ct. 2130 (internal marks and citations, and footnote omitted). The Court further explained that "[t]he party invoking federal jurisdiction bears the burden of establishing these elements." *Id.* at 561, 112 S.Ct. 2130 (quoting *FW/PBS, Inc. v. Dallas,* 493 U.S. 215, 231, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990)).

Ms. Bischoff and Ms. Stites satisfy each of the constitutional requirements to establish standing. First, the fact that they were threatened with arrest for engaging in a demonstration is proof of a concrete injury to meet the "injury in fact" requirement. *See Bischoff,* 222 F.3d at 884 (explaining that the threat of arrest is wholly adequate to show injury in fact to establish standing). As noted by the Magistrate Judge, the threat of arrest was not limited to only those protesters engaged in particular activities. "First, the threat of arrest was not limited to those who stepped in the road—or at least no such limit was proved a the hearing. Sheriff Aycock himself argued in his brief that protestors who did not go into the street, but merely approached vehicles to solicit, nevertheless violated Florida law" and were thus subject to arrest. (Doc. 100 at 19–20). The threat of arrest in this instance was actual and concrete rather than merely conjectural or hypothetical. Ms. Bischoff and Ms. Stites refrained from exercising their First Amendment rights in order to avoid arrest. Thus, they suffered an injury in fact.

Second, Ms. Bischoff and Ms. Stites have established a causal link between the injury they suffered and Sheriff Aycock's enforcement of the contested statutes. "[B]oth Bischoff and Stites were engaged in conduct violative of the same Florida laws for which Osceola County Sheriff's Deputies arrested Plaintiff Spangle." (Doc. 100 at 20).

Finally, it is more than likely, not merely speculative, that Plaintiffs' injury would be redressed by a facial invalidation of the contested statutes. Defendants' primary argument in their objection to the Report and Recommendation with regard to the issue of standing focuses on the fact that neither Ms. Bischoff or Ms. Stites stepped in the road during the demonstration and were not arrested. The Defendants' Objection to the Report and Recommendation does not refer to any other factual evidence or case law that would bolster Defendant's position. As a result, this Court agrees with

the Magistrate Judge's conclusion that all the Plaintiffs have standing to contest the constitutionality of sections 316.2045 and 316.2055.

E. *The Magistrate Judge properly reconsidered the Plaintiffs' facial challenge to the contested Florida statutes.*

[2] In the Defendants' Objections to the Magistrate's Report and Recommendation (Docs. 102 & 103), the Defendants essentially argue that in revisiting the facial challenges to the relevant Florida statutes the Magistrate Judge violated the law of the case doctrine that requires trial courts to strictly adhere to the mandates of appellate courts. *See Piambino v. Bailey,* 757 F.2d 1112, 1120 (11th Cir.1985) (explaining that a "trial court, upon receiving the mandate of an appellate court, may ***1234** not alter, amend, or examine the mandate, or give any further relief or review, but must enter an order in strict compliance with the mandate"). The law of the case "doctrine stands for the proposition that an appellate decision on an issue must be followed in all subsequent trial court proceedings unless the presentation of new evidence or an intervening change in the controlling law dictates a different result, or the appellate decision is clearly erroneous and, if implemented, would work a manifest injustice." *Id.* (citing *Westbrook v. Zant,* 743 F.2d 764, 768–69 (11th Cir.1984)).

According to the Defendants, the disturbance of Judge Sharp's initial finding that the relevant Florida statutes were constitutional is against the Eleventh Circuit's August 14, 2000 mandate remanding the case "to the district court either to hold an evidentiary hearing on the question of standing or to rule on the merits of Plaintiffs' as applied challenge as raised in the parties' cross motion for summary judgment. *We refrain from reviewing the district court's ruling on the merits of Plaintiff's facial challenge at this time.*" *Bischoff v. Osceola County, Fla.,* 222 F.3d 874, 886 (11th Cir.2000) (emphasis added). The Defendants argue that the Eleventh Circuit reversed and remanded Judge Sharp's decision only for the District Court to reconsider standing or the Plaintiffs' as-applied challenge, not to reconsider Judge Sharp's conclusion with regard to the facial challenge. The hearing on the facial challenge along with the subsequent recommendation is, in the perspective of the Defendants, a violation of the Eleventh Circuit's instructions.

[3] The policy behind the law of the case doctrine is to maintain a sense of efficiency, finality and obedience within the judiciary. *See Litman v. Mass., Mutual Life Ins. Co.,* 825 F.2d 1506, 1511 (11th Cir.1987) (explaining that judicial dispute resolution must have elements of finality and stability). " 'Judicial precedence serves as the foundation of our federal judicial system. Adherence to it results in stability and predictability.' " *Id.* at 1510 (citing *Jaffree v. Wallace,* 705 F.2d 1526, 1533 (11th Cir.1983)). "[I]t would be impossible for an appellate court 'to perform its duties satisfactorily and efficiently' and 'expeditiously if a question, once considered and decided by it were to be litigated anew in the same case upon any and every subsequent appeal' thereof." *Terrell v. Household Goods Carriers' Bureau,* 494 F.2d 16, 19 (5th Cir.1974) (quoting *White v. Murtha,* 377 F.2d 428, 431 (5th Cir.1967)). In other words, the law of the case doctrine is primarily concerned with the duty of lower courts to follow what has already been decided in a case. It does not, however, extend to issues the appellate court does not address. *See Piambino,* 757 F.2d at 1120 (explaining that the "law of the case doctrine applies to all issues decided expressly or by necessary implication; it does not extend to issues the appellate court did not address."); *see also Terrell,* 494 F.2d at 19 (explaining that the law of the case rule applies only to issues that were decided, and does not include determination of questions which might have been decided). Therefore, a lower court would not violate the law of the case doctrine in deciding an issue that an appellate court did not address in a previous decision.

The law of the case doctrine simply does not extend to the Plaintiffs' facial challenge to the statutes because the Eleventh Circuit did not decide the issue. The Eleventh Circuit clearly stated that "[w]e refrain from reviewing the district court's ***1235** ruling on the merits of the Plaintiff's facial challenge at this time." *Bischoff,* 222 F.3d at 886. In re-examining the facial challenge, the Magistrate Judge did not exceed his authority but merely reconsidered an issue the Eleventh Circuit did not address. Moreover, the Magistrate Judge issued an Order on August 15, 2002 providing the parties with specific issues that they had to address during oral argument in order to ensure that all parties were prepared to address the question of facial constitutionality. (Doc. 88). In sum, the reconsideration of the facial challenge was appropriate and not a violation of the law of the case doctrine because the Eleventh Circuit decision did not require that Judge Sharp's ruling remain undisturbed.

F. *The contested Florida statutes are unconstitutional.*

1. *Section 316.2045 is unconstitutional because it is content-based and vague.*

[4] All the Defendants object to the Magistrate Judge's recommendation that section **316.2045** be declared unconstitutional.[4] The Magistrate Judge's recommendation is premised on the legal theory that section **316.2045** is content-based and vague. According to the Magistrate Judge, "the Florida statute facially prefers the viewpoints expressed by registered charities and political campaigners by allowing ubiquitous and free dissemination of their views, but restricts discussion of all other issues and subjects." (Doc. 100 at 31).

The Supreme Court in *Carey v. Brown,* 447 U.S. 455, 100 S.Ct. 2286, 65 L.Ed.2d 263 (1980), similarly dealt with an Illinois statute that made distinctions between peaceful picketing and peaceful labor picketing. The contested Illinois statute prohibited picketing on public streets and sidewalks in residential neighborhoods, but made an exception for peaceful labor picketing. The Supreme Court in *Carey* explained:

> The central problem with Chicago's ordinance is that it describes permissible picketing in terms of its subject mat ***1236** ter.... Any restriction on expressive activity because of its content would completely undercut the profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide open.

Id. at 462–63, 100 S.Ct. 2286 (internal citations and footnote omitted). The Court further explains in *Carey* that "[t]here is an equality of status in the field of ideas, and government must afford all points of view an equal opportunity to be heard. Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say." *Id.* at 463, 100 S.Ct. 2286 (internal citations and footnote omitted). The Court in *Carey* found the Illinois statute unconstitutional under the Equal Protection Clause of the Fourteenth Amendment because it made an impermissible subject matter distinction between lawful and unlawful picketing.

The Florida statute is similar to the Illinois statute at issue in *Carey.* The Florida statute suffers from the same constitutional infirmities. Facially the Florida statute prefers speech by § 501(c)(3) charities and those who are engaged in political speech. The Defendants in their objection to the Magistrate Judge's recommendation cite only to Judge Sharp's previous decision finding the contested Florida statute constitutional. The Defendants do not engage in any further analysis or cite to any other legal authority to support their position. In light of the impermissible distinctions made in section **316.2045**, Florida Statutes, the Court finds the statute unconstitutional under the Equal Protection Clause of the Fourteenth Amendment and the First Amendment of the United States Constitution.

The Magistrate Judge also found section **316.2045** void for vagueness. "The essential purpose of the 'void for vagueness' doctrine is to warn individuals of the criminal consequences of their conduct." *Jordan v. De George,* 341 U.S. 223, 230, 71 S.Ct. 703, 95 L.Ed. 886 (1951) (quoting *Williams v. United States,* 341 U.S. 97, 71 S.Ct. 576, 95 L.Ed. 774 (1951)). "The test is whether the language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." *Id.* at 231–2, 71 S.Ct. 576.

Section one of the contested statute in this case contains several ambiguous terms which make it difficult for an individual to determine what type of conduct is unlawful. "Section one is ambiguous as to whether it is unlawful for an individual to willfully obstruct the free use of the road 'by standing,' or whether she must do so by standing on the road. The undefined terms 'solicit' and 'political campaigning' contribute to the indefiniteness of § **316.2045**, as does section two's reference to and partial incorporation of the opaque and undecipherable permit provisions of another criminal statute, § 337.406." (Doc. 100 at 32). The language of section **316.2045** simply does not convey sufficiently definite warning as to the unlawful conduct when measured by common understanding. In the Defendants' Objections to the facial challenge they do not address the ambiguity of the statute. Therefore, this Court shall adopt the Magistrate Judge's recommendation that section **316.2045**, Florida Statutes, is void for vagueness.

2. *Section **316.2045** is not narrowly tailored to meet compelling state interest, but rather it is overbroad.*

[5] Generally, overbroad statutes have the potential to chill speech. Statutes or ***1237** regulations may not "sweep unnecessarily broadly and thereby invade the area of protected freedoms." *NAACP v. Alabama,* 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958). Courts invalidate overly broad statutes because "persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions provided by a statute susceptible of application to protected expression." *Gooding v. Wilson,* 405 U.S. 518, 521, 92 S.Ct. 1103, 31 L.Ed.2d 408 (1972).

The purpose behind the contested statutes is to ensure public safety on roads, which is a compelling government interest. However, the statute is not narrowly tailored to meet that compelling interest. "Nothing in the § 316.2045's content based charity—non-charity distinction or political nonpolitical distinction has any bearing whatsoever on road safety or uniformity." (Doc. 100 at 34). "Traffic accidents or backups caused by political campaigners or duly licensed charitable organizations are no less problematic than traffic accidents or backups caused by other political speakers or non-licensed charitable organizations." (Doc. 100 at 34). The Defendants argue in their objections that the statute is narrowly tailored and that it provides alternative channels for communication because individuals may apply for a permit in order to express their views. (Doc. 102 at 12). However, the Defendants do not address the Magistrate Judge's conclusion that the statute's permit scheme serves as a prior restraint on speech. "A prior restraint on expression exists when the government can deny access to a forum for expression before the expression occurs." *United States v. Frandsen,* 212 F.3d 1231, 1236–37 (2000). "Although prior restraints are not per se unconstitutional, there is a strong presumption against their constitutionality." *Id.* at 1237. In order for a regulation that places a restraint on speech to pass constitutional muster it must contain procedural safeguards to avoid censorship.

In this instance,

> [t]he permitting scheme established by § 316.2045 lacks the procedural safeguards necessary to ensure against undue suppression of protected speech. Neither this court, nor any citizen wishing to engage in legal speech on a Florida road, can determine whether a particular permitting procedure applies to a given stretch of road; whether a particular agency or person has been designated to accept and grant or deny applications; whether any substantive constraints are placed on that person's discretion to deny a license; whether prompt judicial review is available for a denial; and whether there is any time constraint on the issuance or denial of a license.

(Doc. 100 at 36). Although the Defendants argue that individuals could potentially apply for a permit, they do not point to anything in the record that convinces this Court that there are procedural safeguards in place to prevent the undue suppression of speech. Therefore, the Court adopts the recommendation that section 316.2045 is overbroad and not narrowly tailored to meet the government's compelling interest.

3. *Section 316.2055 is not narrowly tailored to meet a significant state interest.*[5]

[6] Although section 316.2055 is content neutral, it suppresses more speech ***1238** than is necessary to serve the stated government purpose of ensuring public safety on roads. In addition, it is impermissibly vague in that it fails to define the terms "advertising or soliciting materials" and thus does not provide sufficient warning as to what conduct is proscribed by the law. The Defendants do not specifically address the Magistrate Judge's legal analysis with regard to the constitutionality of section 316.2055. They do not offer any legal precedent that reaches a contrary conclusion or any factual evidence that persuades the Court to disagree with the Magistrate Judge's recommendation. Therefore, the Court agrees with the Magistrate Judge with regard to the unconstitutionality of section 316.2055.

III. Conclusion

Therefore, it is ORDERED as follows:

1. The Report and Recommendation (Doc. 100, filed September 19, 2002) is **ADOPTED AND CONFIRMED** and made part of this Order.

2. Defendant Aycock's Motion to Dismiss (Doc. 79, filed January 9, 2002) is **DENIED**.

3. Defendant Butterworth's Motion to Dismiss (Doc. 81, filed January 29, 2002) is **DENIED.**

4. It is further Ordered that the Court finds that Plaintiffs have standing to pursue their constitutional challenges to sections 316.2045 and 316.2055, Florida Statutes.

5. It is further Ordered that sections 316.2045 and 316.2055, Florida Statutes are found facially unconstitutional and invalid.

REPORT AND RECOMMENDATION

GLAZEBROOK, United States Magistrate Judge.

This cause came on for hearing on August 27, 2002 on the parties' motions for summary judgment. Those motions are:

1) Defendant Sheriff Charles Aycock's ("Sheriff Aycock's") Motion to Dismiss[1] against Plaintiffs Cheryl Bischoff ("Bischoff"), Vicky Stites ("Stites") and Seth Spangle[2]

("Spangle," collectively, "Plaintiffs"); Docket No. 79, filed January 9, 2002; and

2) Defendant Robert Butterworth's ("Butterworth's" or "the Attorney General's," with Aycock, "Defendants' "), Motion to Dismiss against Plaintiffs. Docket No. 81, filed January 29, 2002.

I. *INTRODUCTION*

On December 29, 1997, the Osceola County Sheriff's Office disbanded an organized protest at the heavily-trafficked ***1239** intersection of Irlo Bronson Memorial Highway and Old Vineland Road in unincorporated Osceola County, Florida. The group had gathered at the intersection to protest Walt Disney World's purported support of homosexuality. The Osceola County Sheriff's Deputies arrested three of the protesters, Phillip Benham ("Benham"), Matthew Bowman ("Bowman") and Spangle. The Sheriff's Office charged them with violating Fla. Stat. §§ **316**.**2045**(2) (obstruction of traffic to solicit without a permit) and 316.2055 (throwing advertising material into vehicles). Benham, Bowman, and Spangle later pled no contest to obstructing traffic to solicit without a permit, and each paid a $25 fine. Plaintiffs Bischoff and Stites were among the remaining protesters. Bischoff and Stites say that they were threatened with arrest under the same statutes, but that they disbanded in order to avoid arrest.

Bischoff and Stites filed this case on May 18, 1998, asking this Court to declare that Fla. Stat. §§ **316**.**2045** and 316.2055 were unconstitutional, both on their face and as applied to plaintiffs. The case was assigned to The Honorable G. Kendall Sharp. The original complaint named Osceola County as the sole defendant. Plaintiffs later amended their complaint, adding Osceola County Sheriff Charles Croft. Docket 17. Osceola County and Sheriff Croft moved to dismiss the amended complaint. Docket Nos. 19, 22. Sheriff Croft's motion to dismiss alternatively sought summary judgment. Bischoff and Stites filed a cross-motion for summary judgment, Docket No. 29, to which Osceola County and Sheriff Croft responded. Docket Nos. 34, 38.

On February 2, 1999, Judge Sharp dismissed the entire case for lack of standing, and denied all outstanding motions as moot. Docket No. 48. The United States Court of Appeals for the Eleventh Circuit reversed and remanded "to either hold an evidentiary hearing on the issue of standing or consider the merits of Plaintiffs' as applied challenge." *Bischoff v. Osceola County, Fla.*, 222 F.3d 874, 876 (11th Cir.2000). The Eleventh Circuit held that Judge Sharp had properly raised the issue of standing *sua sponte,* but had improperly decided standing based on contested facts without a hearing. *Id.* Upon remand from the court of appeals, Judge Sharp ordered the Clerk to reassign the case. The Clerk subsequently reassigned the case to The Honorable John Antoon II.

Robert Butterworth, Attorney General of the State of Florida, intervened as a defendant on February 7, 2001. Docket No. 60. By joint stipulation, the parties dismissed Osceola County on August 23, 2001. Docket No. 72. Bischoff and Stites filed a second amended complaint on December 20, 2001, adding Spangle as a plaintiff, and substituting Sheriff Charles Aycock for Sheriff Croft as a defendant. Docket No. 76. Defendants then moved to dismiss Plaintiffs' second amended complaint, Docket Nos. 79, 81, to which Plaintiffs responded in opposition. Docket Nos. 80, 82. Plaintiffs also filed a motion to set their facial challenge to the two statutes for summary judgment briefing. Docket No. 82.

On June 24, 2002, Judge Antoon referred these motions to the undersigned for preparation of a report and recommendation. Because the parties presented to the Court matters outside the pleadings, the Court converted the outstanding motions to dismiss to motions for summary judgment under Fed.R.Civ.P. 12(b), and established a schedule for hearing and resolving ***1240** all pending motions. Docket No. 87.

The Court held an evidentiary hearing on the standing issue on August 27, 2002, and also entertained extensive oral argument on the facial challenges to Fla. Stat. §§ **316**.**2045** and Fla. Stat. § 316.2055. The parties conceded at oral argument that Plaintiffs' as applied challenges were not ripe for summary judgment, and that no sovereign immunity or qualified immunity issues remained or existed. Therefore, the Court addresses only standing and facial validity.

II. *THE LAW*

A. THE STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). The moving party bears the initial burden of showing the Court, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial. *Celotex Corp. v. Catrett,* 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Clark v. Coats & Clark, Inc.,* 929 F.2d

604 (11th Cir.1991). A moving party discharges its burden on a motion for summary judgment by "showing" or "pointing out" to the Court that there is an absence of evidence to support the non-moving party's case. *Celotex,* 477 U.S. at 325, 106 S.Ct. 2548. Rule 56 permits the moving party to discharge its burden with or without supporting affidavits, and to move for summary judgment on the case as a whole or on any claim. *Id.* When a moving party has discharged its burden, the non-moving party must then "go beyond the pleadings," and by its own affidavits, or by "depositions, answers to interrogatories, and admissions on file," designate specific facts showing that there is a genuine issue for trial. *Id.* at 324, 106 S.Ct. 2548.

In determining whether the moving party has met its burden of establishing that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law, the Court must draw inferences from the evidence in the light most favorable to the non-movant and resolve all reasonable doubts in that party's favor. *Spence v. Zimmerman,* 873 F.2d 256 (11th Cir.1989). The Eleventh Circuit has explained the reasonableness standard:

> In deciding whether an inference is reasonable, the Court must "cull the universe of possible inferences from the facts established by weighing each against the abstract standard of reasonableness." The opposing party's inferences need not be more probable than those inferences in favor of the movant to create a factual dispute, so long as they reasonably may be drawn from the facts. When more than one inference reasonably can be drawn, it is for the trier of fact to determine the proper one.

WSB–TV v. Lee, 842 F.2d 1266, 1270 (11th Cir.1988) (internal citations omitted).

Thus, if a reasonable fact finder evaluating the evidence could draw more than one inference from the facts, and if that inference introduces a genuine issue of material fact, then the court should not grant the summary judgment motion. *Augusta Iron and Steel Works v. Employers Insurance of Wausau,* 835 F.2d 855, 856 (11th Cir.1988). A dispute about a material fact is "genuine" if the "evidence is such that a ***1241** reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). The inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id.* at 251–52, 106 S.Ct. 2505.

B. THE LAW OF STANDING

Unless a plaintiff has standing to bring her claims, the Court is without jurisdiction to hear her case. *Warth v. Seldin,* 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). The party invoking federal jurisdiction bears the burden of proving standing. *Bischoff v. Osceola County, Fla.,* 222 F.3d 874, 878 (11th Cir.2000), citing *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). To satisfy constitutional standing requirements, a plaintiff must show three elements:

> First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal relationship between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely as opposed to merely speculative that the injury will be redressed by favorable decision.

222 F.3d at 883, citing *Lujan,* 504 U.S. at 560–61, 112 S.Ct. 2130 (internal marks, citations, and footnote omitted).

C. FACIAL CHALLENGES UNDER THE CONSTITUTION

1. *The United States Constitution*

The First Amendment guarantees that "Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const., amend. I. Although the First Amendment is directed at the federal government's conduct, the rights guaranteed by the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment. U.S. Const., amend. XIV ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.").

Federal courts are courts of limited jurisdiction. The courts do not reach out to reform or rewrite state statutes that seem to require some improvement. Neither do the federal courts strike down valid laws of which they disapprove. It is the state legislature's duty to enact valid laws, and the Court's duty to

declare what the law is, and how the law applies to the facts. The federal courts do not substitute laws that they prefer for the will of the elected state legislature. But where parties in a controversy ask a federal court to declare whether a state law violates the Constitution of the United States, the Court must not shrink from its duty to adjudicate the question presented.

2. *The Standards of Constitutional Scrutiny*

a. Forum Analysis

When a state regulation restricts the use of government property as a forum for expression, a court must first determine the nature of the government property ***1242** involved. *United States v. Kokinda,* 497 U.S. 720, 726–27, 110 S.Ct. 3115, 111 L.Ed.2d 571 (1990). The nature of the property determines the level of constitutional scrutiny applied to the restrictions on expression. *Capitol Square Review & Advisory Bd. v. Pinette,* 515 U.S. 753, 761, 115 S.Ct. 2440, 132 L.Ed.2d 650 (1995). The Supreme Court has delineated three categories of government-owned property for First Amendment purposes: the traditional public forum, the designated public forum, and the nonpublic forum. *Crowder v. Housing Authority of Atlanta,* 990 F.2d 586, 590 (11th Cir.1993).

Streets and parks are the quintessential traditional public fora, because those areas "have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n,* 460 U.S. 37, 45, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983) (*quoting Hague v. Committee for Indus. Org.,* 307 U.S. 496, 515, 59 S.Ct. 954, 83 L.Ed. 1423 (1939)); *see also Int'l Soc. for Krishna Consciousness, Inc., v. Lee,* 505 U.S. 672, 696, 112 S.Ct. 2701, 120 L.Ed.2d 541 (1992) (Kennedy, J., concurring) ("At the heart of our jurisprudence lies the principal that in a free nation citizens must have the right to gather and speak with other persons in public places. The recognition that certain government owned property is a public forum provides open notice to citizens that their freedoms may be exercised there without fear of a censorial government, adding tangible reinforcement to the idea that we are a free people"); *Redd v. City of Enterprise,* 140 F.3d 1378, 1383 (11th Cir.1998) (where traveling minister was arrested for disorderly conduct for preaching on the corner of a busy intersection, streets were a traditional public forum).

b. Content–Neutral versus Content–Based

[7] Courts apply different levels of scrutiny to contested statutes. At issue in the instant case is whether Fla. Stat. §§ **316.2045** and 316.2055 impose only content-neutral restrictions, or whether the restrictions are content-based. In any event, the Court interprets[3] statutes to avoid constitutional difficulties. *Frisby v. Schultz,* 487 U.S. 474, 483, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988).

i. *Content–Neutral Restrictions*

[8] **[9]** In public fora, the government may regulate the time, place and manner of expression so long as the restrictions are: 1) content-neutral; 2) narrowly tailored to serve a significant government interest; and 3) leave open alternative channels of communication. *United States v. Grace,* 461 U.S. 171, 177, 103 S.Ct. 1702, 75 L.Ed.2d 736 (1983). Content-neutral regulations are those that are "justified without reference to the content of the regulated speech." *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.,* 425 U.S. 748, 771, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976). A valid time, place and manner restriction must also be ***1243** narrowly tailored to serve a significant government interest. *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council,* 425 U.S. 748, 771, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976). The government's interest in protecting the safety of persons using a public forum is a valid government objective. *See Heffron v. Int'l Soc. for Krishna Consciousness, Inc.,* 452 U.S. 640, 650, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981), *citing Grayned,* 408 U.S. at 109, 92 S.Ct. 2294; *see also News and Sun–Sentinel Co. v. Cox,* 702 F.Supp. 891, 900 (S.D.Fla.1988) ("It requires neither towering intellect nor an expensive 'expert' study to conclude that mixing pedestrians and temporarily stopped motor vehicles in the same space at the same time is dangerous."). The Supreme Court has held, however, that an ordinance may not prohibit "a person rightfully on a public street from handing literature to one willing to receive it" because the defendant has an interest in keeping its streets clean and of good appearance. *Schneider v. New Jersey,* 308 U.S. 147, 162–63, 60 S.Ct. 146, 84 L.Ed. 155 (1939).

[10] Lastly, a valid time, place and manner restriction must allow for alternative channels of communication. The government may not, however, abridge a citizen's right to exercise liberty of expression in an appropriate place simply because that same expression may be exercised in another place. *Cox,* 702 F.Supp. at 902, *quoting Schneider v. State,* 308 U.S. 147, 163, 60 S.Ct. 146, 84 L.Ed. 155 (1939).

The level of scrutiny the Court must apply "is initially tied to whether the statute distinguishes between prohibited and permitted conduct on the basis of content." *Frisby,* 487 U.S. at 481, 108 S.Ct. 2495. In *Frisby,* individuals who strongly opposed abortion held at least six demonstrations on a public street in front of a doctor's residence. The town of Brookfield, Wisconsin then adopted a municipal ordinance that completely banned picketing "before or about" any residence. Two individuals who wished to continue picketing sought a declaration that the ordinance was facially invalid under the First Amendment. 487 U.S. at 477, 108 S.Ct. 2495. The Supreme Court held that the street in front of the doctor's house in a residential neighborhood was a traditional public forum, and deferred to the district court's finding that the municipal ordinance was facially content neutral—*i.e.,* the ban on all focused picketing did not distinguish between prohibited and permitted speech on the basis of content.[4] 487 U.S. at 481–82, 108 S.Ct. 2495.

The Court then applied the test for whether a statute is narrowly tailored—i.e., it "targets and eliminates no more than the exact source of the 'evil' it needs to remedy." 487 U.S. at 485, 108 S.Ct. 2495. The Court found that the ordinance's complete ban on focused picketing was narrowly directed at the household, not the general public, and that the "First Amendment permits the government to prohibit offensive speech as intrusive when the 'captive' audience cannot avoid the objectionable speech." 487 U.S. at 487, 108 S.Ct. 2495. Because of the narrow scope of the Brookfield ordinance, and because ***1244** "the ordinance prohibited speech directed primarily at those who are presumptively unwilling to receive it," the state had a substantial interest in banning picketing. 487 U.S. at 488, 108 S.Ct. 2495. The ordinance was facially valid under the First Amendment.

ii. *Content–Based Restrictions*

[11] **[12]** Content-based restrictions, on the other hand, regulate speech on the basis of the ideas expressed. A content-based restriction is presumptively invalid. *R.A.V. v. City of St. Paul,* 505 U.S. 377, 382, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992); *Simon & Schuster v. New York Crime Victims Bd.,* 502 U.S. 105, 116, 112 S.Ct. 501, 116 L.Ed.2d 476 (1991) (*quoting Regan v. Time, Inc.,* 468 U.S. 641, 648–49, 104 S.Ct. 3262, 82 L.Ed.2d 487 (1984) (regulations which "permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment"); *Dimmitt v. City of Clearwater,* 985 F.2d 1565, 1569 (11th Cir.1993) (finding that an ordinance prohibiting nonresidential flag display without a permit unless the flags "represent a governmental unit or body" was content-based and invalid); *Krafchow v. Town of Woodstock,* 62 F.Supp.2d 698, 710 (N.D.N.Y.1999) (finding that an ordinance prohibiting all political speech and solicitation except political campaigning on a village green was content-based and invalid)). Our society, however, has permitted content-based restrictions in types of speech that are "of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." *R.A.V.,* 505 U.S. at 383, 112 S.Ct. 2538 (*quoting Chaplinsky v. New Hampshire,* 315 U.S. 568, 572, 62 S.Ct. 766, 86 L.Ed. 1031 (1942)). For a state to enforce a content-based restriction, it must show that the regulation is necessary to serve a compelling state interest and is narrowly drawn to achieve that end. *Perry,* 460 U.S. at 45, 103 S.Ct. 948.

In *Carey v. Brown,* 447 U.S. 455, 459, 100 S.Ct. 2286, 65 L.Ed.2d 263 (1980), a civil rights organization protested the alleged failure of the Mayor of Chicago to support busing of school children. The protest occurred on the public sidewalk on front of the Mayor's home. The protestors were arrested and charged with violating an Illinois statute that made it a Class B misdemeanor to "picket before or about the residence or dwelling of any person," but permitted the peaceful picketing of a "place of employment involved in a labor dispute." 447 U.S. at 457, 100 S.Ct. 2286. The protestors sought a declaration that the Illinois residential picketing statute was facially invalid under the First and Fourteenth Amendments. The protestors argued that the law was overbroad and vague, and that it imposed an impermissible content-based restriction on protected expression in light of the exception for labor picketing. 447 U.S. at 458, 100 S.Ct. 2286.

The Supreme Court held that the Illinois statute violated the Equal Protection Clause because it selectively proscribed peaceful picketing "on the basis of the placard's message"—*i.e.,* it impermissibly "distinguished between labor picketing and all other peaceful picketing without any showing that the latter was 'clearly more disruptive' than the former." *Carey,* 447 U.S. at 459–60, 465, 100 S.Ct. 2286; *accord, Police Department of Chicago v. Mosley,* 408 U.S. 92, 100, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972) (invalidating as content-based an ordinance criminalizing picketing in front of schools, but excepting ***1245** labor-related picketing). The Court reasoned that the legality of residential picketing

depends solely on the nature of the message being conveyed. On its face, the Illinois statute prefers the expression of views about labor disputes, and allows the free dissemination of views on that subject, but restricts discussion of all other issues and subjects. *Carey,* 447 U.S. at 460–61, 100 S.Ct. 2286.

The Supreme Court found that "nothing in the content-based labor-nonlabor distinction has any bearing whatsoever on privacy," and that peaceful labor picketing is no less disruptive than peaceful picketing on issues of broader social concern. 447 U.S. at 465, 100 S.Ct. 2286. The Court observed that labor picketing is no more deserving of First Amendment protection than are public protests over other issues, particularly the economic, social, and political subjects about which the parties before the Court wished to demonstrate. 447 U.S. at 466, 100 S.Ct. 2286.

c. Overbreadth

[13] A facial challenge, as distinguished from an as-applied challenge, seeks to invalidate a statute or regulation itself. *Jacobs v. Florida Bar,* 50 F.3d 901, 905–06 (11th Cir.1995). If a facial challenge is successful, the court will strike down the invalid statute. *Stromberg v. California,* 283 U.S. 359, 369–70, 51 S.Ct. 532, 75 L.Ed. 1117 (1931). For a facial challenge to be successful, a plaintiff generally must establish that no set of circumstances exists under which the law would be valid. *Adler v. Duval County Sch. Bd.,* 206 F.3d 1070, 1083–84 (11th Cir.2000) (*en banc*) (*quoting U.S. v. Salerno,* 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987)).

[14] Statutes or regulations may not "sweep unnecessarily broadly and thereby invade the area of protected freedoms." *NAACP v. Alabama,* 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958). This is known as the overbreadth doctrine. *See* Gerald Gunther & Kathleen M. Sullivan, Constitutional Law 1326—37 (13th ed.1997). A court may invalidate an overly broad law even though the speech at issue could have been proscribed by a more narrowly drawn law. *Id.* Courts invalidate overly broad statutes or regulations because "persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions provided by a statute susceptible of application to protected expression." *Gooding v. Wilson,* 405 U.S. 518, 521, 92 S.Ct. 1103, 31 L.Ed.2d 408 (1972); *see also United States v. Frandsen,* 212 F.3d 1231, 1236 n. 3 (11th Cir.2000), *quoting Forsyth County v. Nationalist Movement,* 505 U.S. 123, 129, 112 S.Ct. 2395, 120 L.Ed.2d 101 (1992).

[15] A plaintiff may facially challenge an overly broad statute even though a more narrowly drawn statute would be valid as applied against the plaintiff. *Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent,* 466 U.S. 789, 799, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984). Courts are circumspect in applying overbreadth, however, for fear that a wide-sweeping overbreadth doctrine would swallow traditional standing requirements. *Id.* As such, the Supreme Court has stated that, in order for the doctrine to apply, a statute's overbreadth must be substantial. *Broadrick v. Oklahoma,* 413 U.S. 601, 615, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973).

While "substantial overbreadth" has never been defined, the Supreme Court has held that "the mere fact that one can conceive of some impermissible applications ***1246** of a statute is not sufficient to render it susceptible to an overbreadth challenge." *Vincent,* 466 U.S. at 800, 104 S.Ct. 2118. The overbreadth doctrine stems from the interest of "preventing an invalid statute from inhibiting the speech of third parties who are not before the Court." *Id.* at 800–01, 104 S.Ct. 2118 ("there must be a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court for it to be facially challenged on overbreadth grounds."); *cf. Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.,* 455 U.S. 489, 497, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982) (the overbreadth doctrine does not apply to commercial speech).

At least one court of appeals has recognized the similarity between the overbreadth analysis, and the time, place, and manner restriction analysis. *Krantz v. City of Fort Smith,* 160 F.3d 1214, 1218–22 (8th Cir.1998), *cert. denied,* 527 U.S. 1037, 119 S.Ct. 2397, 144 L.Ed.2d 797 (1999) ("we also agree with the district court that plaintiffs' overbreadth challenge is governed by the line of cases addressing time, place and manner restrictions"). Indeed, determining whether a content-neutral statute is narrowly tailored is similar, if not identical, to determining overbreadth. Logic, if not existing case law, suggests that an overly broad statute cannot be narrowly tailored. Conversely, a narrowly-tailored statute cannot be overly broad. Accordingly, this Court's analysis of the narrowly-tailored prong of the time, place and manner regulation mirrors its overbreadth analysis.

d. Vagueness

Statutes or regulations may also be invalid because of vagueness.[5] The void-for-vagueness doctrine draws upon the procedural due process requirement that a law must provide "sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." *Jordan v. De George,* 341 U.S. 223, 231, 71 S.Ct. 703, 95 L.Ed. 886 (1951). A law will be void for vagueness if persons "of common intelligence must necessarily guess at its meaning and differ as to its application...." *Connally v. General Constr. Co.,* 269 U.S. 385, 391, 46 S.Ct. 126, 70 L.Ed. 322 (1926). In analyzing a statute or regulation for vagueness, the court applies a stricter standard for First Amendment challenges than in other contexts. *Smith v. Goguen,* 415 U.S. 566, 572–73, 94 S.Ct. 1242, 39 L.Ed.2d 605 (1974); *compare* ***1247** *Grayned v. City of Rockford,* 408 U.S. 104, 105, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972) (anti-noise ordinance) *with United States v. Nat'l Dairy Products Corp.,* 372 U.S. 29, 29–30, 83 S.Ct. 594, 9 L.Ed.2d 561 (1963) (consumer competition statute).

e. Prior Restraints on Speech

[16] A law that prohibits or restricts speech without a permit is a prior restraint on speech. A prior restraint exists "when the government can deny access to a forum for expression before the expression occurs." *United States v. Frandsen,* 212 F.3d 1231, 1236–37 (11th Cir.2000). Plaintiffs may challenge statutes involving prior restraints on speech as facially invalid without demonstrating that "there are no conceivable set of facts where the application of the particular government regulation might or would be constitutional." *Frandsen,* 212 F.3d at 1236, *citing City of Lakewood v. Plain Dealer Publ'g Co.,* 486 U.S. 750, 755–56, 108 S.Ct. 2138, 100 L.Ed.2d 771 (1988). A facial challenge is appropriate when a permit lacks adequate procedural safeguards necessary to ensure against undue suppression of protected speech. 212 F.3d at 1236.

[17] A facially valid prior restraint on protected expression contains three procedural safeguards that obviate the dangers of censorship. *Freedman v. Maryland,* 380 U.S. 51, 58–59, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965). First, the burden of going to court to suppress the speech, and the burden of proof once in court, must rest with the government. *Id.; Frandsen,* 212 F.3d at 1238. Second, any restraint prior to a judicial determination may only be for a specified brief time period in order to preserve the *status quo.* Where a licensor "has unlimited time within which to issue a license, the risk of arbitrary suppression is as great as the provision of unbridled discretion." *Frandsen,* 212 F.3d at 1239, *quoting FW/PBS, Inc., v. City of Dallas,* 493 U.S. 215, 226–27, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990) (plurality). Third, an avenue for prompt judicial review of the censor's decision must be available. *Freedman,* 380 U.S. at 58–59, 85 S.Ct. 734; *Frandsen,* 212 F.3d at 1238.

f. Reconsideration of Facial Challenges

"The law of the case" doctrine states that a trial court must follow an appellate court decision on an issue in subsequent trial court proceedings unless the presentation of new evidence or a change in controlling laws compels a different result. *Piambino v. Bailey,* 757 F.2d 1112, 1120 (11th Cir.1985); *see also White v. Murtha,* 377 F.2d 428, 431 (5th Cir.1967); *Terrell v. Household Goods Carriers' Bureau,* 494 F.2d 16, 19 (5th Cir.1974). The law of the case doctrine "applies to all issues decided expressly or by necessary implication; it does not extend to issues the appellate court did not address." *Piambino,* 757 F.2d at 1120.

III. *APPLICATION*

A. STANDING

1. *Background Regarding Standing*

On December 29, 2002, Bischoff, Stites and Spangle went to the heavily-trafficked intersection of Irlo Bronson Memorial Highway and Old Vineland Road in Osceola County, Florida, with other members of the Christian Life Family Center, a Baptist Church.[6] They protested Walt Disney World's purported support of homosexuality ***1248** by standing in the median between traffic lanes and on the side of the road, displaying signs and distributing literature to passing vehicles. Protesters carried large signs bearing slogans like "Choose Jesus Over Mickey" and "Disney Promotes Homosexuality." Docket No. 95, Exhibit B. The literature was titled "Why Boycott Disney?," and listed a number of reasons why the protesters believed that Walt Disney, Inc. supported "anti-family activities," including homosexuality, violence, incest, and drug abuse. *Id.,* Exhibit A. Bischoff held a sign and distributed literature. Stites also held a sign, and held literature for others. Spangle distributed literature.

Soon after the protesters arrived at around 8:00 a.m., an Osceola County Sheriff's Deputy identifying herself as Officer Crawford approached Bischoff.[7] The deputy told Bischoff that the protesters were impeding traffic, and that if they did not move, she would have to arrest them. According to Bischoff, the deputy did not answer her inquiries

concerning exactly why Bischoff might be arrested, but instead returned to her vehicle and spoke on the radio.

More Osceola County Sheriff's Deputies arrived, and warned the protesters that they were impeding traffic and had to disperse. Officers then arrested Benham, whom Bischoff never saw standing in the road or distributing literature. The officers warned the protesters that anybody who stepped in the road would be arrested. The officers then arrested Bowman and Spangle when they stepped into the road.[8] Bischoff and Stites witnessed these arrests.

After the arrests of Bowman and Spangle, the protesters soon disbanded at around 1:00 p.m., although they had planned to protest until around 5:00 p.m. Both Bischoff and Stites were afraid that they would also be arrested. They have not returned to the intersection of Irlo Bronson Memorial Highway and Old Vineland Road to protest since December 29, 1997, although they expressed a desire to protest again at that location.

2. *Standing Analysis*

All parties concede that Spangle, who was arrested, has standing. Bischoff and Stites claim to have been threatened with arrest for a violation of Fla. Stat. §§ **316.2045** and 316.2055, and the Court addresses their claims collectively.

a. Findings as to Injury in Fact

The Court finds that both Bischoff and Stites were threatened with arrest, and ***1249** thereby suffered an injury in fact.[9] *See Bischoff,* 222 F.3d at 884 ("Plaintiffs' testimony that they were threatened with arrest for engaging in free speech activities is evidence of an actual and concrete injury wholly adequate to satisfy the injury in fact requirement of standing."). Bischoff and Stites' unrefuted testimony was credible in this regard. At the hearing, Sheriff Aycock and the Attorney General argued that Bischoff and Stites had suffered no injury in fact because they had never been threatened with arrest for the same activities that led to the arrests of Spangle, Bowman and Benham. Specifically, Defendants maintained that the officers warned the protesters that they would be arrested for stepping into the road to distribute literature, and that Spangle, Bowman and Benham had stepped into the road. Because Bischoff and Spangle did not step in the road, according to Sheriff Aycock and the Attorney General, they suffered no injury from the threat to arrest those who stepped into the road. This argument is meritless.

First, the threat of arrest was not limited to those who stepped in the road—or at least no such limit was proved at the hearing. Sheriff Aycock himself argued in his brief that protesters who did not go into the street, but merely approached vehicles to solicit, nevertheless violated Florida law. Although Sheriff Aycock argued in his memorandum that the conduct of Spangle, Benham and Bowman was more hazardous because they entered the road, according to the Sheriff of Osceola County "those who stood on the grassy island and handed their materials across to drivers ..." also were subject to arrest. Docket No. 91 at 6, filed August 22, 2002. Sheriff Aycock's contrary argument five days later at the hearing—that persons who distributed literature (Bischoff) or persons who aided and abetted them (Stites) were not subject to arrest—rings hollow.

Second, it is insignificant that Bischoff and Stites may have been threatened with arrest for violating different sub-parts of Fla. Stat. §§ **316.2045** and 316.2055 than those for which Spangle, Benham and Bowman were arrested. As discussed in detail below, these statutes state numerous means by which a defendant might impede traffic or unlawfully distribute handbills. Bischoff and Stites may well suffer an injury-in-fact sufficient to confer standing even if their conduct did not mirror, subsection for subsection or step for step, Spangle's conduct. To deny standing to Bischoff and Stites on this basis would elevate form over substance.

b. Findings as to Causation

Similarly, Bischoff and Stites have demonstrated a causal link between the injury they suffered and Sheriff Aycock's enforcement of the contested statutes. According to Sheriff Aycock, both Bischoff and Stites were engaged in conduct violative of the same Florida laws for which Osceola County Sheriff's Deputies arrested Plaintiff Spangle. *Bischoff,* 222 F.3d at 885.

c. Findings as to Likelihood of Redress

Finally, the relief Bischoff and Stites seek, a facial invalidation of the Florida ***1250** statutes at issue, would redress their injury if granted. *Bischoff,* 222 F.3d at 885. If Fla. Stat. §§ **316.2045** and 316.2055 are declared invalid, then Bischoff and Stites could return to the same site in Osceola County to protest without fear of arrest for violating these statutes. For the above reasons, Bischoff, Stites and Spangle have standing to contest the constitutionality of these Florida statutes.

B. FACIAL CHALLENGES UNDER THE CONSTITUTION

1. *Reconsideration of Facial Challenges*

The district court first must decide whether to re-examine Fla. Stat. §§ 316.2045 and 2055 on remand in light of the pre-appeal disposition of The Honorable G. Kendall Sharp. Docket 48. Judge Sharp granted summary judgment to former defendants Sheriff Charles Croft and Osceola County on Bischoff and Stites' facial challenges. Judge Sharp relied primarily on a finding that neither plaintiff had standing to challenge either statute, but ruled in the alternative that the two statutes imposed permissible time, place and manner restrictions. *Id.* at 9. The Eleventh Circuit refrained from reviewing the district court's ruling on the merits of Plaintiffs' facial challenges. *See Bischoff,* 222 F.3d at 886. Defendants argue that the Eleventh Circuit's refusal to address the facial challenge prohibits the district court from reconsidering Plaintiffs' facial challenges.

Plainly, the Eleventh Circuit did not address the facial validity of the contested Florida laws. *See Bischoff,* 222 F.3d at 886. Absent a limited remand and clear retention of jurisdiction in the Court of Appeals, a district court is free to re-evaluate its earlier rulings in order to achieve a legally correct result, particularly when the Court of Appeals has provided new enlightenment. Accordingly, the Court proceeds to consider Plaintiffs' facial challenges to Fla. Stat. §§ 316.2045 and 316.2055.

2. *Facial Analysis of Fla. Stat. § 316.2045*

Plaintiffs contest the facial validity of Fla. Stat. § 316.2045, a law prohibiting the willful obstruction of public streets, highways and roads. Plaintiffs raise three grounds. First, Plaintiffs contend that Fla. Stat. § 316.2045 is an invalid content-based statute that impermissibly regulates the type of speech allowed in a public forum. Second, Plaintiffs argue that Fla. Stat. § 316.2045 is void for vagueness because it criminalizes conduct that falls within undefined terms, and because it establishes a licensing system that lacks the requisite procedural safeguards. Third, Plaintiffs allege that Fla. Stat. § 316.2045 is overly broad in that it applies to a wide range of protected First Amendment conduct.

Any facial analysis must begin with a very close analysis of the language chosen by the legislature in order to determine the statute's exact reach or scope. *See Frisby,* 487 U.S. at 482, 108 S.Ct. 2495. Section 316.2045 (captioned "Obstruction of public streets, highways and roads") states, in pertinent part:

> (1) It is unlawful for any person or persons willfully to obstruct the free, convenient and normal use of any public street, highway or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, by standing or approaching motor vehicles thereon, or by endangering ***1251** the safe movement of vehicles or pedestrians traveling thereon; and any person or persons who violate the provisions of this subsection, upon conviction, shall be cited for a pedestrian violation, punishable as provided in chapter 318.
>
> (2) It is unlawful, without proper authorization or a lawful permit, for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by any of the means specified in subsection (1) in order to solicit. Any person who violates the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. Organizations qualified under § 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, or persons acting on their behalf are exempted from the provisions of this subsection by the state. Permits for the use of any portion of a state-maintained road or right-of-way shall be required only for those purposes and in the manner set out in § 337.406.
>
> (3) Permits for the use of any street, road or right-of-way not maintained by the state may be issued by the appropriate local government.
>
> (4) Nothing in this section shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity.

Fla. Stat. § 316.2045.

Section one of § 316.2045 makes it unlawful wilfully to obstruct the normal use of any road "by impeding, hindering, stifling, retarding, or restraining traffic or passage" on the road. Section one also prohibits the wilful obstruction of any road's normal use "by standing or approaching motor vehicles thereon." Section one is ambiguous as to whether it is unlawful for an individual to wilfully obstruct the free use of a road simply "by standing," or whether she must do so "by standing ... thereon," *i.e.,* on the road. It is clear, however, from the language of section one that a person

may violate § 316.2045(1) by standing without approaching a motor vehicle.

Thus, section one prohibits a person from wilfully retarding traffic by standing on the side of the road, whether or not she is holding a sign.[10] Section one makes no exceptions for political campaigning, for charitable work, or for permitted conduct. ***1252** A person violating section one commits a non-criminal pedestrian violation or infraction punishable by a fifteen dollar fine. Fla. Stat. § 316.2045(1); Fla. Stat. § 316.655(1); Fla. Stat. § 318.13(3); Fla. Stat. § 318.18(1)(a); Fla. Stat. § 775.082(5).[11]

Section two of § 316.2045 similarly makes it unlawful for any person wilfully to obstruct the normal use of a road by any means specified in section one "in order to solicit." The term "solicit" is not defined. Any person who violates section two, however, is guilty of a crime—a second degree misdemeanor punishable by "a definite term of imprisonment not exceeding 60 days," a $500 fine, or both. Fla. Stat. § 316.2045(2); Fla. Stat. § 775.082(4)(b); Fla. Stat. § 775.083(1)(e). The criminality of a defendant's conduct and the possibility that she may spend up to two months in jail depends on whether she has retarded traffic "in order to solicit." The firefighter collecting money in a boot for the families of firefighters killed on September 11 is subject to arrest and up to two months imprisonment, as is the ninth grader hoping to entice cars into a charity car wash.

Unlike section one, section two of § 316.2045 lists three exceptions that decriminalize specific activities: 1.) the Internal Revenue Code § 501(c)(3) exception; 2.) the exception for political campaigning; and 3.) the exception for permitted conduct. First, registered organizations qualified under Internal Revenue Code, 26 U.S.C. § 501(c)(3) (list of types of tax exempt organizations)—or "*any persons or organizations acting on their behalf* "—are exempted from section two for activities on roads not maintained by the state. Fla. Stat. § 316.2045(2) (emphasis supplied). Thus, a person acting on behalf of Church A (which qualifies under § 501(c)(3)) may protest, wilfully retard traffic, and solicit with impunity on an Osceola County road, but a Church B parishioner engaged in the very same conduct a few blocks down the same road faces possible imprisonment because Church B is not § 501(c)(3) qualified or registered. Similarly, persons from Church A may protest perceived pro-homosexual bias at Walt Disney World, Inc.—no matter how severe the effect on traffic—but persons protesting on behalf of Disney (which is not likely a § 501(c)(3) corporation) would risk incarceration if they responded from the other side of the same Osceola County road.[12]

Second, section four of Fla. Stat. § 316.2045 states that "[n]othing in this ***1253** section shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity." The term "political campaigning" is not defined. One can surmise from ordinary usage that some conduct is political campaigning: "Vote for Janet Reno;" or "Vote Republican."[13] Other conduct may be less clear, or depend on the context: "Impeach Nixon;" "Support Democrats on Prescription Drugs;" "Defeat the NRA Candidate;" "Vote Pro–Choice;" "Elect Judge Jones" (non-partisan); or perhaps "Choose Mickey." Yet the criminality of a defendant's conduct and the possibility that she may spend up to two months in jail depends on whether she has retarded traffic while "political campaigning."[14] Under all parties' interpretation of § 316.2045, a ninth grader risks a term in the Osceola County Jail if her charity car wash sign slightly retards traffic, but a Nazi party candidate for governor may back up traffic for miles with impunity.

Section 316.2045 specifies a third exception available to law-abiding citizens who do not wish to violate Florida law—obtain a permit. Sections two, three, and four of § 316.2045 decriminalize the wilful retarding of traffic where the solicitor has obtained a permit. Section two specifies that it is only unlawful to solicit "without proper authorization or a lawful permit." Section two is unclear as to whether the words "proper authorization or" are mere surplusage, or whether one can obtain "proper authorization" without obtaining a "lawful permit."[15] In any event, there is no violation of § 316.2045(2) (a second degree misdemeanor)[16] if one obtains a permit. The permit exception should be a useful option for a law-abiding person wishing to avoid criminal conduct. That person may seek a permit's protection because she cannot discern whether her intended conduct is in fact "soliciting," or whether her intended conduct falls within the safe harbor of the § 501(c)(3) exception or the "political campaigning" exception.

But the permit exception is far more complicated than it appears upon first examination. Section 316.2045(3) establishes a permitting rule for roads not maintained by the state. Section three simply states that "[p]ermits for the use of any street, road, or right-of-way not maintained by the state may be issued by the appropriate local government." Section two, however, establishes a different permitting rule for state-maintained roads. Permits for the ***1254** use of a

state-maintained road or right-of-way "shall be required *only for those purposes* and in the manner set out in § 337.406." Fla. Stat. § **316**.**2045**(2) (emphasis supplied). The language of § **316**.**2045**(2) requires a permit for the use of state roads only for certain specified purposes—no permit is otherwise required. Apparently, a solicitor may wilfully retard traffic without a lawful permit so long as he is not using the state road for a purpose specified in Fla. Stat. § 337.406.[17]

But how would a person intending to solicit on a state road determine whether or not he will be using the state road for a specified purpose (and therefore need a permit)? Section 337.406 of the Florida Statutes does not clearly specify those purposes for which a permit is required. Section 337.406 is itself a separate criminal statute—a second degree misdemeanor—punishable by "a definite term of imprisonment not exceeding 60 days," a $500 fine, or both. Fla. Stat. § 337.406(4); Fla. Stat. § 775.082(4)(b); Fla. Stat. § 775.083(1)(e). Under § 337.406(1), it is unlawful to make any use of the right-of-way of a state transportation facility (an undefined term) outside an incorporated municipality in any manner that interferes with the safe and efficient movement of people or property on the facility. Any such use is a *prohibited use.* Prohibited uses include, but are not limited to, the free distribution or display of any goods or property; solicitation for charitable purposes; and the display of advertising of any sort. Fla. Stat. § 337.406(1).

Although no party in this action seeks a declaration that Fla. Stat. § 337.406 is unconstitutional, our analysis of § **316**.**2045** is aided by identifying the conduct that § 337.406 criminalizes. Again, the firefighter collecting money in a boot and the ninth grader hoping to entice cars into a car wash are each subject to arrest and a jail term of up to two months if they interfere with the safe and efficient movement of cars. Indeed, § 337.406 not only omits the § 501(c)(3) exemption found in § **316**.**2045**(2), but expressly criminalizes "solicitation for charitable purposes." Furthermore, § 337.406 not only omits the "political campaigning" exemption found in § **316**.**2045**(4), but expressly criminalizes "the display of advertising of any sort." Florida legislators and state judges advertising for re-election or retention along the roadway may join the firefighters and ninth graders in jail.

Section 337.406(1) does provide for permits: "any portion of a state transportation facility may be used for an art festival, parade, fair, or other special event if permitted by the appropriate local governmental entity." The term "other special event" is not defined, and the "appropriate" local governmental entity (*i.e.,* the county, an unincorporated municipality) is not specified. Section 337.406(1) confers on incorporated municipalities special authority to issue permits of limited duration for the temporary use of the right-of-way "*for any of these prohibited uses* if it is determined that the use will not interfere with the safe and efficient movement of traffic and the use will cause no danger to the public." Fla. Stat. § 337.406(1) (emphasis supplied).[18]

But § 337.406(1) is unclear as to whether the term "*these* prohibited uses" refers ***1255** only to uses "for an art festival, parade, fair or other special event." May municipalities also permit other uses prohibited by § 337.406(1), such as charitable solicitation that interferes with traffic movement? The answer may be important not only to someone seeking a permit for soliciting in a municipality, but also to someone who simply wants to avoid using a state road for a purpose specified in Fla. Stat. § 337.406—*i.e.,* a person who has no permit but wants to avoid violating § **316**.**2045**(2). The statute provides no answer. This level of detail in the analysis is necessary because the Florida Legislature chose to make the criminality of a person's conduct under § **316**.**2045**(2) dependent on the "purposes" set forth in § 337.406.

On its face, § **316**.**2045**(2)–(3) seems to decriminalize conduct by a permit holder, but the permit exemptions are illusory. Although forewarned that the Court would inquire about permitting at oral argument, Docket No. 88 at 2, neither Sheriff Aycock nor the Attorney General of the State of Florida could point to a description in the record (or otherwise describe) how one might obtain the permits referred to in Fla. Stat. § **316**.**2045**(2)–(3) (permits for state-maintained and non-state-maintained roads, or other "proper authorization") and § 337.406(1)–(2) (permits for use of state transportation facilities by the appropriate local governmental entity, both outside and within incorporated municipalities, including roads on the State Highway System).

Although Sheriff Aycock and the Attorney General agreed that the intersection of Irlo Bronson Memorial Highway and Old Vineland Road was in unincorporated Osceola County, they could not identify the appropriate local government entity to issue a permit for that location. Also, they were unable to determine whether the intersection was or was not state-maintained.[19] Counsel for the Attorney General was unable to point the Court to any written procedures for obtaining permits, although she orally described what little a

colleague had learned about the State of Florida's permitting practice.

According to the Attorney General, a permit seeker would first go to the local government, in this case the Osceola County Sheriff's Office, to request a permit. If a permitting process existed at all in Osceola County, then the Osceola County Sheriff's Office would have the applicant fill out a permit application. Someone at the Osceola County Sheriff's Office would decide "what their interests are in granting or denying the permit." If the Osceola County Sheriff's Office wanted to grant the permit, then the Sheriff's Office would forward the application to an unspecified person at the Florida Department of Transportation, Maintenance Department (location unavailable, although counsel believed that the Maintenance Division had an office in Orange County). Counsel for the Attorney General was uncertain whether someone in the Maintenance Department would then review, grant, or deny the application, and was uncertain whether further review of an adverse decision was possible. The Attorney General could point to no time limits imposed at any stage of the permitting procedure. If ***1256** no local permitting procedure existed in a particular county or municipality, then there would be no permitting available at the state level. Sheriff Aycock read into the record a letter stating that Osceola County had no procedure for permitting.[20] Docket No. 98 at 191.

3. *Fla. Stat. § 316.2045 Is Content–Based and Vague*

On its face, § **316**.**2045** regulates speech on the basis of the ideas expressed even though § **316**.**2045** says nothing about pro-homosexual or anti-homosexual speech, and nothing about pro-Disney or anti-Disney speech. Rather, section **316**.**2045** selectively proscribes protected First Amendment activity—*i.e.,* it impermissibly prefers speech by § 501(c)(3) charities and by persons who are engaged in "political campaigning" over all other activity that retards traffic, without any showing that the latter is more disruptive than the former. *See Carey,* 447 U.S. at 459–60, 465, 100 S.Ct. 2286; *Mosley,* 408 U.S. at 100, 92 S.Ct. 2286.

Section **316**.**2045** makes the legality of conduct that retards traffic depend solely on the nature of the message being conveyed. Said differently, the Florida statute facially prefers the viewpoints expressed by registered charities and political campaigners by allowing ubiquitous and free dissemination of their views, but restricts discussion of all other issues and subjects. Section **316**.**2045** of the Florida Statutes, therefore, is presumptively invalid under the Equal Protection Clause and the First Amendment of the United States Constitution because it imposes content-based restrictions on speech in a traditional public forum.

Furthermore, § **316**.**2045** does not sufficiently define the conduct that it proscribes when measured by common understanding and practices. As is evident from the above facial analysis, persons of common intelligence (including Osceola County Sheriff's Deputies and the Attorney General of the State of Florida) must necessarily guess at its meaning and differ as to its application. Section one is ambiguous as to whether it is unlawful for an individual to wilfully obstruct the free use of a road simply "by standing," or whether she must do so by standing on the road. The undefined terms "solicit" and "political campaigning" contribute to the indefiniteness of § **316**.**2045**, as does section two's reference to and partial incorporation of the opaque and undecipherable permit provisions of another criminal statute, § 337.406. It is equally problematic that section two creates a different permit scheme from the permit scheme in section three, and that the permit scheme in section two actually seems to criminalize *additional* conduct that would otherwise be exempted under section two, *i.e.,* § 501(c)(3) solicitation and political campaigning. Section **316**.**2045** therefore is void for vagueness.

4. *Section 316.2045 Is Not Narrowly Tailored to Meet a Compelling State Interest, But Rather Is Overbroad*

Because Fla. Stat. § **316**.**2045** is content-based, it is only valid if narrowly tailored to meet a compelling state interest. *Perry,* 460 U.S. at 45, 103 S.Ct. 948. Determining ***1257** whether a statute is narrowly tailored is similar, if not identical, to determining overbreadth. Defendants assert that Fla. Stat. § **316**.**2045** is designed to protect the safety of both motorists and pedestrians. Section **316**.**2045** supports defendants' assertion. Section **316**.**2045**(2) refers to and adopts the licensing provisions in Fla. Stat. § 337.406. That statute states the legislature's intent:

> Failure to prohibit the use of right-of-way in this manner will endanger the health, safety, and general welfare of the public by causing distractions to motorists, unsafe pedestrian movement within travel lanes, sudden stoppage or slowdown of traffic, rapid lane changing and other dangerous traffic movement, increased vehicular accidents, and motorist injuries and fatalities.

Fla. Stat. § 337.406(1).

The Florida legislature has also stated its interest in uniformity from county to county. Section 316.2045 is part of the Florida Uniform Traffic Control Law. Fla. Stat. § 316.001. The Florida legislature's intent in adopting the Florida Uniform Traffic Control Law was "to make uniform traffic laws to apply throughout the state and its several counties and uniform traffic ordinances to apply in all municipalities." Fla. Stat. § 316.002 (purpose); *accord,* Fla. Stat. § 316.007 (the "provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein ..."). The Florida legislature's intent in decriminalizing the pedestrian violations in Fla. Stat. §§ 316.2045(1) and 316.2055 is "facilitating the implementation of a more uniform and expeditious system for the disposition of traffic infractions." Fla. Stat. § 318.12 (Florida Uniform Disposition of Traffic Infractions Act).

Florida's interest in protecting the safety of persons using a public forum is at least a "significant" governmental objective. *See Heffron,* 452 U.S. at 650, 101 S.Ct. 2559 (content-neutral restriction of speech to rented booths met a significant government interest in maintaining the orderly movement of crowds at a state fairground). The Court assumes without deciding that Florida's desire to protect public safety on the roads is also a "compelling" government interest. Therefore, the Court proceeds to determine whether Fla. Stat. § 316.2045 is narrowly tailored to meet Florida's stated objectives. It is not.

Nothing in the § 316.2045's content-based charity-noncharity distinction or political-nonpolitical distinction has any bearing whatsoever on road safety or uniformity. Speech by a § 501(c)(3) charity and speech by a politician is no more deserving of First Amendment protection than is a public protest over other issues, particularly the economic, social, and political subjects about which the parties before the Court wish to demonstrate. Traffic accidents or backups caused by political campaigners or duly-licensed charitable organizations are no less problematic than traffic accidents or backups caused by other political speakers or non-licensed charitable organizations. *See Krafchow,* 62 F.Supp.2d at 710. These groups' differing political messages are entirely irrelevant to Defendants' stated goal of pedestrian and motorist safety. Furthermore, there are less restrictive alternatives available. Florida could allow all political speech regardless of message on the state's roads, while continuing the prohibition on solicitation. 62 F.Supp.2d at 711, *citing Boos v. Barry,* 485 U.S. 312, 326–27, 108 S.Ct. 1157, 99 L.Ed.2d 333 (1988) (finding the law at issue not narrowly tailored because ***1258** "a less restrictive alternative was readily available.").

The language of Fla. Stat. § 316.2045 does nothing to promote Florida's interest in uniform traffic laws and dispositions. The statute's permitting procedure varies as one travels along a given road from county to county, municipality to municipality, and also as one enters and then leaves parts of the road that the Florida Department of Transportation's Maintenance Division maintains. If the Attorney General of the State of Florida was unable to determine whether the intersection in question is state-maintained when the issue is relevant in a federal action, and was unable to identify the proper person to contact for a permit, no law-abiding citizen likely can. The undefined terms "solicit" and "political campaigning," which transform handbilling from a civil pedestrian infraction into a crime, will also encourage varying on-the-spot interpretations by the arresting deputies, not uniformity.[21]

Therefore, Fla. Stat. § 316.2045 is an invalid content-based statute. Section 316.2045 sweeps unnecessarily broadly, and invades the area of protected freedoms. There is a realistic danger that section 316.2045 will significantly compromise recognized First Amendment protections of parties not before the Court. Section 316.2045, therefore, is content-based and substantially overbroad. Persons whose expression is constitutionally protected—whether firemen, ninth-graders, politicians, or judges—may well refrain from exercising their rights for fear of arrest and incarceration.

Section 316.2045 also imposes a prior restraint on speech by restricting speech without a permit. A prior restraint exists because the governments of Florida and of each county can deny access to a forum for expression, the borders of Florida's roads, before the expression occurs. The permitting scheme established by § 316.2045 lacks the procedural safeguards necessary to ensure against undue suppression of protected speech. Neither this Court, nor any citizen wishing to engage in legal speech on a Florida road, can determine whether a particular permitting procedure applies to a given stretch of road; whether a particular agency or person has been designated to accept and grant or deny applications; whether any substantive constraints are placed on that person's discretion to deny a license;[22] whether prompt judicial review is available for a denial; and whether there is any time constraint on the issuance or denial of a license. From the face of the statute, it appears that the licensor has unlimited time within which to issue a license, so the risk

of ***1259** arbitrary suppression is as great as the provision of unbridled discretion. *Frandsen,* 212 F.3d at 1239.

5. *Facial Analysis of Fla. Stat. § 316.2055*

Plaintiffs contest the facial validity of Fla. Stat. § 316.2055 on three grounds. First, Plaintiffs contend Fla. Stat. § 316.2055 is an invalid time, place and manner restriction. Second, Plaintiffs argue Fla. Stat. § 316.2055 is void-for-vagueness because it criminalizes terms without defining them. Third, Plaintiffs allege that Fla. Stat. § 316.2055 is overly broad and applies to a wide range of protected First Amendment conduct.

Once again, a facial analysis of § 316.2055 begins with a close analysis of the language chosen by the legislature to determine the statute's scope. Section 316.2055 (captioned "Motor vehicles, throwing advertising material in") states, in pertinent part:

> It is unlawful for any person on a public street, highway, or sidewalk in the state to throw into, or attempt to throw into, any motor vehicle, or offer, or attempt to offer, to any occupant of any motor vehicle, whether standing or moving, or to place or throw into any motor vehicle any advertising or soliciting materials or to cause or secure any person or persons to do any one of such unlawful acts.

Fla. Stat. § 316.2055. A person violating § 316.2055 commits a non-criminal pedestrian violation or infraction punishable by a fifteen dollar fine. Fla. Stat. § 316.2055(1); Fla. Stat. § 316.655(1); Fla. Stat. § 318.13(3); Fla. Stat. § 318.18(1)(a); Fla. Stat. § 775.082(5).

Although § 316.2055 makes unlawful the dangerous practice of throwing advertising into a motor vehicle, the statute has a far broader impact on protected speech. The statute also makes it unlawful for any person on a sidewalk to offer soliciting materials to the occupant of a standing motor vehicle. The term "soliciting materials" is not defined. The term "standing" means "the halting of a vehicle, whether occupied or not, otherwise than temporarily, for the purpose of, and while actually engaged in, receiving or discharging passengers, as may be permitted by law ..." Fla. Stat. § 316.106(49).

6. *Section 316.2055 Is Not Narrowly Tailored to Meet a Significant State Interest, But Rather Is Overbroad*

Both parties agree that the intersection of Irlo Bronson Memorial Highway and Old Vineland Road is a traditional public forum, and that Fla. Stat. § 316.2055 is a content-neutral statute. Therefore, in order to be valid, Fla. Stat. § 316.2055 must be narrowly tailored to serve a significant government interest, and provide alternative channels of communication. *Grace,* 461 U.S. at 177, 103 S.Ct. 1702. While the safety interest asserted by Defendants is certainly a significant government interest, and alternative channels of communication unquestionably exist, the statute is not narrowly tailored.

Rather, Fla. Stat. § 316.2055 is a remarkably broad statute. Section 316.2055 makes it unlawful for a pedestrian on a sidewalk to hand an advertising leaflet to a willing recipient in a car that has stopped in a metered space or in a private driveway, even though such conduct has no effect on traffic or safety. The statute also makes it unlawful for someone on a roadside to hand "soliciting materials" to passengers in cars that have stopped at a light. Section 316.2055 requires no retarding ***1260** of traffic, and contains no exceptions for § 501(c)(3) charities, for "political campaigning," or for permitted activity. Because § 316.2055 makes political campaigning unlawful even from the sidewalk, the Florida legislators and state judges who choose to advertise for re-election or retention along Florida's sidewalks and roadways may join the firefighters and ninth graders in line when paying their $15 fines (or in the back of an Osceola County Sheriff's Office prisoner van should they be arrested despite the "sign-and-pay" provisions of Fla. Stat. § 318.14).

Section 316.2055 inhibits the speech of third parties not before the Court, and suppresses considerably more speech than is necessary to serve the stated government purpose of traffic safety and uniformity. It is therefore substantially overbroad, and not narrowly tailored to meet a significant state interest.

Section 316.2055 is also impermissibly vague. Section 316.2055 makes it unlawful to hand into a car any "advertising or soliciting materials." "Advertising or soliciting materials" is undefined. To some people, the term might include political campaign fund-raising materials; a road map containing service station advertisements; a matchbook embossed with the name of a hotel or candidate; a resume; an invitation to join a church or synagogue; a theme park ticket and brochure; or a coupon for a free hamburger at a local restaurant. Section 316.2055 does not provide sufficiently definite warning as to the conduct that it proscribes when measured by common understanding and practices. Persons of common intelligence (again including

the Osceola County Sheriff's Deputies and the Attorney General) must necessarily guess at its meaning and differ as to its application.

IV. *CONCLUSION*

For the above reasons, it is:

RECOMMENDED that Defendant Aycock's Motion to Dismiss against Plaintiffs [Doc. 79, filed January 9, 2002] be **DENIED**. It is

FURTHER RECOMMENDED that Defendant Butterworth's Motion to Dismiss against Plaintiffs [Doc. 81, filed January 29, 2002] be **DENIED**. It is

FURTHER RECOMMENDED that Plaintiffs be found to have standing to pursue their constitutional challenges to Fla. Stat. §§ **316.2045** and 316.2055. It is

FURTHER RECOMMENDED that Fla. Stat §§ **316.2045** and 316.2055 be found facially unconstitutional, and declared invalid.

Failure to file written objections to the proposed findings and recommendations in this report pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 6.02 within ten days of the date of its filing shall bar an aggrieved party from a *de novo* determination by the district court of issues covered in the report, and shall bar an aggrieved party from attacking the factual findings on appeal.

September 19, 2002.

All Citations

242 F.Supp.2d 1226, 17 Fla. L. Weekly Fed. D 98

Footnotes

1 Defendant Sheriff Aycock states in his Objection that "[t]he parties conceded at oral argument that Plaintiffs' as applied challenges were not ripe for summary judgment, and that no sovereign immunity or qualified immunity issues remained or existed." (Doc. 102 at 6).

The Court:	Does the State of Florida say that it could pass any statute no matter how strongly in violation of the U.S. Constitution and there could be no suit in federal court, but that the only federal review can occur after a full exhaustion of state remedies through the Florida Supreme Court and on the chance that the U.S. Supreme Court grants cert?
Ms. Becker[2]:	We understand that we have an obligation to defend the statute? ... So I was using this primarily to narrow the scope so that everybody understands the State of Florida and Attorney General are only in this case to defend that statute, but that if this broadens out to anything beyond that, that we can't be sued beyond that.
The Court:	So you don't contest that the State of Florida can be sued in federal court to determine the federal constitutionality of statutes in a declaratory judgment context?
Ms. Becker:	To the best of my knowledge, yes, your Honor, that's, yes, the state can come in for those purposes.
The Court:	And it doesn't impair that there are nominal damages sought.
Ms. Becker:	Well, the nominal damages cannot be sought against the state is what I'm getting at. So in other words, we can defend the statute, but that's it.

2 Ms. Becker is counsel for Defendants the State of Florida and Mr. Butterworth.

3 The "Defendant Sheriff in [his] Objection does not object to Magistrate Judge Glazebrook's ruling that the Plaintiffs have standing to bring their claims." (Doc. 102 at 8). All Defendants, however, concede that Mr. Spangle has standing to bring suit.

4 Section **316.2045** states:

> (1) It is unlawful for any person or persons willfully to obstruct the free, convenient and normal use of any public street, highway or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, by standing or approaching motor vehicles thereon, or by endangering the safe movement of vehicles or pedestrians

traveling thereon; and any person or persons who violate the provisions of this subsection, upon conviction, shall be cited for a pedestrian violation, punishable as provided in chapter 318.

(2) It is unlawful, without proper authorization or a lawful permit, for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by any of the means specified in subsection (1) in order to solicit. Any person who violates the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. Organizations qualified under § 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, or persons acting on their behalf are exempted from the provisions of this subsection by the state. Permits for the use of any portion of a state-maintained road or right-of-way shall be required only for those purposes and in the manner set out in § 337.406.

(3) Permits for the use of any street, road or right-of-way not maintained by the state may be issued by the appropriate local government.

(4) Nothing in this section shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity.

5 Section 316.2055 states:

It is unlawful for any person on a public street, highway, or sidewalk in the state to throw into, or attempt to throw into, any motor vehicle, or offer, or attempt to offer, to any occupant of any motor vehicle, whether standing or moving, or to place or throw into any motor vehicle any advertising or soliciting materials or to cause or secure any person or persons to do any one of such unlawful acts.

1 The Court converted Defendants' motions to dismiss to motions for summary judgment pursuant to Federal Rule of Civil Procedure 12(b)(6) because the parties presented matters outside the pleadings. Docket 87. The Court denied Plaintiffs' motion to set facial challenges for summary judgment to the extent it was inconsistent with this order. *Id.*

2 Plaintiff Seth Spangle was formerly known as Seth Marchke. He is referred to as Marchke in arrest reports, Spangle in pending motions, and both Marchke and Spangle at oral argument.

3 The Court looks primarily to the language of the statute, and also to the record. The Court's reading or construction of an ordinance, however, may find support in the representation of town counsel at oral argument. *See Frisby v. Schultz,* 487 U.S. 474, 483, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988) (majority opinion by Justice O'Connor); *but cf.,* 487 U.S. at 493 n. 3, 108 S.Ct. 2495 (questioned in Justice Brennan's dissent because town counsel's interpretations did not bind the state courts).

4 The municipality had revised the ordinance to omit an exception for labor picketing after reviewing *Carey v. Brown,* 447 U.S. 455, 100 S.Ct. 2286, 65 L.Ed.2d 263 (1980) (invalidating similar ordinance under the Equal Protection Clause). The individuals challenging the ordinance apparently conceded the law's facial content-neutrality, but argued that state law nevertheless implied an exception for labor picketing. *Frisby,* 487 U.S. at 481, 108 S.Ct. 2495.

5 The Supreme Court has stated that:

Vague laws offend several important values. First, because we assume man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute abuts upon sensitive areas of First Amendment freedoms, it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.

Grayned v. City of Rockford, 408 U.S. 104, 108–09, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972) (internal citations, marks, and footnotes omitted).

6 The Court held an evidentiary hearing on standing on August 27, 2002. At the hearing, both Bischoff and Stites testified about the events of December 29, 1997. Defendants cross-examined Bischoff and Stites and introduced in evidence: 1) a copy of the literature distributed by the protesters; 2) a videotape showing some of the events of December 29, 1997; and 3) arrest reports of Spangle, Benham and Bowman. Docket 95. Defendants offered no witnesses of their own. The Court admitted the evidence solely on the issue of standing. Therefore, the facts set forth in the above section on “Background Regarding Standing” may have no bearing on issues resolved as a matter of law in the rest of this report and recommendation.

7 Plaintiffs believe that Officer Crawford's real name was Officer Gens.

8 Plaintiffs presented no evidence demonstrating that any Osceola County Deputy Sheriffs acted unprofessionally or in a manner inconsistent with their difficult responsibility of enforcing thousands of state and federal statutes.

9 The "injury-in-fact" analysis is solely for the purposes of addressing standing to challenge the constitutionality of the Florida statutes allegedly affecting Plaintiffs' First Amendment rights. The Court makes no finding critical of Sheriff Aycock or the Osceola County Sheriff's Office.

10 As written, Fla. Stat. § **316**.**2045** criminalizes all activity that retards traffic. Therefore, any roadside speech—except for exempt § 501(c)(3) speech and political campaigning—whether political or solicitous, will violate the statute. The parties acknowledge that the Plaintiffs' action are more accurately described as "handbilling," an activity traditionally accorded more deference by the Supreme Court. *See United States v. Belsky,* 799 F.2d 1485, 1489 (11th Cir.1986) ("soliciting funds is an inherently more intrusive and complicated activity than is distributing literature"). Nevertheless, the activity may well be considered "solicitation" for the purposes of Fla. Stat. § **316**.**2045**(2)–(4). Indeed, the Attorney General argued at the hearing that Plaintiff Spangle's arrest record shows that he was arrested for solicitation, even though the protesters' activities bore none of the traditional hallmarks of solicitation. *Heffron,* 452 U.S. at 653, 665, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981) (Blackmun, J., concurring in part and dissenting in part) ("The distribution of literature does not require that the recipient stop in order to receive the message the speaker wishes to convey; instead, the recipient is free to read the message at a later time... [S]ales and the collection of solicited funds not only require the fairgoer to stop, but also 'engender additional confusion ... because they involve acts of exchanging articles for money, fumbling for and dropping money, making change, etc.' ").

11 The Florida Legislature adopted the Florida Uniform Disposition of Traffic Infractions Act in order to decriminalize certain violations of Chapter 316, the Florida Uniform Traffic Control Law, thereby facilitating the implementation of a more uniform and expeditious system for the disposition of traffic infractions. Fla. Stat. § 318.12. A person charged with a non-criminal infraction simply signs the citation, and promises to appear. Fla. Stat. § 318.14(2). A person who does not elect to appear, may pay the fine by mail or in person, and is deemed to have admitted the infraction. Fla. Stat. § 318.14(4). Such admission shall not be used as evidence in any other proceeding. *Id.* There is no right to a trial by jury or a right to court-appointed counsel for a non-criminal infraction. Fla. Stat. § 318.13(3).

12 All protesters nevertheless may be subject to non-criminal pedestrian violations under section one, which contains no § 501(c)(3) exemption. Persons who are engaged in "political campaigning," however, are exempt from both pedestrian and criminal violations under sections one and two. *See* Fla. Stat. § **316**.**2045**(4).

13 Defendants contend that the term "political campaigning" has a "clear meaning traditionally and commonly understood to refer to urging the election of a candidate to office." Docket No. 91 at 7. But the traditional and common understanding may be broader. Political campaigning may include urging the election of a slate of candidates; urging support for a political party; urging the defeat of an opposing candidate; urging the defeat of a proposition or initiative on the ballot; or urging a party-line vote on a political issue.

14 Under defendant's understanding of "political campaigning," the Osceola County Sheriff's Office must arrest the group on one side of the street holding "Impeach Clinton" posters, while the group on the other side of the street holding "Re–Elect Clinton" signs would be allowed to remain and wilfully retard traffic.

15 Section 337.406 of the Florida Statutes makes it lawful to use a state transportation facility right-of-way in a manner that interferes with traffic movement where the use is "otherwise authorized" by the rules of the Florida Department of Transportation. No such rules appear in the record.

16 There may nevertheless be a pedestrian violation. Section one contains no permitting exception.

17 Once again, there may nevertheless be a pedestrian violation. Section one contains no permitting exception.

18 Section two of Fla. Stat. § 337.406 also permits sales by persons "holding valid peddlers' licenses issued by appropriate governmental entities."

19 The Florida Department of Transportation designates roads as state-maintained roads. *See* Fla. Stat. § 316.106(50). Jurisdiction to control traffic on state roads is vested in the Florida Department of Transportation. Fla. Stat. § 316.006(1). Chartered municipalities have jurisdiction over all non-state roads in their boundaries, while counties have jurisdiction over all roads within their boundaries that do not fall under state or municipal jurisdiction. Fla. Stat. § 316.006(2)–(3).

20 Apparently some counties and some municipalities have permitting procedures, and others do not. A person's ability to obtain a permit for otherwise criminal conduct may vary from county to county, even along the same road.

21 Section one of Fla. Stat. § **316**.**2045** does not, standing alone, have the problems created by the preferences in § **316**.**2045**(2)–(4) for § 501(c)(3) speech, for "political campaigning," and for licensed speech. Standing alone, Fla. Stat. § **316**.**2045**(1) appears to be facially content-neutral. But the Florida legislature chose to include the specified exceptions

as important parts of the statute. Absent an express direction as to the legislature's intent, this Court will not sever the unconstitutional parts, and leave section one standing alone. That is a decision for the legislature.

22 The statute provides little guidance even for a permit for the use of a state-maintained road or right-of-way that is within an incorporated municipality. An unspecified local government entity "may" issue a limited and temporary permit for certain ambiguously specified uses if the entity determines that "the use will not interfere with the safe and efficient movement of traffic and the use will cause no danger to the public." Fla Stat. §§ **316**.**2045**(2) and 337.406(1).

242 F.Supp.2d 1226
United States District Court,
M.D. Florida.
Orlando Division.

Cheryl BISCHOFF, Vicky Stites, Seth Spangle, Plaintiffs,

v.

State of FLORIDA, Robert Butterworth, in his official capacity as Attorney General of the State of Florida, Sheriff Charles C. Aycock, in his Official Capacity, Defendants.

No. 6:98CV583–ORL–28JGG.
|
Jan. 3, 2003.

Synopsis

Protesters, who were threatened with arrest for engaging in a demonstration against company's support of homosexuality, brought action challenging constitutionality of Florida statutes prohibiting obstruction of public streets, highways, and roads and prohibiting the throwing advertising materials in motor vehicles. After remand, 222 F.3d 874, the District Court, Antoon, II, J., adopted the report and recommendation of United States Magistrate Judge Glazebrook, holding that: (1) protesters had standing to contest the constitutionality of Florida statutes, and (2) challenged statutes were facially invalid under First Amendment.

Judgment for plaintiffs.

West Headnotes (17)

[1] **Constitutional Law** Criminal Law

Although they were not arrested during demonstration, protesters, who were threatened with arrest for engaging in a demonstration against company's support of homosexuality and who refrained from exercising their First Amendment rights in order to avoid arrest, had standing to contest the constitutionality of Florida statutes prohibiting obstruction of public streets, highways, and roads and prohibiting the throwing advertising materials in motor vehicles. West's F.S.A. §§ 316.2045, 316.2055.

[2] **Federal Courts** Law of the case in general

Law of the case doctrine stands for the proposition that an appellate decision on an issue must be followed in all subsequent trial court proceedings unless the presentation of new evidence or an intervening change in the controlling law dictates a different result, or the appellate decision is clearly erroneous and, if implemented, would work a manifest injustice.

[3] **Federal Courts** Law of the case in general

Law of the case doctrine is primarily concerned with the duty of lower courts to follow what has already been decided in a case; it does not, however, extend to issues the appellate court does not address.

[4] **Constitutional Law** Streets and highways

Highways Obstruction of use of highway in general

Municipal Corporations Mode of Use and Regulation Thereof in General

Florida statute prohibiting obstruction of public streets, highways, and roads was content-based and vague, and therefore violated First Amendment free speech rights; statute facially preferred the viewpoints expressed by registered charities and political campaigners by allowing ubiquitous and free dissemination of their views, but restricted discussion of all other issues and subjects. U.S.C.A. Const.Amend. 1; West's F.S.A. § 316.2045.

4 Cases that cite this headnote

[5] **Constitutional Law** Streets and highways

Highways Obstruction of use of highway in general

Municipal Corporations Mode of Use and Regulation Thereof in General

Florida statute prohibiting obstruction of public streets, highways, and roads was not narrowly tailored to meet a significant state interest, but rather it was overbroad in violation of First Amendment; nothing in statute's content-based charity—non-charity distinction or political nonpolitical distinction has any bearing whatsoever on road safety or uniformity. U.S.C.A. Const.Amend. 1; West's F.S.A. § 316.2055.

1 Cases that cite this headnote

[6] **Constitutional Law** Advertising

Constitutional Law Particular Offenses

Highways Obstruction of use of highway in general

Florida statute prohibiting the throwing of advertising materials in motor vehicles was not narrowly tailored to meet a significant state interest as required by First Amendment; in addition, it was impermissibly vague in that it failed to define the terms "advertising or soliciting materials" and thus did not provide sufficient warning as to what conduct was proscribed by the law. U.S.C.A. Const.Amends. 1, 14; West's F.S.A. § 316.2055.

1 Cases that cite this headnote

[7] **Constitutional Law** Avoidance of constitutional questions

Court interprets statutes to avoid constitutional difficulties.

[8] **Constitutional Law** Justification for exclusion or limitation

In public fora, the government may regulate the time, place and manner of expression under First Amendment so long as the restrictions are: 1) content-neutral; 2) narrowly tailored to serve a significant government interest; and 3) leave open alternative channels of communication; content-neutral regulations are those that are justified without reference to the content of the regulated speech. U.S.C.A. Const.Amend. 1.

[9] **Constitutional Law** Justification for exclusion or limitation

Under First Amendment, a valid time, place and manner restriction must also be narrowly tailored to serve a significant government interest; government's interest in protecting the safety of persons using a public forum is a valid government objective. U.S.C.A. Const.Amend. 1.

2 Cases that cite this headnote

[10] **Constitutional Law** Time, Place, or Manner Restrictions

Under First Amendment, a valid time, place and manner restriction must allow for alternative channels of communication; government may not, however, abridge a citizen's right to exercise liberty of expression in an appropriate place simply because that same expression may be exercised in another place. U.S.C.A. Const.Amend. 1.

[11] **Constitutional Law** Content-Based Regulations or Restrictions

A content-based restriction, which regulates speech on the basis of the ideas expressed, is presumptively invalid under First Amendment. U.S.C.A. Const.Amend. 1.

2 Cases that cite this headnote

[12] **Constitutional Law** Strict or exacting scrutiny; compelling interest test

For a state to enforce a content-based restriction under First Amendment, it must show that the regulation is necessary to serve a compelling state interest and is narrowly drawn to achieve that end. U.S.C.A. Const.Amend. 1.

[13] **Constitutional Law** Facial invalidity

Statutes Effect of Total Invalidity

If a facial challenge is successful, the court will strike down the invalid statute; for a facial challenge to be successful, a plaintiff generally must establish that no set of circumstances exists under which the law would be valid.

[14] **Constitutional Law** Rules and regulations in general

Constitutional Law Statutes in general

Statutes or regulations may not sweep unnecessarily broadly and thereby invade the area of protected freedoms.

[15] **Constitutional Law** Overbreadth in General

A plaintiff may facially challenge an overly broad statute even though a more narrowly drawn statute would be valid as applied against the plaintiff.

1 Cases that cite this headnote

[16] **Constitutional Law** Prior Restraints

Plaintiffs may challenge statutes involving prior restraints on speech as facially invalid under First Amendment without demonstrating that there are no conceivable set of facts where the application of the particular government regulation might or would be constitutional. U.S.C.A. Const.Amend. 1.

1 Cases that cite this headnote

[17] **Constitutional Law** Prior Restraints

Constitutional Law Time limits on decision-making

A facially valid prior restraint on First Amendment protected expression contains procedural safeguards that obviate the dangers of censorship; first, burden of going to court to suppress the speech, and the burden of proof once in court, must rest with the government, second, any restraint prior to a judicial determination may only be for a specified brief time period in order to preserve the status quo., and third, an avenue for prompt judicial review of the censor's decision must be available. U.S.C.A. Const.Amend. 1.

West Codenotes

Held Unconstitutional
West's F.S.A. §§ 316.2045, 316.2055

Attorneys and Law Firms

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Alison L. Becker, Office of the Attorney General, Civil Litigation Div., Tampa, FL, Jeffrey F. Mahl, Attorney General's Office, West Palm Beach, FL, for State of Florida.

ORDER

ANTOON, District Judge.

This cause is before the Court on Defendant Sheriff Aycock's Motion to Dismiss against Plaintiffs Cheryl Bischoff, Vicky Stites and Seth Spangle (Doc. 79, filed ***1229** January 9, 2002); and Defendant Robert Butterworth's ("Mr. Butterworth") Motion to Dismiss against Plaintiffs. (Doc. 81, filed January 29, 2002). The United States Magistrate Judge has submitted a Report and Recommendation (Doc. 100, filed September 19, 2002) providing that both Defendant Aycock's and Defendant Butterworth's Motion to Dismiss against Plaintiff be denied.

After an independent review of the record in this matter, including the Objections filed by all Defendants (Doc. 102, filed October 3, 2002 and Doc. 103, filed October 7, 2002)

and the response filed by Plaintiffs (Doc. 105 filed October 22, 2002), the Court agrees with the findings of fact and conclusions of law in the Report and Recommendation.

I. *Procedural History*

On December 29, 1997 religious activists gathered at the heavily trafficked intersection of Irlo Bronson Memorial Highway and Old Vineland Road in Osceola County, Florida for a demonstration. The activists were protesting Walt Disney's alleged support of homosexuality. The demonstrators carried signs and distributed handbills that articulated their criticism of Walt Disney's policies. In response to the demonstration, the Osceola County Sheriff's Deputies arrested three of the protesters, Phillip Benham ("Mr. Benham"), Matthew Bowman ("Mr. Bowman") and Seth Spangle ("Mr. Spangle"). They were each charged with violating section **316.2045**(2), Florida Statutes, for obstruction of traffic without a permit and section 316.2055 for throwing advertising material into vehicles.

Cheryl Bischoff ("Ms. Bischoff") and Vicky Stites ("Ms. Stites") were among the activists protesting against Walt Disney. On May 18, 1998 both Ms. Bischoff and Ms. Stites filed the instant action alleging that sections **316.2045** and 316.2055 were unconstitutional, both on their face and as applied to Plaintiffs.

Initially, this case was assigned to the Honorable Judge G. Kendall Sharp who dismissed the entire case because the Plaintiffs could not establish that they suffered an actual or threatened injury and therefore did not have standing to bring an as-applied challenge to the statute. With regard to the facial challenges, Judge Sharp declared the contested Florida Statutes constitutional and denied all outstanding motions as moot. (Doc. 48). However, on appeal the Eleventh Circuit reversed and remanded Judge Sharp's decision, ordering this court "to either hold an evidentiary hearing on the issue of standing or consider the merits of Plaintiff's as applied challenge." *Bischoff v. Osceola County, Fla.*, 222 F.3d 874, 876 (11th Cir.2000). According to the Eleventh Circuit, "the court erred in making findings of disputed facts and judgments regarding credibility, on which it then based its standing conclusion, without holding an evidentiary hearing." *Bischoff,* 222 F.3d at 885. Upon remand from the court of appeals, the case was reassigned to the undersigned United States district judge.

On February 7, 2001 Robert Butterworth ("Mr. Butterworth"), the Attorney General of the State of Florida, intervened as a Defendant (Doc. 60) and in late August Osceola County was dismissed from the case pursuant to agreement of the parties. (Doc. 72). A second amended complaint was filed on December 20, 2001 which added Mr. Spangle as a Plaintiff and substituted Sheriff Aycock for Sheriff Croft as a Defendant. (Doc. 76). Defendants filed a motion to dismiss the second ***1230** amended complaint (Docs. 79 & 81) to which Plaintiffs responded in opposition. (Docs. 80 & 82). In addition, the Plaintiffs filed a motion to set their facial challenge for summary judgment briefing. (Doc. 82).

This court referred these motions to Magistrate Judge James G. Glazebrook for a Report and Recommendation. Since the parties offered evidence outside the pleadings, on August 2, 2002 the Magistrate Judge converted the motions to dismiss to motions for summary judgment. An evidentiary hearing was held on August 27, 2002 on the issue of standing as well as on the facial challenges to sections **316.2045** and 316.2055. At oral argument the parties conceded that Plaintiffs' as-applied challenges were not ripe for summary judgment and that no sovereign immunity or qualified immunity issues remained. (Doc. 98 at 283–89). A Report and Recommendation was filed by Magistrate Judge Glazebrook on September 19, 2002 recommending denial of defendant's motions to dismiss and further recommending that Plaintiffs be found to have standing to pursue their First Amendment challenges to sections **316.2045** and 316.2055. Most significantly, the Magistrate Judge recommended that the relevant statutes be found facially unconstitutional and declared invalid. The Defendants subsequently filed objections to the Report and Recommendation (Docs. 102 & 103) and the Plaintiffs filed a response (Doc. 105).

II. *Defendants' Objections*

A. *The arrest of three protesters caused the termination of the demonstration.*

The Defendants object to the Magistrate Judge's use of the word "disbanded" in the following sentence: "On December 29, 1997, the Osceola County Sheriff's Office *disbanded* an organized protest at the heavily-trafficked intersection of Irlo Bronson Memorial Highway and Old Vineland Road in unincorporated Osceola County, Florida." (Doc. 100 at 2) (emphasis added). According to the Defendants, the use of the word "disbanded" can be interpreted to mean that Sheriff's officers told or instructed protestors to leave the demonstration. The Defendants argue that there is no evidence in the record to suggest that any officer instructed a

protestor to leave the area. Defendants however, do concede that the arrest of three of the protestors did result in the departure of other demonstrators. (Doc. 102 at 9).

The Court does not interpret the word "disbanded" in the Report and Recommendation to mean that the Sheriff's officers instructed the activists to leave the demonstration. However, the Court does interpret the Report and Recommendation to read that the December 29, 1997 demonstration was essentially disbanded by the arrest of three religious activists. Upon witnessing the arrest of three protesters the remaining activists feared the possibility of their own arrest and thus refrained from exercising their First Amendment right. The Magistrate Judge's Report and Recommendation does not in any way suggest that the Sheriff's officers instructed any demonstrators to leave. In fact, the Magistrate Judge explains that "Plaintiffs presented no evidence demonstrating that any Osceola County Deputy Sheriffs acted unprofessionally or in a manner inconsistent with their difficult responsibility of enforcing thousands of state and federal statutes." (Doc. 100 at 18 n. 8) Moreover, the interpretation of the word "disbanded" has no significance in the legal analysis of this case. This Court finds the use of the ***1231** word "disbanded" in the Report and Recommendation to be proper and agrees with the Magistrate Judge's finding of fact.

B. *The parties conceded at oral argument that no sovereign immunity or qualified immunity issues remained.*

The State of Florida and Mr. Butterworth object to the Magistrate Judge's finding that Defendants conceded that there are no issues as to sovereign immunity or qualified immunity remaining in the case.[1] It is clear from the transcript of the hearing that all Parties agreed that no sovereign immunity or qualified immunity issues remained:

(Doc. 98 at 286–87). The Court then proceeded to inquire about qualified immunity:

The Court:	All right. So there's really no issue as to sovereign immunity. And as to qualified immunity in that it's a declaratory judgment action, Attorney General's position.
Ms. Becker:	Your Honor, we didn't raise qualified immunity.
The Court:	Did the Sheriff raise that?
Mr. Poulton:	I don't think so.
The Court:	I'm sorry. That's not an issue.

(Doc. 98 at 287). The parties clearly conceded at oral argument that there were no sovereign or qualified immunity issues to be settled during oral argument. Therefore, the Magistrate Judge's conclusion with regard to these issues in the Report and Recommendation is proper and adopted by this Court.

C. *The Magistrate Judge properly converted the Defendants' Motions to Dismiss to Motions for Summary Judgment.*

The State of Florida and Mr. Butterworth also object to the Magistrate Judge's conversion of their motion to dismiss to a motion for summary judgment. (Doc. 103 at 12). Typically a court converts a motion to dismiss to a motion for summary judgment when the moving parties ask the court to resolve issues and consider evidence that are beyond the complaint. ***1232** Federal Rule of Civil Procedure 12(b) gives a court discretion to treat a motion to dismiss for failure to state a claim as a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. However, upon conversion of a motion to dismiss to a motion for summary judgment "[n]otice must be given to each party that the status of the action is now changed, and they must be given a 'reasonable opportunity' to present legal and factual material in support of or in opposition to the motion for summary judgment." *U.S. v. Gottlieb,* 424 F.Supp. 417, 418 (S.D.Fla.1976) (quoting *Sims v. Mercy Hosp.,* 451 F.2d 171 (6th Cir.1971)). "It is well established in this circuit that the ten day notice requirement of Fed. R. Civ. P. 56(c) is strictly enforced." *Herron v. Beck,*

693 F.2d 125 (11th Cir.1982) (citations and footnote omitted). Federal Rule of Civil Procedure 56(c) reads "[t]he motion [for summary judgment] shall be served at least 10 days before the time fixed for the hearing."

On August 2, 2002 the Magistrate Judge issued an Amended Order and Notice of Hearing which notified the parties of the court's conversion of Defendants' motions to dismiss to motions for summary judgment. (Doc. 87, filed August 2, 2002). The Magistrate Judge provided that "[o]n or before August 22, 2002, either party (or the intervener) may also file additional affidavits and exhibits within the purview of Fed. R. Civ. P. 56 as to matters that remain contested —as well as a Notice of Supplemental Authorities with explanatory parentheticals—in support of or in opposition to the motions." (Doc. 87 at 3). The Magistrate Judge further explained that "[t]he Court will hear oral argument on the motions, as well as any necessary evidence not otherwise presented (to the extent required by law), on Tuesday, August 27, 2002 at 9:30 a.m." (Doc. 87 at 3–4).

The parties were notified twenty-five days prior to the evidentiary hearing of the court's conversion of the pending motions to dismiss to motions for summary judgment. This notice was well within the ten-day requirement and certainly provided the parties with a reasonable opportunity to present legal and factual material in support of or in opposition to the motions for summary judgment. The conversion of the motions in this instance was proper and complied with the notice requirement of Federal Rule of Civil Procedure 56(c).

D. *The Plaintiffs have standing to bring their claims.*

[1] The State of Florida and Mr. Butterworth object to the Magistrate Judge's recommendation that Ms. Bischoff and Ms. Stites have standing to bring their claim.[3] The State of Florida and Mr. Butterworth argue that Ms. Bischoff and Ms. Stites do not have standing because they were not arrested during the demonstration and have not suffered an injury.

The Supreme Court in *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992), articulated the necessary requirements a Plaintiff must show to establish standing:

> First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection ***1233** between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative that the injury will be redressed by a favorable decision.

504 U.S. at 560–561, 112 S.Ct. 2130 (internal marks and citations, and footnote omitted). The Court further explained that "[t]he party invoking federal jurisdiction bears the burden of establishing these elements." *Id.* at 561, 112 S.Ct. 2130 (quoting *FW/PBS, Inc. v. Dallas,* 493 U.S. 215, 231, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990)).

Ms. Bischoff and Ms. Stites satisfy each of the constitutional requirements to establish standing. First, the fact that they were threatened with arrest for engaging in a demonstration is proof of a concrete injury to meet the "injury in fact" requirement. *See Bischoff,* 222 F.3d at 884 (explaining that the threat of arrest is wholly adequate to show injury in fact to establish standing). As noted by the Magistrate Judge, the threat of arrest was not limited to only those protesters engaged in particular activities. "First, the threat of arrest was not limited to those who stepped in the road—or at least no such limit was proved a the hearing. Sheriff Aycock himself argued in his brief that protestors who did not go into the street, but merely approached vehicles to solicit, nevertheless violated Florida law" and were thus subject to arrest. (Doc. 100 at 19–20). The threat of arrest in this instance was actual and concrete rather than merely conjectural or hypothetical. Ms. Bischoff and Ms. Stites refrained from exercising their First Amendment rights in order to avoid arrest. Thus, they suffered an injury in fact.

Second, Ms. Bischoff and Ms. Stites have established a causal link between the injury they suffered and Sheriff Aycock's enforcement of the contested statutes. "[B]oth Bischoff and Stites were engaged in conduct violative of the same Florida laws for which Osceola County Sheriff's Deputies arrested Plaintiff Spangle." (Doc. 100 at 20).

Finally, it is more than likely, not merely speculative, that Plaintiffs' injury would be redressed by a facial invalidation of the contested statutes. Defendants' primary argument in their objection to the Report and Recommendation with regard to the issue of standing focuses on the fact that neither Ms. Bischoff or Ms. Stites stepped in the road during the demonstration and were not arrested. The Defendants' Objection to the Report and Recommendation does not refer to any other factual evidence or case law that would bolster Defendant's position. As a result, this Court agrees with

the Magistrate Judge's conclusion that all the Plaintiffs have standing to contest the constitutionality of sections 316.2045 and 316.2055.

E. *The Magistrate Judge properly reconsidered the Plaintiffs' facial challenge to the contested Florida statutes.*

[2] In the Defendants' Objections to the Magistrate's Report and Recommendation (Docs. 102 & 103), the Defendants essentially argue that in revisiting the facial challenges to the relevant Florida statutes the Magistrate Judge violated the law of the case doctrine that requires trial courts to strictly adhere to the mandates of appellate courts. *See Piambino v. Bailey,* 757 F.2d 1112, 1120 (11th Cir.1985) (explaining that a "trial court, upon receiving the mandate of an appellate court, may ***1234** not alter, amend, or examine the mandate, or give any further relief or review, but must enter an order in strict compliance with the mandate"). The law of the case "doctrine stands for the proposition that an appellate decision on an issue must be followed in all subsequent trial court proceedings unless the presentation of new evidence or an intervening change in the controlling law dictates a different result, or the appellate decision is clearly erroneous and, if implemented, would work a manifest injustice." *Id.* (citing *Westbrook v. Zant,* 743 F.2d 764, 768–69 (11th Cir.1984)).

According to the Defendants, the disturbance of Judge Sharp's initial finding that the relevant Florida statutes were constitutional is against the Eleventh Circuit's August 14, 2000 mandate remanding the case "to the district court either to hold an evidentiary hearing on the question of standing or to rule on the merits of Plaintiffs' as applied challenge as raised in the parties' cross motion for summary judgment. *We refrain from reviewing the district court's ruling on the merits of Plaintiff's facial challenge at this time.*" *Bischoff v. Osceola County, Fla.,* 222 F.3d 874, 886 (11th Cir.2000) (emphasis added). The Defendants argue that the Eleventh Circuit reversed and remanded Judge Sharp's decision only for the District Court to reconsider standing or the Plaintiffs' as-applied challenge, not to reconsider Judge Sharp's conclusion with regard to the facial challenge. The hearing on the facial challenge along with the subsequent recommendation is, in the perspective of the Defendants, a violation of the Eleventh Circuit's instructions.

[3] The policy behind the law of the case doctrine is to maintain a sense of efficiency, finality and obedience within the judiciary. *See Litman v. Mass., Mutual Life Ins. Co.,* 825 F.2d 1506, 1511 (11th Cir.1987) (explaining that judicial dispute resolution must have elements of finality and stability). " 'Judicial precedence serves as the foundation of our federal judicial system. Adherence to it results in stability and predictability.' " *Id.* at 1510 (citing *Jaffree v. Wallace,* 705 F.2d 1526, 1533 (11th Cir.1983)). "[I]t would be impossible for an appellate court 'to perform its duties satisfactorily and efficiently' and 'expeditiously if a question, once considered and decided by it were to be litigated anew in the same case upon any and every subsequent appeal' thereof." *Terrell v. Household Goods Carriers' Bureau,* 494 F.2d 16, 19 (5th Cir.1974) (quoting *White v. Murtha,* 377 F.2d 428, 431 (5th Cir.1967)). In other words, the law of the case doctrine is primarily concerned with the duty of lower courts to follow what has already been decided in a case. It does not, however, extend to issues the appellate court does not address. *See Piambino,* 757 F.2d at 1120 (explaining that the "law of the case doctrine applies to all issues decided expressly or by necessary implication; it does not extend to issues the appellate court did not address."); *see also Terrell,* 494 F.2d at 19 (explaining that the law of the case rule applies only to issues that were decided, and does not include determination of questions which might have been decided). Therefore, a lower court would not violate the law of the case doctrine in deciding an issue that an appellate court did not address in a previous decision.

The law of the case doctrine simply does not extend to the Plaintiffs' facial challenge to the statutes because the Eleventh Circuit did not decide the issue. The Eleventh Circuit clearly stated that "[w]e refrain from reviewing the district court's ***1235** ruling on the merits of the Plaintiff's facial challenge at this time." *Bischoff,* 222 F.3d at 886. In re-examining the facial challenge, the Magistrate Judge did not exceed his authority but merely reconsidered an issue the Eleventh Circuit did not address. Moreover, the Magistrate Judge issued an Order on August 15, 2002 providing the parties with specific issues that they had to address during oral argument in order to ensure that all parties were prepared to address the question of facial constitutionality. (Doc. 88). In sum, the reconsideration of the facial challenge was appropriate and not a violation of the law of the case doctrine because the Eleventh Circuit decision did not require that Judge Sharp's ruling remain undisturbed.

F. *The contested Florida statutes are unconstitutional.*

1. *Section 316.2045 is unconstitutional because it is content-based and vague.*

[4] All the Defendants object to the Magistrate Judge's recommendation that section **316.2045** be declared unconstitutional.[4] The Magistrate Judge's recommendation is premised on the legal theory that section **316.2045** is content-based and vague. According to the Magistrate Judge, "the Florida statute facially prefers the viewpoints expressed by registered charities and political campaigners by allowing ubiquitous and free dissemination of their views, but restricts discussion of all other issues and subjects." (Doc. 100 at 31).

The Supreme Court in *Carey v. Brown,* 447 U.S. 455, 100 S.Ct. 2286, 65 L.Ed.2d 263 (1980), similarly dealt with an Illinois statute that made distinctions between peaceful picketing and peaceful labor picketing. The contested Illinois statute prohibited picketing on public streets and sidewalks in residential neighborhoods, but made an exception for peaceful labor picketing. The Supreme Court in *Carey* explained:

> The central problem with Chicago's ordinance is that it describes permissible picketing in terms of its subject mat ***1236** ter.... Any restriction on expressive activity because of its content would completely undercut the profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide open.

Id. at 462–63, 100 S.Ct. 2286 (internal citations and footnote omitted). The Court further explains in *Carey* that "[t]here is an equality of status in the field of ideas, and government must afford all points of view an equal opportunity to be heard. Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say." *Id.* at 463, 100 S.Ct. 2286 (internal citations and footnote omitted). The Court in *Carey* found the Illinois statute unconstitutional under the Equal Protection Clause of the Fourteenth Amendment because it made an impermissible subject matter distinction between lawful and unlawful picketing.

The Florida statute is similar to the Illinois statute at issue in *Carey.* The Florida statute suffers from the same constitutional infirmities. Facially the Florida statute prefers speech by § 501(c)(3) charities and those who are engaged in political speech. The Defendants in their objection to the Magistrate Judge's recommendation cite only to Judge Sharp's previous decision finding the contested Florida statute constitutional. The Defendants do not engage in any further analysis or cite to any other legal authority to support their position. In light of the impermissible distinctions made in section **316.2045**, Florida Statutes, the Court finds the statute unconstitutional under the Equal Protection Clause of the Fourteenth Amendment and the First Amendment of the United States Constitution.

The Magistrate Judge also found section **316.2045** void for vagueness. "The essential purpose of the 'void for vagueness' doctrine is to warn individuals of the criminal consequences of their conduct." *Jordan v. De George,* 341 U.S. 223, 230, 71 S.Ct. 703, 95 L.Ed. 886 (1951) (quoting *Williams v. United States,* 341 U.S. 97, 71 S.Ct. 576, 95 L.Ed. 774 (1951)). "The test is whether the language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." *Id.* at 231–2, 71 S.Ct. 576.

Section one of the contested statute in this case contains several ambiguous terms which make it difficult for an individual to determine what type of conduct is unlawful. "Section one is ambiguous as to whether it is unlawful for an individual to willfully obstruct the free use of the road 'by standing,' or whether she must do so by standing on the road. The undefined terms 'solicit' and 'political campaigning' contribute to the indefiniteness of § **316.2045**, as does section two's reference to and partial incorporation of the opaque and undecipherable permit provisions of another criminal statute, § 337.406." (Doc. 100 at 32). The language of section **316.2045** simply does not convey sufficiently definite warning as to the unlawful conduct when measured by common understanding. In the Defendants' Objections to the facial challenge they do not address the ambiguity of the statute. Therefore, this Court shall adopt the Magistrate Judge's recommendation that section **316.2045**, Florida Statutes, is void for vagueness.

2. *Section **316.2045** is not narrowly tailored to meet compelling state interest, but rather it is overbroad.*

[5] Generally, overbroad statutes have the potential to chill speech. Statutes or ***1237** regulations may not "sweep unnecessarily broadly and thereby invade the area of protected freedoms." *NAACP v. Alabama,* 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958). Courts invalidate overly broad statutes because "persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions provided by a statute susceptible of application to protected expression." *Gooding v. Wilson,* 405 U.S. 518, 521, 92 S.Ct. 1103, 31 L.Ed.2d 408 (1972).

The purpose behind the contested statutes is to ensure public safety on roads, which is a compelling government interest. However, the statute is not narrowly tailored to meet that compelling interest. "Nothing in the § 316.2045's content based charity—non-charity distinction or political nonpolitical distinction has any bearing whatsoever on road safety or uniformity." (Doc. 100 at 34). "Traffic accidents or backups caused by political campaigners or duly licensed charitable organizations are no less problematic than traffic accidents or backups caused by other political speakers or non-licensed charitable organizations." (Doc. 100 at 34). The Defendants argue in their objections that the statute is narrowly tailored and that it provides alternative channels for communication because individuals may apply for a permit in order to express their views. (Doc. 102 at 12). However, the Defendants do not address the Magistrate Judge's conclusion that the statute's permit scheme serves as a prior restraint on speech. "A prior restraint on expression exists when the government can deny access to a forum for expression before the expression occurs." *United States v. Frandsen,* 212 F.3d 1231, 1236–37 (2000). "Although prior restraints are not per se unconstitutional, there is a strong presumption against their constitutionality." *Id.* at 1237. In order for a regulation that places a restraint on speech to pass constitutional muster it must contain procedural safeguards to avoid censorship.

In this instance,

> [t]he permitting scheme established by § 316.2045 lacks the procedural safeguards necessary to ensure against undue suppression of protected speech. Neither this court, nor any citizen wishing to engage in legal speech on a Florida road, can determine whether a particular permitting procedure applies to a given stretch of road; whether a particular agency or person has been designated to accept and grant or deny applications; whether any substantive constraints are placed on that person's discretion to deny a license; whether prompt judicial review is available for a denial; and whether there is any time constraint on the issuance or denial of a license.

(Doc. 100 at 36). Although the Defendants argue that individuals could potentially apply for a permit, they do not point to anything in the record that convinces this Court that there are procedural safeguards in place to prevent the undue suppression of speech. Therefore, the Court adopts the recommendation that section 316.2045 is overbroad and not narrowly tailored to meet the government's compelling interest.

3. *Section 316.2055 is not narrowly tailored to meet a significant state interest.*[5]

[6] Although section 316.2055 is content neutral, it suppresses more speech ***1238** than is necessary to serve the stated government purpose of ensuring public safety on roads. In addition, it is impermissibly vague in that it fails to define the terms "advertising or soliciting materials" and thus does not provide sufficient warning as to what conduct is proscribed by the law. The Defendants do not specifically address the Magistrate Judge's legal analysis with regard to the constitutionality of section 316.2055. They do not offer any legal precedent that reaches a contrary conclusion or any factual evidence that persuades the Court to disagree with the Magistrate Judge's recommendation. Therefore, the Court agrees with the Magistrate Judge with regard to the unconstitutionality of section 316.2055.

III. Conclusion

Therefore, it is ORDERED as follows:

1. The Report and Recommendation (Doc. 100, filed September 19, 2002) is **ADOPTED AND CONFIRMED** and made part of this Order.

2. Defendant Aycock's Motion to Dismiss (Doc. 79, filed January 9, 2002) is **DENIED**.

3. Defendant Butterworth's Motion to Dismiss (Doc. 81, filed January 29, 2002) is **DENIED.**

4. It is further Ordered that the Court finds that Plaintiffs have standing to pursue their constitutional challenges to sections 316.2045 and 316.2055, Florida Statutes.

5. It is further Ordered that sections 316.2045 and 316.2055, Florida Statutes are found facially unconstitutional and invalid.

REPORT AND RECOMMENDATION

GLAZEBROOK, United States Magistrate Judge.

This cause came on for hearing on August 27, 2002 on the parties' motions for summary judgment. Those motions are:

1) Defendant Sheriff Charles Aycock's ("Sheriff Aycock's") Motion to Dismiss[1] against Plaintiffs Cheryl Bischoff ("Bischoff"), Vicky Stites ("Stites") and Seth Spangle[2]

("Spangle," collectively, "Plaintiffs"); Docket No. 79, filed January 9, 2002; and

2) Defendant Robert Butterworth's ("Butterworth's" or "the Attorney General's," with Aycock, "Defendants' "), Motion to Dismiss against Plaintiffs. Docket No. 81, filed January 29, 2002.

I. *INTRODUCTION*

On December 29, 1997, the Osceola County Sheriff's Office disbanded an organized protest at the heavily-trafficked ***1239** intersection of Irlo Bronson Memorial Highway and Old Vineland Road in unincorporated Osceola County, Florida. The group had gathered at the intersection to protest Walt Disney World's purported support of homosexuality. The Osceola County Sheriff's Deputies arrested three of the protesters, Phillip Benham ("Benham"), Matthew Bowman ("Bowman") and Spangle. The Sheriff's Office charged them with violating Fla. Stat. §§ **316**.**2045**(2) (obstruction of traffic to solicit without a permit) and 316.2055 (throwing advertising material into vehicles). Benham, Bowman, and Spangle later pled no contest to obstructing traffic to solicit without a permit, and each paid a $25 fine. Plaintiffs Bischoff and Stites were among the remaining protesters. Bischoff and Stites say that they were threatened with arrest under the same statutes, but that they disbanded in order to avoid arrest.

Bischoff and Stites filed this case on May 18, 1998, asking this Court to declare that Fla. Stat. §§ **316**.**2045** and 316.2055 were unconstitutional, both on their face and as applied to plaintiffs. The case was assigned to The Honorable G. Kendall Sharp. The original complaint named Osceola County as the sole defendant. Plaintiffs later amended their complaint, adding Osceola County Sheriff Charles Croft. Docket 17. Osceola County and Sheriff Croft moved to dismiss the amended complaint. Docket Nos. 19, 22. Sheriff Croft's motion to dismiss alternatively sought summary judgment. Bischoff and Stites filed a cross-motion for summary judgment, Docket No. 29, to which Osceola County and Sheriff Croft responded. Docket Nos. 34, 38.

On February 2, 1999, Judge Sharp dismissed the entire case for lack of standing, and denied all outstanding motions as moot. Docket No. 48. The United States Court of Appeals for the Eleventh Circuit reversed and remanded "to either hold an evidentiary hearing on the issue of standing or consider the merits of Plaintiffs' as applied challenge." *Bischoff v. Osceola County, Fla.*, 222 F.3d 874, 876 (11th Cir.2000). The Eleventh Circuit held that Judge Sharp had properly raised the issue of standing *sua sponte,* but had improperly decided standing based on contested facts without a hearing. *Id.* Upon remand from the court of appeals, Judge Sharp ordered the Clerk to reassign the case. The Clerk subsequently reassigned the case to The Honorable John Antoon II.

Robert Butterworth, Attorney General of the State of Florida, intervened as a defendant on February 7, 2001. Docket No. 60. By joint stipulation, the parties dismissed Osceola County on August 23, 2001. Docket No. 72. Bischoff and Stites filed a second amended complaint on December 20, 2001, adding Spangle as a plaintiff, and substituting Sheriff Charles Aycock for Sheriff Croft as a defendant. Docket No. 76. Defendants then moved to dismiss Plaintiffs' second amended complaint, Docket Nos. 79, 81, to which Plaintiffs responded in opposition. Docket Nos. 80, 82. Plaintiffs also filed a motion to set their facial challenge to the two statutes for summary judgment briefing. Docket No. 82.

On June 24, 2002, Judge Antoon referred these motions to the undersigned for preparation of a report and recommendation. Because the parties presented to the Court matters outside the pleadings, the Court converted the outstanding motions to dismiss to motions for summary judgment under Fed.R.Civ.P. 12(b), and established a schedule for hearing and resolving ***1240** all pending motions. Docket No. 87.

The Court held an evidentiary hearing on the standing issue on August 27, 2002, and also entertained extensive oral argument on the facial challenges to Fla. Stat. §§ **316**.**2045** and Fla. Stat. § 316.2055. The parties conceded at oral argument that Plaintiffs' as applied challenges were not ripe for summary judgment, and that no sovereign immunity or qualified immunity issues remained or existed. Therefore, the Court addresses only standing and facial validity.

II. *THE LAW*

A. THE STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). The moving party bears the initial burden of showing the Court, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial. *Celotex Corp. v. Catrett,* 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Clark v. Coats & Clark, Inc.,* 929 F.2d

604 (11th Cir.1991). A moving party discharges its burden on a motion for summary judgment by "showing" or "pointing out" to the Court that there is an absence of evidence to support the non-moving party's case. *Celotex,* 477 U.S. at 325, 106 S.Ct. 2548. Rule 56 permits the moving party to discharge its burden with or without supporting affidavits, and to move for summary judgment on the case as a whole or on any claim. *Id.* When a moving party has discharged its burden, the non-moving party must then "go beyond the pleadings," and by its own affidavits, or by "depositions, answers to interrogatories, and admissions on file," designate specific facts showing that there is a genuine issue for trial. *Id.* at 324, 106 S.Ct. 2548.

In determining whether the moving party has met its burden of establishing that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law, the Court must draw inferences from the evidence in the light most favorable to the non-movant and resolve all reasonable doubts in that party's favor. *Spence v. Zimmerman,* 873 F.2d 256 (11th Cir.1989). The Eleventh Circuit has explained the reasonableness standard:

> In deciding whether an inference is reasonable, the Court must "cull the universe of possible inferences from the facts established by weighing each against the abstract standard of reasonableness." The opposing party's inferences need not be more probable than those inferences in favor of the movant to create a factual dispute, so long as they reasonably may be drawn from the facts. When more than one inference reasonably can be drawn, it is for the trier of fact to determine the proper one.

WSB–TV v. Lee, 842 F.2d 1266, 1270 (11th Cir.1988) (internal citations omitted).

Thus, if a reasonable fact finder evaluating the evidence could draw more than one inference from the facts, and if that inference introduces a genuine issue of material fact, then the court should not grant the summary judgment motion. *Augusta Iron and Steel Works v. Employers Insurance of Wausau,* 835 F.2d 855, 856 (11th Cir.1988). A dispute about a material fact is "genuine" if the "evidence is such that a ***1241** reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). The inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id.* at 251–52, 106 S.Ct. 2505.

B. THE LAW OF STANDING

Unless a plaintiff has standing to bring her claims, the Court is without jurisdiction to hear her case. *Warth v. Seldin,* 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). The party invoking federal jurisdiction bears the burden of proving standing. *Bischoff v. Osceola County, Fla.,* 222 F.3d 874, 878 (11th Cir.2000), citing *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). To satisfy constitutional standing requirements, a plaintiff must show three elements:

> First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal relationship between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely as opposed to merely speculative that the injury will be redressed by favorable decision.

222 F.3d at 883, citing *Lujan,* 504 U.S. at 560–61, 112 S.Ct. 2130 (internal marks, citations, and footnote omitted).

C. FACIAL CHALLENGES UNDER THE CONSTITUTION

1. *The United States Constitution*

The First Amendment guarantees that "Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const., amend. I. Although the First Amendment is directed at the federal government's conduct, the rights guaranteed by the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment. U.S. Const., amend. XIV ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.").

Federal courts are courts of limited jurisdiction. The courts do not reach out to reform or rewrite state statutes that seem to require some improvement. Neither do the federal courts strike down valid laws of which they disapprove. It is the state legislature's duty to enact valid laws, and the Court's duty to

declare what the law is, and how the law applies to the facts. The federal courts do not substitute laws that they prefer for the will of the elected state legislature. But where parties in a controversy ask a federal court to declare whether a state law violates the Constitution of the United States, the Court must not shrink from its duty to adjudicate the question presented.

2. *The Standards of Constitutional Scrutiny*

a. Forum Analysis

When a state regulation restricts the use of government property as a forum for expression, a court must first determine the nature of the government property ***1242** involved. *United States v. Kokinda,* 497 U.S. 720, 726–27, 110 S.Ct. 3115, 111 L.Ed.2d 571 (1990). The nature of the property determines the level of constitutional scrutiny applied to the restrictions on expression. *Capitol Square Review & Advisory Bd. v. Pinette,* 515 U.S. 753, 761, 115 S.Ct. 2440, 132 L.Ed.2d 650 (1995). The Supreme Court has delineated three categories of government-owned property for First Amendment purposes: the traditional public forum, the designated public forum, and the nonpublic forum. *Crowder v. Housing Authority of Atlanta,* 990 F.2d 586, 590 (11th Cir.1993).

Streets and parks are the quintessential traditional public fora, because those areas "have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n,* 460 U.S. 37, 45, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983) (*quoting Hague v. Committee for Indus. Org.,* 307 U.S. 496, 515, 59 S.Ct. 954, 83 L.Ed. 1423 (1939)); *see also Int'l Soc. for Krishna Consciousness, Inc., v. Lee,* 505 U.S. 672, 696, 112 S.Ct. 2701, 120 L.Ed.2d 541 (1992) (Kennedy, J., concurring) ("At the heart of our jurisprudence lies the principal that in a free nation citizens must have the right to gather and speak with other persons in public places. The recognition that certain government owned property is a public forum provides open notice to citizens that their freedoms may be exercised there without fear of a censorial government, adding tangible reinforcement to the idea that we are a free people"); *Redd v. City of Enterprise,* 140 F.3d 1378, 1383 (11th Cir.1998) (where traveling minister was arrested for disorderly conduct for preaching on the corner of a busy intersection, streets were a traditional public forum).

b. Content–Neutral versus Content–Based

[7] Courts apply different levels of scrutiny to contested statutes. At issue in the instant case is whether Fla. Stat. §§ **316.2045** and 316.2055 impose only content-neutral restrictions, or whether the restrictions are content-based. In any event, the Court interprets[3] statutes to avoid constitutional difficulties. *Frisby v. Schultz,* 487 U.S. 474, 483, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988).

i. *Content–Neutral Restrictions*

[8] **[9]** In public fora, the government may regulate the time, place and manner of expression so long as the restrictions are: 1) content-neutral; 2) narrowly tailored to serve a significant government interest; and 3) leave open alternative channels of communication. *United States v. Grace,* 461 U.S. 171, 177, 103 S.Ct. 1702, 75 L.Ed.2d 736 (1983). Content-neutral regulations are those that are "justified without reference to the content of the regulated speech." *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.,* 425 U.S. 748, 771, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976). A valid time, place and manner restriction must also be ***1243** narrowly tailored to serve a significant government interest. *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council,* 425 U.S. 748, 771, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976). The government's interest in protecting the safety of persons using a public forum is a valid government objective. *See Heffron v. Int'l Soc. for Krishna Consciousness, Inc.,* 452 U.S. 640, 650, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981), *citing Grayned,* 408 U.S. at 109, 92 S.Ct. 2294; *see also News and Sun–Sentinel Co. v. Cox,* 702 F.Supp. 891, 900 (S.D.Fla.1988) ("It requires neither towering intellect nor an expensive 'expert' study to conclude that mixing pedestrians and temporarily stopped motor vehicles in the same space at the same time is dangerous."). The Supreme Court has held, however, that an ordinance may not prohibit "a person rightfully on a public street from handing literature to one willing to receive it" because the defendant has an interest in keeping its streets clean and of good appearance. *Schneider v. New Jersey,* 308 U.S. 147, 162–63, 60 S.Ct. 146, 84 L.Ed. 155 (1939).

[10] Lastly, a valid time, place and manner restriction must allow for alternative channels of communication. The government may not, however, abridge a citizen's right to exercise liberty of expression in an appropriate place simply because that same expression may be exercised in another place. *Cox,* 702 F.Supp. at 902, *quoting Schneider v. State,* 308 U.S. 147, 163, 60 S.Ct. 146, 84 L.Ed. 155 (1939).

The level of scrutiny the Court must apply "is initially tied to whether the statute distinguishes between prohibited and permitted conduct on the basis of content." *Frisby,* 487 U.S. at 481, 108 S.Ct. 2495. In *Frisby,* individuals who strongly opposed abortion held at least six demonstrations on a public street in front of a doctor's residence. The town of Brookfield, Wisconsin then adopted a municipal ordinance that completely banned picketing "before or about" any residence. Two individuals who wished to continue picketing sought a declaration that the ordinance was facially invalid under the First Amendment. 487 U.S. at 477, 108 S.Ct. 2495. The Supreme Court held that the street in front of the doctor's house in a residential neighborhood was a traditional public forum, and deferred to the district court's finding that the municipal ordinance was facially content neutral—*i.e.,* the ban on all focused picketing did not distinguish between prohibited and permitted speech on the basis of content.[4] 487 U.S. at 481–82, 108 S.Ct. 2495.

The Court then applied the test for whether a statute is narrowly tailored—i.e., it "targets and eliminates no more than the exact source of the 'evil' it needs to remedy." 487 U.S. at 485, 108 S.Ct. 2495. The Court found that the ordinance's complete ban on focused picketing was narrowly directed at the household, not the general public, and that the "First Amendment permits the government to prohibit offensive speech as intrusive when the 'captive' audience cannot avoid the objectionable speech." 487 U.S. at 487, 108 S.Ct. 2495. Because of the narrow scope of the Brookfield ordinance, and because ***1244** "the ordinance prohibited speech directed primarily at those who are presumptively unwilling to receive it," the state had a substantial interest in banning picketing. 487 U.S. at 488, 108 S.Ct. 2495. The ordinance was facially valid under the First Amendment.

ii. *Content–Based Restrictions*

[11] **[12]** Content-based restrictions, on the other hand, regulate speech on the basis of the ideas expressed. A content-based restriction is presumptively invalid. *R.A.V. v. City of St. Paul,* 505 U.S. 377, 382, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992); *Simon & Schuster v. New York Crime Victims Bd.,* 502 U.S. 105, 116, 112 S.Ct. 501, 116 L.Ed.2d 476 (1991) (*quoting Regan v. Time, Inc.,* 468 U.S. 641, 648–49, 104 S.Ct. 3262, 82 L.Ed.2d 487 (1984) (regulations which "permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment"); *Dimmitt v. City of Clearwater,* 985 F.2d 1565, 1569 (11th Cir.1993) (finding that an ordinance prohibiting nonresidential flag display without a permit unless the flags "represent a governmental unit or body" was content-based and invalid); *Krafchow v. Town of Woodstock,* 62 F.Supp.2d 698, 710 (N.D.N.Y.1999) (finding that an ordinance prohibiting all political speech and solicitation except political campaigning on a village green was content-based and invalid)). Our society, however, has permitted content-based restrictions in types of speech that are "of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." *R.A.V.,* 505 U.S. at 383, 112 S.Ct. 2538 (*quoting Chaplinsky v. New Hampshire,* 315 U.S. 568, 572, 62 S.Ct. 766, 86 L.Ed. 1031 (1942)). For a state to enforce a content-based restriction, it must show that the regulation is necessary to serve a compelling state interest and is narrowly drawn to achieve that end. *Perry,* 460 U.S. at 45, 103 S.Ct. 948.

In *Carey v. Brown,* 447 U.S. 455, 459, 100 S.Ct. 2286, 65 L.Ed.2d 263 (1980), a civil rights organization protested the alleged failure of the Mayor of Chicago to support busing of school children. The protest occurred on the public sidewalk on front of the Mayor's home. The protestors were arrested and charged with violating an Illinois statute that made it a Class B misdemeanor to "picket before or about the residence or dwelling of any person," but permitted the peaceful picketing of a "place of employment involved in a labor dispute." 447 U.S. at 457, 100 S.Ct. 2286. The protestors sought a declaration that the Illinois residential picketing statute was facially invalid under the First and Fourteenth Amendments. The protestors argued that the law was overbroad and vague, and that it imposed an impermissible content-based restriction on protected expression in light of the exception for labor picketing. 447 U.S. at 458, 100 S.Ct. 2286.

The Supreme Court held that the Illinois statute violated the Equal Protection Clause because it selectively proscribed peaceful picketing "on the basis of the placard's message"—*i.e.,* it impermissibly "distinguished between labor picketing and all other peaceful picketing without any showing that the latter was 'clearly more disruptive' than the former." *Carey,* 447 U.S. at 459–60, 465, 100 S.Ct. 2286; *accord, Police Department of Chicago v. Mosley,* 408 U.S. 92, 100, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972) (invalidating as content-based an ordinance criminalizing picketing in front of schools, but excepting ***1245** labor-related picketing). The Court reasoned that the legality of residential picketing

depends solely on the nature of the message being conveyed. On its face, the Illinois statute prefers the expression of views about labor disputes, and allows the free dissemination of views on that subject, but restricts discussion of all other issues and subjects. *Carey,* 447 U.S. at 460–61, 100 S.Ct. 2286.

The Supreme Court found that "nothing in the content-based labor-nonlabor distinction has any bearing whatsoever on privacy," and that peaceful labor picketing is no less disruptive than peaceful picketing on issues of broader social concern. 447 U.S. at 465, 100 S.Ct. 2286. The Court observed that labor picketing is no more deserving of First Amendment protection than are public protests over other issues, particularly the economic, social, and political subjects about which the parties before the Court wished to demonstrate. 447 U.S. at 466, 100 S.Ct. 2286.

c. Overbreadth

[13] A facial challenge, as distinguished from an as-applied challenge, seeks to invalidate a statute or regulation itself. *Jacobs v. Florida Bar,* 50 F.3d 901, 905–06 (11th Cir.1995). If a facial challenge is successful, the court will strike down the invalid statute. *Stromberg v. California,* 283 U.S. 359, 369–70, 51 S.Ct. 532, 75 L.Ed. 1117 (1931). For a facial challenge to be successful, a plaintiff generally must establish that no set of circumstances exists under which the law would be valid. *Adler v. Duval County Sch. Bd.,* 206 F.3d 1070, 1083–84 (11th Cir.2000) (*en banc*) (*quoting U.S. v. Salerno,* 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987)).

[14] Statutes or regulations may not "sweep unnecessarily broadly and thereby invade the area of protected freedoms." *NAACP v. Alabama,* 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958). This is known as the overbreadth doctrine. *See* Gerald Gunther & Kathleen M. Sullivan, Constitutional Law 1326—37 (13th ed.1997). A court may invalidate an overly broad law even though the speech at issue could have been proscribed by a more narrowly drawn law. *Id.* Courts invalidate overly broad statutes or regulations because "persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions provided by a statute susceptible of application to protected expression." *Gooding v. Wilson,* 405 U.S. 518, 521, 92 S.Ct. 1103, 31 L.Ed.2d 408 (1972); *see also United States v. Frandsen,* 212 F.3d 1231, 1236 n. 3 (11th Cir.2000), *quoting Forsyth County v. Nationalist Movement,* 505 U.S. 123, 129, 112 S.Ct. 2395, 120 L.Ed.2d 101 (1992).

[15] A plaintiff may facially challenge an overly broad statute even though a more narrowly drawn statute would be valid as applied against the plaintiff. *Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent,* 466 U.S. 789, 799, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984). Courts are circumspect in applying overbreadth, however, for fear that a wide-sweeping overbreadth doctrine would swallow traditional standing requirements. *Id.* As such, the Supreme Court has stated that, in order for the doctrine to apply, a statute's overbreadth must be substantial. *Broadrick v. Oklahoma,* 413 U.S. 601, 615, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973).

While "substantial overbreadth" has never been defined, the Supreme Court has held that "the mere fact that one can conceive of some impermissible applications ***1246** of a statute is not sufficient to render it susceptible to an overbreadth challenge." *Vincent,* 466 U.S. at 800, 104 S.Ct. 2118. The overbreadth doctrine stems from the interest of "preventing an invalid statute from inhibiting the speech of third parties who are not before the Court." *Id.* at 800–01, 104 S.Ct. 2118 ("there must be a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court for it to be facially challenged on overbreadth grounds."); *cf. Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.,* 455 U.S. 489, 497, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982) (the overbreadth doctrine does not apply to commercial speech).

At least one court of appeals has recognized the similarity between the overbreadth analysis, and the time, place, and manner restriction analysis. *Krantz v. City of Fort Smith,* 160 F.3d 1214, 1218–22 (8th Cir.1998), *cert. denied,* 527 U.S. 1037, 119 S.Ct. 2397, 144 L.Ed.2d 797 (1999) ("we also agree with the district court that plaintiffs' overbreadth challenge is governed by the line of cases addressing time, place and manner restrictions"). Indeed, determining whether a content-neutral statute is narrowly tailored is similar, if not identical, to determining overbreadth. Logic, if not existing case law, suggests that an overly broad statute cannot be narrowly tailored. Conversely, a narrowly-tailored statute cannot be overly broad. Accordingly, this Court's analysis of the narrowly-tailored prong of the time, place and manner regulation mirrors its overbreadth analysis.

d. Vagueness

Statutes or regulations may also be invalid because of vagueness.[5] The void-for-vagueness doctrine draws upon the procedural due process requirement that a law must provide "sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." *Jordan v. De George,* 341 U.S. 223, 231, 71 S.Ct. 703, 95 L.Ed. 886 (1951). A law will be void for vagueness if persons "of common intelligence must necessarily guess at its meaning and differ as to its application...." *Connally v. General Constr. Co.,* 269 U.S. 385, 391, 46 S.Ct. 126, 70 L.Ed. 322 (1926). In analyzing a statute or regulation for vagueness, the court applies a stricter standard for First Amendment challenges than in other contexts. *Smith v. Goguen,* 415 U.S. 566, 572–73, 94 S.Ct. 1242, 39 L.Ed.2d 605 (1974); *compare* ***1247** *Grayned v. City of Rockford,* 408 U.S. 104, 105, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972) (anti-noise ordinance) *with United States v. Nat'l Dairy Products Corp.,* 372 U.S. 29, 29–30, 83 S.Ct. 594, 9 L.Ed.2d 561 (1963) (consumer competition statute).

e. Prior Restraints on Speech

[16] A law that prohibits or restricts speech without a permit is a prior restraint on speech. A prior restraint exists "when the government can deny access to a forum for expression before the expression occurs." *United States v. Frandsen,* 212 F.3d 1231, 1236–37 (11th Cir.2000). Plaintiffs may challenge statutes involving prior restraints on speech as facially invalid without demonstrating that "there are no conceivable set of facts where the application of the particular government regulation might or would be constitutional." *Frandsen,* 212 F.3d at 1236, *citing City of Lakewood v. Plain Dealer Publ'g Co.,* 486 U.S. 750, 755–56, 108 S.Ct. 2138, 100 L.Ed.2d 771 (1988). A facial challenge is appropriate when a permit lacks adequate procedural safeguards necessary to ensure against undue suppression of protected speech. 212 F.3d at 1236.

[17] A facially valid prior restraint on protected expression contains three procedural safeguards that obviate the dangers of censorship. *Freedman v. Maryland,* 380 U.S. 51, 58–59, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965). First, the burden of going to court to suppress the speech, and the burden of proof once in court, must rest with the government. *Id.; Frandsen,* 212 F.3d at 1238. Second, any restraint prior to a judicial determination may only be for a specified brief time period in order to preserve the *status quo.* Where a licensor "has unlimited time within which to issue a license, the risk of arbitrary suppression is as great as the provision of unbridled discretion." *Frandsen,* 212 F.3d at 1239, *quoting FW/PBS, Inc., v. City of Dallas,* 493 U.S. 215, 226–27, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990) (plurality). Third, an avenue for prompt judicial review of the censor's decision must be available. *Freedman,* 380 U.S. at 58–59, 85 S.Ct. 734; *Frandsen,* 212 F.3d at 1238.

f. Reconsideration of Facial Challenges

"The law of the case" doctrine states that a trial court must follow an appellate court decision on an issue in subsequent trial court proceedings unless the presentation of new evidence or a change in controlling laws compels a different result. *Piambino v. Bailey,* 757 F.2d 1112, 1120 (11th Cir.1985); *see also White v. Murtha,* 377 F.2d 428, 431 (5th Cir.1967); *Terrell v. Household Goods Carriers' Bureau,* 494 F.2d 16, 19 (5th Cir.1974). The law of the case doctrine "applies to all issues decided expressly or by necessary implication; it does not extend to issues the appellate court did not address." *Piambino,* 757 F.2d at 1120.

III. *APPLICATION*

A. STANDING

1. *Background Regarding Standing*

On December 29, 2002, Bischoff, Stites and Spangle went to the heavily-trafficked intersection of Irlo Bronson Memorial Highway and Old Vineland Road in Osceola County, Florida, with other members of the Christian Life Family Center, a Baptist Church.[6] They protested Walt Disney World's purported support of homosexuality ***1248** by standing in the median between traffic lanes and on the side of the road, displaying signs and distributing literature to passing vehicles. Protesters carried large signs bearing slogans like "Choose Jesus Over Mickey" and "Disney Promotes Homosexuality." Docket No. 95, Exhibit B. The literature was titled "Why Boycott Disney?," and listed a number of reasons why the protesters believed that Walt Disney, Inc. supported "anti-family activities," including homosexuality, violence, incest, and drug abuse. *Id.,* Exhibit A. Bischoff held a sign and distributed literature. Stites also held a sign, and held literature for others. Spangle distributed literature.

Soon after the protesters arrived at around 8:00 a.m., an Osceola County Sheriff's Deputy identifying herself as Officer Crawford approached Bischoff.[7] The deputy told Bischoff that the protesters were impeding traffic, and that if they did not move, she would have to arrest them. According to Bischoff, the deputy did not answer her inquiries

concerning exactly why Bischoff might be arrested, but instead returned to her vehicle and spoke on the radio.

More Osceola County Sheriff's Deputies arrived, and warned the protesters that they were impeding traffic and had to disperse. Officers then arrested Benham, whom Bischoff never saw standing in the road or distributing literature. The officers warned the protesters that anybody who stepped in the road would be arrested. The officers then arrested Bowman and Spangle when they stepped into the road.[8] Bischoff and Stites witnessed these arrests.

After the arrests of Bowman and Spangle, the protesters soon disbanded at around 1:00 p.m., although they had planned to protest until around 5:00 p.m. Both Bischoff and Stites were afraid that they would also be arrested. They have not returned to the intersection of Irlo Bronson Memorial Highway and Old Vineland Road to protest since December 29, 1997, although they expressed a desire to protest again at that location.

2. *Standing Analysis*

All parties concede that Spangle, who was arrested, has standing. Bischoff and Stites claim to have been threatened with arrest for a violation of Fla. Stat. §§ **316.2045** and 316.2055, and the Court addresses their claims collectively.

a. Findings as to Injury in Fact

The Court finds that both Bischoff and Stites were threatened with arrest, and ***1249** thereby suffered an injury in fact.[9] *See Bischoff,* 222 F.3d at 884 ("Plaintiffs' testimony that they were threatened with arrest for engaging in free speech activities is evidence of an actual and concrete injury wholly adequate to satisfy the injury in fact requirement of standing."). Bischoff and Stites' unrefuted testimony was credible in this regard. At the hearing, Sheriff Aycock and the Attorney General argued that Bischoff and Stites had suffered no injury in fact because they had never been threatened with arrest for the same activities that led to the arrests of Spangle, Bowman and Benham. Specifically, Defendants maintained that the officers warned the protesters that they would be arrested for stepping into the road to distribute literature, and that Spangle, Bowman and Benham had stepped into the road. Because Bischoff and Spangle did not step in the road, according to Sheriff Aycock and the Attorney General, they suffered no injury from the threat to arrest those who stepped into the road. This argument is meritless.

First, the threat of arrest was not limited to those who stepped in the road—or at least no such limit was proved at the hearing. Sheriff Aycock himself argued in his brief that protesters who did not go into the street, but merely approached vehicles to solicit, nevertheless violated Florida law. Although Sheriff Aycock argued in his memorandum that the conduct of Spangle, Benham and Bowman was more hazardous because they entered the road, according to the Sheriff of Osceola County "those who stood on the grassy island and handed their materials across to drivers ..." also were subject to arrest. Docket No. 91 at 6, filed August 22, 2002. Sheriff Aycock's contrary argument five days later at the hearing—that persons who distributed literature (Bischoff) or persons who aided and abetted them (Stites) were not subject to arrest—rings hollow.

Second, it is insignificant that Bischoff and Stites may have been threatened with arrest for violating different sub-parts of Fla. Stat. §§ **316.2045** and 316.2055 than those for which Spangle, Benham and Bowman were arrested. As discussed in detail below, these statutes state numerous means by which a defendant might impede traffic or unlawfully distribute handbills. Bischoff and Stites may well suffer an injury-in-fact sufficient to confer standing even if their conduct did not mirror, subsection for subsection or step for step, Spangle's conduct. To deny standing to Bischoff and Stites on this basis would elevate form over substance.

b. Findings as to Causation

Similarly, Bischoff and Stites have demonstrated a causal link between the injury they suffered and Sheriff Aycock's enforcement of the contested statutes. According to Sheriff Aycock, both Bischoff and Stites were engaged in conduct violative of the same Florida laws for which Osceola County Sheriff's Deputies arrested Plaintiff Spangle. *Bischoff,* 222 F.3d at 885.

c. Findings as to Likelihood of Redress

Finally, the relief Bischoff and Stites seek, a facial invalidation of the Florida ***1250** statutes at issue, would redress their injury if granted. *Bischoff,* 222 F.3d at 885. If Fla. Stat. §§ **316.2045** and 316.2055 are declared invalid, then Bischoff and Stites could return to the same site in Osceola County to protest without fear of arrest for violating these statutes. For the above reasons, Bischoff, Stites and Spangle have standing to contest the constitutionality of these Florida statutes.

B. FACIAL CHALLENGES UNDER THE CONSTITUTION

1. *Reconsideration of Facial Challenges*

The district court first must decide whether to re-examine Fla. Stat. §§ **316**.**2045** and 2055 on remand in light of the pre-appeal disposition of The Honorable G. Kendall Sharp. Docket 48. Judge Sharp granted summary judgment to former defendants Sheriff Charles Croft and Osceola County on Bischoff and Stites' facial challenges. Judge Sharp relied primarily on a finding that neither plaintiff had standing to challenge either statute, but ruled in the alternative that the two statutes imposed permissible time, place and manner restrictions. *Id.* at 9. The Eleventh Circuit refrained from reviewing the district court's ruling on the merits of Plaintiffs' facial challenges. *See Bischoff,* 222 F.3d at 886. Defendants argue that the Eleventh Circuit's refusal to address the facial challenge prohibits the district court from reconsidering Plaintiffs' facial challenges.

Plainly, the Eleventh Circuit did not address the facial validity of the contested Florida laws. *See Bischoff,* 222 F.3d at 886. Absent a limited remand and clear retention of jurisdiction in the Court of Appeals, a district court is free to re-evaluate its earlier rulings in order to achieve a legally correct result, particularly when the Court of Appeals has provided new enlightenment. Accordingly, the Court proceeds to consider Plaintiffs' facial challenges to Fla. Stat. §§ **316**.**2045** and 316.2055.

2. *Facial Analysis of Fla. Stat. § 316.2045*

Plaintiffs contest the facial validity of Fla. Stat. § **316**.**2045**, a law prohibiting the willful obstruction of public streets, highways and roads. Plaintiffs raise three grounds. First, Plaintiffs contend that Fla. Stat. § **316**.**2045** is an invalid content-based statute that impermissibly regulates the type of speech allowed in a public forum. Second, Plaintiffs argue that Fla. Stat. § **316**.**2045** is void for vagueness because it criminalizes conduct that falls within undefined terms, and because it establishes a licensing system that lacks the requisite procedural safeguards. Third, Plaintiffs allege that Fla. Stat. § **316**.**2045** is overly broad in that it applies to a wide range of protected First Amendment conduct.

Any facial analysis must begin with a very close analysis of the language chosen by the legislature in order to determine the statute's exact reach or scope. *See Frisby,* 487 U.S. at 482, 108 S.Ct. 2495. Section **316**.**2045** (captioned "Obstruction of public streets, highways and roads") states, in pertinent part:

> (1) It is unlawful for any person or persons willfully to obstruct the free, convenient and normal use of any public street, highway or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, by standing or approaching motor vehicles thereon, or by endangering ***1251** the safe movement of vehicles or pedestrians traveling thereon; and any person or persons who violate the provisions of this subsection, upon conviction, shall be cited for a pedestrian violation, punishable as provided in chapter 318.
>
> (2) It is unlawful, without proper authorization or a lawful permit, for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by any of the means specified in subsection (1) in order to solicit. Any person who violates the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. Organizations qualified under § 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, or persons acting on their behalf are exempted from the provisions of this subsection by the state. Permits for the use of any portion of a state-maintained road or right-of-way shall be required only for those purposes and in the manner set out in § 337.406.
>
> (3) Permits for the use of any street, road or right-of-way not maintained by the state may be issued by the appropriate local government.
>
> (4) Nothing in this section shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity.

Fla. Stat. § **316**.**2045**.

Section one of § **316**.**2045** makes it unlawful wilfully to obstruct the normal use of any road "by impeding, hindering, stifling, retarding, or restraining traffic or passage" on the road. Section one also prohibits the wilful obstruction of any road's normal use "by standing or approaching motor vehicles thereon." Section one is ambiguous as to whether it is unlawful for an individual to wilfully obstruct the free use of a road simply "by standing," or whether she must do so "by standing ... thereon," *i.e.,* on the road. It is clear, however, from the language of section one that a person

may violate § 316.2045(1) by standing without approaching a motor vehicle.

Thus, section one prohibits a person from wilfully retarding traffic by standing on the side of the road, whether or not she is holding a sign.[10] Section one makes no exceptions for political campaigning, for charitable work, or for permitted conduct. ***1252** A person violating section one commits a non-criminal pedestrian violation or infraction punishable by a fifteen dollar fine. Fla. Stat. § 316.2045(1); Fla. Stat. § 316.655(1); Fla. Stat. § 318.13(3); Fla. Stat. § 318.18(1)(a); Fla. Stat. § 775.082(5).[11]

Section two of § 316.2045 similarly makes it unlawful for any person wilfully to obstruct the normal use of a road by any means specified in section one "in order to solicit." The term "solicit" is not defined. Any person who violates section two, however, is guilty of a crime—a second degree misdemeanor punishable by "a definite term of imprisonment not exceeding 60 days," a $500 fine, or both. Fla. Stat. § 316.2045(2); Fla. Stat. § 775.082(4)(b); Fla. Stat. § 775.083(1)(e). The criminality of a defendant's conduct and the possibility that she may spend up to two months in jail depends on whether she has retarded traffic "in order to solicit." The firefighter collecting money in a boot for the families of firefighters killed on September 11 is subject to arrest and up to two months imprisonment, as is the ninth grader hoping to entice cars into a charity car wash.

Unlike section one, section two of § 316.2045 lists three exceptions that decriminalize specific activities: 1.) the Internal Revenue Code § 501(c)(3) exception; 2.) the exception for political campaigning; and 3.) the exception for permitted conduct. First, registered organizations qualified under Internal Revenue Code, 26 U.S.C. § 501(c)(3) (list of types of tax exempt organizations)—or "*any persons or organizations acting on their behalf* "—are exempted from section two for activities on roads not maintained by the state. Fla. Stat. § 316.2045(2) (emphasis supplied). Thus, a person acting on behalf of Church A (which qualifies under § 501(c)(3)) may protest, wilfully retard traffic, and solicit with impunity on an Osceola County road, but a Church B parishioner engaged in the very same conduct a few blocks down the same road faces possible imprisonment because Church B is not § 501(c)(3) qualified or registered. Similarly, persons from Church A may protest perceived pro-homosexual bias at Walt Disney World, Inc.—no matter how severe the effect on traffic—but persons protesting on behalf of Disney (which is not likely a § 501(c)(3) corporation) would risk incarceration if they responded from the other side of the same Osceola County road.[12]

Second, section four of Fla. Stat. § 316.2045 states that "[n]othing in this ***1253** section shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity." The term "political campaigning" is not defined. One can surmise from ordinary usage that some conduct is political campaigning: "Vote for Janet Reno;" or "Vote Republican."[13] Other conduct may be less clear, or depend on the context: "Impeach Nixon;" "Support Democrats on Prescription Drugs;" "Defeat the NRA Candidate;" "Vote Pro–Choice;" "Elect Judge Jones" (non-partisan); or perhaps "Choose Mickey." Yet the criminality of a defendant's conduct and the possibility that she may spend up to two months in jail depends on whether she has retarded traffic while "political campaigning."[14] Under all parties' interpretation of § 316.2045, a ninth grader risks a term in the Osceola County Jail if her charity car wash sign slightly retards traffic, but a Nazi party candidate for governor may back up traffic for miles with impunity.

Section 316.2045 specifies a third exception available to law-abiding citizens who do not wish to violate Florida law—obtain a permit. Sections two, three, and four of § 316.2045 decriminalize the wilful retarding of traffic where the solicitor has obtained a permit. Section two specifies that it is only unlawful to solicit "without proper authorization or a lawful permit." Section two is unclear as to whether the words "proper authorization or" are mere surplusage, or whether one can obtain "proper authorization" without obtaining a "lawful permit."[15] In any event, there is no violation of § 316.2045(2) (a second degree misdemeanor)[16] if one obtains a permit. The permit exception should be a useful option for a law-abiding person wishing to avoid criminal conduct. That person may seek a permit's protection because she cannot discern whether her intended conduct is in fact "soliciting," or whether her intended conduct falls within the safe harbor of the § 501(c)(3) exception or the "political campaigning" exception.

But the permit exception is far more complicated than it appears upon first examination. Section 316.2045(3) establishes a permitting rule for roads not maintained by the state. Section three simply states that "[p]ermits for the use of any street, road, or right-of-way not maintained by the state may be issued by the appropriate local government." Section two, however, establishes a different permitting rule for state-maintained roads. Permits for the ***1254** use of a

state-maintained road or right-of-way "shall be required *only for those purposes* and in the manner set out in § 337.406." Fla. Stat. § **316**.**2045**(2) (emphasis supplied). The language of § **316**.**2045**(2) requires a permit for the use of state roads only for certain specified purposes—no permit is otherwise required. Apparently, a solicitor may wilfully retard traffic without a lawful permit so long as he is not using the state road for a purpose specified in Fla. Stat. § 337.406.[17]

But how would a person intending to solicit on a state road determine whether or not he will be using the state road for a specified purpose (and therefore need a permit)? Section 337.406 of the Florida Statutes does not clearly specify those purposes for which a permit is required. Section 337.406 is itself a separate criminal statute—a second degree misdemeanor—punishable by "a definite term of imprisonment not exceeding 60 days," a $500 fine, or both. Fla. Stat. § 337.406(4); Fla. Stat. § 775.082(4)(b); Fla. Stat. § 775.083(1)(e). Under § 337.406(1), it is unlawful to make any use of the right-of-way of a state transportation facility (an undefined term) outside an incorporated municipality in any manner that interferes with the safe and efficient movement of people or property on the facility. Any such use is a *prohibited use.* Prohibited uses include, but are not limited to, the free distribution or display of any goods or property; solicitation for charitable purposes; and the display of advertising of any sort. Fla. Stat. § 337.406(1).

Although no party in this action seeks a declaration that Fla. Stat. § 337.406 is unconstitutional, our analysis of § **316**.**2045** is aided by identifying the conduct that § 337.406 criminalizes. Again, the firefighter collecting money in a boot and the ninth grader hoping to entice cars into a car wash are each subject to arrest and a jail term of up to two months if they interfere with the safe and efficient movement of cars. Indeed, § 337.406 not only omits the § 501(c)(3) exemption found in § **316**.**2045**(2), but expressly criminalizes "solicitation for charitable purposes." Furthermore, § 337.406 not only omits the "political campaigning" exemption found in § **316**.**2045**(4), but expressly criminalizes "the display of advertising of any sort." Florida legislators and state judges advertising for re-election or retention along the roadway may join the firefighters and ninth graders in jail.

Section 337.406(1) does provide for permits: "any portion of a state transportation facility may be used for an art festival, parade, fair, or other special event if permitted by the appropriate local governmental entity." The term "other special event" is not defined, and the "appropriate" local governmental entity (*i.e.,* the county, an unincorporated municipality) is not specified. Section 337.406(1) confers on incorporated municipalities special authority to issue permits of limited duration for the temporary use of the right-of-way "*for any of these prohibited uses* if it is determined that the use will not interfere with the safe and efficient movement of traffic and the use will cause no danger to the public." Fla. Stat. § 337.406(1) (emphasis supplied).[18]

But § 337.406(1) is unclear as to whether the term "*these* prohibited uses" refers ***1255** only to uses "for an art festival, parade, fair or other special event." May municipalities also permit other uses prohibited by § 337.406(1), such as charitable solicitation that interferes with traffic movement? The answer may be important not only to someone seeking a permit for soliciting in a municipality, but also to someone who simply wants to avoid using a state road for a purpose specified in Fla. Stat. § 337.406—*i.e.,* a person who has no permit but wants to avoid violating § **316**.**2045**(2). The statute provides no answer. This level of detail in the analysis is necessary because the Florida Legislature chose to make the criminality of a person's conduct under § **316**.**2045**(2) dependent on the "purposes" set forth in § 337.406.

On its face, § **316**.**2045**(2)–(3) seems to decriminalize conduct by a permit holder, but the permit exemptions are illusory. Although forewarned that the Court would inquire about permitting at oral argument, Docket No. 88 at 2, neither Sheriff Aycock nor the Attorney General of the State of Florida could point to a description in the record (or otherwise describe) how one might obtain the permits referred to in Fla. Stat. § **316**.**2045**(2)–(3) (permits for state-maintained and non-state-maintained roads, or other "proper authorization") and § 337.406(1)–(2) (permits for use of state transportation facilities by the appropriate local governmental entity, both outside and within incorporated municipalities, including roads on the State Highway System).

Although Sheriff Aycock and the Attorney General agreed that the intersection of Irlo Bronson Memorial Highway and Old Vineland Road was in unincorporated Osceola County, they could not identify the appropriate local government entity to issue a permit for that location. Also, they were unable to determine whether the intersection was or was not state-maintained.[19] Counsel for the Attorney General was unable to point the Court to any written procedures for obtaining permits, although she orally described what little a

colleague had learned about the State of Florida's permitting practice.

According to the Attorney General, a permit seeker would first go to the local government, in this case the Osceola County Sheriff's Office, to request a permit. If a permitting process existed at all in Osceola County, then the Osceola County Sheriff's Office would have the applicant fill out a permit application. Someone at the Osceola County Sheriff's Office would decide "what their interests are in granting or denying the permit." If the Osceola County Sheriff's Office wanted to grant the permit, then the Sheriff's Office would forward the application to an unspecified person at the Florida Department of Transportation, Maintenance Department (location unavailable, although counsel believed that the Maintenance Division had an office in Orange County). Counsel for the Attorney General was uncertain whether someone in the Maintenance Department would then review, grant, or deny the application, and was uncertain whether further review of an adverse decision was possible. The Attorney General could point to no time limits imposed at any stage of the permitting procedure. If ***1256** no local permitting procedure existed in a particular county or municipality, then there would be no permitting available at the state level. Sheriff Aycock read into the record a letter stating that Osceola County had no procedure for permitting.[20] Docket No. 98 at 191.

3. *Fla. Stat. § 316.2045 Is Content–Based and Vague*

On its face, § **316**.**2045** regulates speech on the basis of the ideas expressed even though § **316**.**2045** says nothing about pro-homosexual or anti-homosexual speech, and nothing about pro-Disney or anti-Disney speech. Rather, section **316**.**2045** selectively proscribes protected First Amendment activity—*i.e.,* it impermissibly prefers speech by § 501(c)(3) charities and by persons who are engaged in "political campaigning" over all other activity that retards traffic, without any showing that the latter is more disruptive than the former. *See Carey,* 447 U.S. at 459–60, 465, 100 S.Ct. 2286; *Mosley,* 408 U.S. at 100, 92 S.Ct. 2286.

Section **316**.**2045** makes the legality of conduct that retards traffic depend solely on the nature of the message being conveyed. Said differently, the Florida statute facially prefers the viewpoints expressed by registered charities and political campaigners by allowing ubiquitous and free dissemination of their views, but restricts discussion of all other issues and subjects. Section **316**.**2045** of the Florida Statutes, therefore, is presumptively invalid under the Equal Protection Clause and the First Amendment of the United States Constitution because it imposes content-based restrictions on speech in a traditional public forum.

Furthermore, § **316**.**2045** does not sufficiently define the conduct that it proscribes when measured by common understanding and practices. As is evident from the above facial analysis, persons of common intelligence (including Osceola County Sheriff's Deputies and the Attorney General of the State of Florida) must necessarily guess at its meaning and differ as to its application. Section one is ambiguous as to whether it is unlawful for an individual to wilfully obstruct the free use of a road simply "by standing," or whether she must do so by standing on the road. The undefined terms "solicit" and "political campaigning" contribute to the indefiniteness of § **316**.**2045**, as does section two's reference to and partial incorporation of the opaque and undecipherable permit provisions of another criminal statute, § 337.406. It is equally problematic that section two creates a different permit scheme from the permit scheme in section three, and that the permit scheme in section two actually seems to criminalize *additional* conduct that would otherwise be exempted under section two, *i.e.,* § 501(c)(3) solicitation and political campaigning. Section **316**.**2045** therefore is void for vagueness.

4. *Section 316.2045 Is Not Narrowly Tailored to Meet a Compelling State Interest, But Rather Is Overbroad*

Because Fla. Stat. § **316**.**2045** is content-based, it is only valid if narrowly tailored to meet a compelling state interest. *Perry,* 460 U.S. at 45, 103 S.Ct. 948. Determining ***1257** whether a statute is narrowly tailored is similar, if not identical, to determining overbreadth. Defendants assert that Fla. Stat. § **316**.**2045** is designed to protect the safety of both motorists and pedestrians. Section **316**.**2045** supports defendants' assertion. Section **316**.**2045**(2) refers to and adopts the licensing provisions in Fla. Stat. § 337.406. That statute states the legislature's intent:

> Failure to prohibit the use of right-of-way in this manner will endanger the health, safety, and general welfare of the public by causing distractions to motorists, unsafe pedestrian movement within travel lanes, sudden stoppage or slowdown of traffic, rapid lane changing and other dangerous traffic movement, increased vehicular accidents, and motorist injuries and fatalities.

Fla. Stat. § 337.406(1).

The Florida legislature has also stated its interest in uniformity from county to county. Section 316.2045 is part of the Florida Uniform Traffic Control Law. Fla. Stat. § 316.001. The Florida legislature's intent in adopting the Florida Uniform Traffic Control Law was "to make uniform traffic laws to apply throughout the state and its several counties and uniform traffic ordinances to apply in all municipalities." Fla. Stat. § 316.002 (purpose); *accord,* Fla. Stat. § 316.007 (the "provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein ..."). The Florida legislature's intent in decriminalizing the pedestrian violations in Fla. Stat. §§ 316.2045(1) and 316.2055 is "facilitating the implementation of a more uniform and expeditious system for the disposition of traffic infractions." Fla. Stat. § 318.12 (Florida Uniform Disposition of Traffic Infractions Act).

Florida's interest in protecting the safety of persons using a public forum is at least a "significant" governmental objective. *See Heffron,* 452 U.S. at 650, 101 S.Ct. 2559 (content-neutral restriction of speech to rented booths met a significant government interest in maintaining the orderly movement of crowds at a state fairground). The Court assumes without deciding that Florida's desire to protect public safety on the roads is also a "compelling" government interest. Therefore, the Court proceeds to determine whether Fla. Stat. § 316.2045 is narrowly tailored to meet Florida's stated objectives. It is not.

Nothing in the § 316.2045's content-based charity-noncharity distinction or political-nonpolitical distinction has any bearing whatsoever on road safety or uniformity. Speech by a § 501(c)(3) charity and speech by a politician is no more deserving of First Amendment protection than is a public protest over other issues, particularly the economic, social, and political subjects about which the parties before the Court wish to demonstrate. Traffic accidents or backups caused by political campaigners or duly-licensed charitable organizations are no less problematic than traffic accidents or backups caused by other political speakers or non-licensed charitable organizations. *See Krafchow,* 62 F.Supp.2d at 710. These groups' differing political messages are entirely irrelevant to Defendants' stated goal of pedestrian and motorist safety. Furthermore, there are less restrictive alternatives available. Florida could allow all political speech regardless of message on the state's roads, while continuing the prohibition on solicitation. 62 F.Supp.2d at 711, *citing Boos v. Barry,* 485 U.S. 312, 326–27, 108 S.Ct. 1157, 99 L.Ed.2d 333 (1988) (finding the law at issue not narrowly tailored because ***1258** "a less restrictive alternative was readily available.").

The language of Fla. Stat. § 316.2045 does nothing to promote Florida's interest in uniform traffic laws and dispositions. The statute's permitting procedure varies as one travels along a given road from county to county, municipality to municipality, and also as one enters and then leaves parts of the road that the Florida Department of Transportation's Maintenance Division maintains. If the Attorney General of the State of Florida was unable to determine whether the intersection in question is state-maintained when the issue is relevant in a federal action, and was unable to identify the proper person to contact for a permit, no law-abiding citizen likely can. The undefined terms "solicit" and "political campaigning," which transform handbilling from a civil pedestrian infraction into a crime, will also encourage varying on-the-spot interpretations by the arresting deputies, not uniformity.[21]

Therefore, Fla. Stat. § 316.2045 is an invalid content-based statute. Section 316.2045 sweeps unnecessarily broadly, and invades the area of protected freedoms. There is a realistic danger that section 316.2045 will significantly compromise recognized First Amendment protections of parties not before the Court. Section 316.2045, therefore, is content-based and substantially overbroad. Persons whose expression is constitutionally protected—whether firemen, ninth-graders, politicians, or judges—may well refrain from exercising their rights for fear of arrest and incarceration.

Section 316.2045 also imposes a prior restraint on speech by restricting speech without a permit. A prior restraint exists because the governments of Florida and of each county can deny access to a forum for expression, the borders of Florida's roads, before the expression occurs. The permitting scheme established by § 316.2045 lacks the procedural safeguards necessary to ensure against undue suppression of protected speech. Neither this Court, nor any citizen wishing to engage in legal speech on a Florida road, can determine whether a particular permitting procedure applies to a given stretch of road; whether a particular agency or person has been designated to accept and grant or deny applications; whether any substantive constraints are placed on that person's discretion to deny a license;[22] whether prompt judicial review is available for a denial; and whether there is any time constraint on the issuance or denial of a license. From the face of the statute, it appears that the licensor has unlimited time within which to issue a license, so the risk

of ***1259** arbitrary suppression is as great as the provision of unbridled discretion. *Frandsen,* 212 F.3d at 1239.

5. *Facial Analysis of Fla. Stat. § 316.2055*

Plaintiffs contest the facial validity of Fla. Stat. § 316.2055 on three grounds. First, Plaintiffs contend Fla. Stat. § 316.2055 is an invalid time, place and manner restriction. Second, Plaintiffs argue Fla. Stat. § 316.2055 is void-for-vagueness because it criminalizes terms without defining them. Third, Plaintiffs allege that Fla. Stat. § 316.2055 is overly broad and applies to a wide range of protected First Amendment conduct.

Once again, a facial analysis of § 316.2055 begins with a close analysis of the language chosen by the legislature to determine the statute's scope. Section 316.2055 (captioned "Motor vehicles, throwing advertising material in") states, in pertinent part:

> It is unlawful for any person on a public street, highway, or sidewalk in the state to throw into, or attempt to throw into, any motor vehicle, or offer, or attempt to offer, to any occupant of any motor vehicle, whether standing or moving, or to place or throw into any motor vehicle any advertising or soliciting materials or to cause or secure any person or persons to do any one of such unlawful acts.

Fla. Stat. § 316.2055. A person violating § 316.2055 commits a non-criminal pedestrian violation or infraction punishable by a fifteen dollar fine. Fla. Stat. § 316.2055(1); Fla. Stat. § 316.655(1); Fla. Stat. § 318.13(3); Fla. Stat. § 318.18(1)(a); Fla. Stat. § 775.082(5).

Although § 316.2055 makes unlawful the dangerous practice of throwing advertising into a motor vehicle, the statute has a far broader impact on protected speech. The statute also makes it unlawful for any person on a sidewalk to offer soliciting materials to the occupant of a standing motor vehicle. The term "soliciting materials" is not defined. The term "standing" means "the halting of a vehicle, whether occupied or not, otherwise than temporarily, for the purpose of, and while actually engaged in, receiving or discharging passengers, as may be permitted by law ..." Fla. Stat. § 316.106(49).

6. *Section 316.2055 Is Not Narrowly Tailored to Meet a Significant State Interest, But Rather Is Overbroad*

Both parties agree that the intersection of Irlo Bronson Memorial Highway and Old Vineland Road is a traditional public forum, and that Fla. Stat. § 316.2055 is a content-neutral statute. Therefore, in order to be valid, Fla. Stat. § 316.2055 must be narrowly tailored to serve a significant government interest, and provide alternative channels of communication. *Grace,* 461 U.S. at 177, 103 S.Ct. 1702. While the safety interest asserted by Defendants is certainly a significant government interest, and alternative channels of communication unquestionably exist, the statute is not narrowly tailored.

Rather, Fla. Stat. § 316.2055 is a remarkably broad statute. Section 316.2055 makes it unlawful for a pedestrian on a sidewalk to hand an advertising leaflet to a willing recipient in a car that has stopped in a metered space or in a private driveway, even though such conduct has no effect on traffic or safety. The statute also makes it unlawful for someone on a roadside to hand "soliciting materials" to passengers in cars that have stopped at a light. Section 316.2055 requires no retarding ***1260** of traffic, and contains no exceptions for § 501(c)(3) charities, for "political campaigning," or for permitted activity. Because § 316.2055 makes political campaigning unlawful even from the sidewalk, the Florida legislators and state judges who choose to advertise for re-election or retention along Florida's sidewalks and roadways may join the firefighters and ninth graders in line when paying their $15 fines (or in the back of an Osceola County Sheriff's Office prisoner van should they be arrested despite the "sign-and-pay" provisions of Fla. Stat. § 318.14).

Section 316.2055 inhibits the speech of third parties not before the Court, and suppresses considerably more speech than is necessary to serve the stated government purpose of traffic safety and uniformity. It is therefore substantially overbroad, and not narrowly tailored to meet a significant state interest.

Section 316.2055 is also impermissibly vague. Section 316.2055 makes it unlawful to hand into a car any "advertising or soliciting materials." "Advertising or soliciting materials" is undefined. To some people, the term might include political campaign fund-raising materials; a road map containing service station advertisements; a matchbook embossed with the name of a hotel or candidate; a resume; an invitation to join a church or synagogue; a theme park ticket and brochure; or a coupon for a free hamburger at a local restaurant. Section 316.2055 does not provide sufficiently definite warning as to the conduct that it proscribes when measured by common understanding and practices. Persons of common intelligence (again including

the Osceola County Sheriff's Deputies and the Attorney General) must necessarily guess at its meaning and differ as to its application.

IV. *CONCLUSION*

For the above reasons, it is:

RECOMMENDED that Defendant Aycock's Motion to Dismiss against Plaintiffs [Doc. 79, filed January 9, 2002] be **DENIED**. It is

FURTHER RECOMMENDED that Defendant Butterworth's Motion to Dismiss against Plaintiffs [Doc. 81, filed January 29, 2002] be **DENIED**. It is

FURTHER RECOMMENDED that Plaintiffs be found to have standing to pursue their constitutional challenges to Fla. Stat. §§ **316.2045** and 316.2055. It is

FURTHER RECOMMENDED that Fla. Stat §§ **316.2045** and 316.2055 be found facially unconstitutional, and declared invalid.

Failure to file written objections to the proposed findings and recommendations in this report pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 6.02 within ten days of the date of its filing shall bar an aggrieved party from a *de novo* determination by the district court of issues covered in the report, and shall bar an aggrieved party from attacking the factual findings on appeal.

September 19, 2002.

All Citations

242 F.Supp.2d 1226, 17 Fla. L. Weekly Fed. D 98

Footnotes

1 Defendant Sheriff Aycock states in his Objection that "[t]he parties conceded at oral argument that Plaintiffs' as applied challenges were not ripe for summary judgment, and that no sovereign immunity or qualified immunity issues remained or existed." (Doc. 102 at 6).

The Court:	Does the State of Florida say that it could pass any statute no matter how strongly in violation of the U.S. Constitution and there could be no suit in federal court, but that the only federal review can occur after a full exhaustion of state remedies through the Florida Supreme Court and on the chance that the U.S. Supreme Court grants cert?
Ms. Becker[2]:	We understand that we have an obligation to defend the statute? ... So I was using this primarily to narrow the scope so that everybody understands the State of Florida and Attorney General are only in this case to defend that statute, but that if this broadens out to anything beyond that, that we can't be sued beyond that.
The Court:	So you don't contest that the State of Florida can be sued in federal court to determine the federal constitutionality of statutes in a declaratory judgment context?
Ms. Becker:	To the best of my knowledge, yes, your Honor, that's, yes, the state can come in for those purposes.
The Court:	And it doesn't impair that there are nominal damages sought.
Ms. Becker:	Well, the nominal damages cannot be sought against the state is what I'm getting at. So in other words, we can defend the statute, but that's it.

2 Ms. Becker is counsel for Defendants the State of Florida and Mr. Butterworth.

3 The "Defendant Sheriff in [his] Objection does not object to Magistrate Judge Glazebrook's ruling that the Plaintiffs have standing to bring their claims." (Doc. 102 at 8). All Defendants, however, concede that Mr. Spangle has standing to bring suit.

4 Section **316.2045** states:

> (1) It is unlawful for any person or persons willfully to obstruct the free, convenient and normal use of any public street, highway or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, by standing or approaching motor vehicles thereon, or by endangering the safe movement of vehicles or pedestrians

traveling thereon; and any person or persons who violate the provisions of this subsection, upon conviction, shall be cited for a pedestrian violation, punishable as provided in chapter 318.

(2) It is unlawful, without proper authorization or a lawful permit, for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by any of the means specified in subsection (1) in order to solicit. Any person who violates the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. Organizations qualified under § 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, or persons acting on their behalf are exempted from the provisions of this subsection by the state. Permits for the use of any portion of a state-maintained road or right-of-way shall be required only for those purposes and in the manner set out in § 337.406.

(3) Permits for the use of any street, road or right-of-way not maintained by the state may be issued by the appropriate local government.

(4) Nothing in this section shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity.

5 Section 316.2055 states:

It is unlawful for any person on a public street, highway, or sidewalk in the state to throw into, or attempt to throw into, any motor vehicle, or offer, or attempt to offer, to any occupant of any motor vehicle, whether standing or moving, or to place or throw into any motor vehicle any advertising or soliciting materials or to cause or secure any person or persons to do any one of such unlawful acts.

1 The Court converted Defendants' motions to dismiss to motions for summary judgment pursuant to Federal Rule of Civil Procedure 12(b)(6) because the parties presented matters outside the pleadings. Docket 87. The Court denied Plaintiffs' motion to set facial challenges for summary judgment to the extent it was inconsistent with this order. *Id.*

2 Plaintiff Seth Spangle was formerly known as Seth Marchke. He is referred to as Marchke in arrest reports, Spangle in pending motions, and both Marchke and Spangle at oral argument.

3 The Court looks primarily to the language of the statute, and also to the record. The Court's reading or construction of an ordinance, however, may find support in the representation of town counsel at oral argument. *See Frisby v. Schultz,* 487 U.S. 474, 483, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988) (majority opinion by Justice O'Connor); *but cf.,* 487 U.S. at 493 n. 3, 108 S.Ct. 2495 (questioned in Justice Brennan's dissent because town counsel's interpretations did not bind the state courts).

4 The municipality had revised the ordinance to omit an exception for labor picketing after reviewing *Carey v. Brown,* 447 U.S. 455, 100 S.Ct. 2286, 65 L.Ed.2d 263 (1980) (invalidating similar ordinance under the Equal Protection Clause). The individuals challenging the ordinance apparently conceded the law's facial content-neutrality, but argued that state law nevertheless implied an exception for labor picketing. *Frisby,* 487 U.S. at 481, 108 S.Ct. 2495.

5 The Supreme Court has stated that:

Vague laws offend several important values. First, because we assume man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute abuts upon sensitive areas of First Amendment freedoms, it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.

Grayned v. City of Rockford, 408 U.S. 104, 108–09, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972) (internal citations, marks, and footnotes omitted).

6 The Court held an evidentiary hearing on standing on August 27, 2002. At the hearing, both Bischoff and Stites testified about the events of December 29, 1997. Defendants cross-examined Bischoff and Stites and introduced in evidence: 1) a copy of the literature distributed by the protesters; 2) a videotape showing some of the events of December 29, 1997; and 3) arrest reports of Spangle, Benham and Bowman. Docket 95. Defendants offered no witnesses of their own. The Court admitted the evidence solely on the issue of standing. Therefore, the facts set forth in the above section on “Background Regarding Standing” may have no bearing on issues resolved as a matter of law in the rest of this report and recommendation.

7 Plaintiffs believe that Officer Crawford's real name was Officer Gens.

8 Plaintiffs presented no evidence demonstrating that any Osceola County Deputy Sheriffs acted unprofessionally or in a manner inconsistent with their difficult responsibility of enforcing thousands of state and federal statutes.

9 The "injury-in-fact" analysis is solely for the purposes of addressing standing to challenge the constitutionality of the Florida statutes allegedly affecting Plaintiffs' First Amendment rights. The Court makes no finding critical of Sheriff Aycock or the Osceola County Sheriff's Office.

10 As written, Fla. Stat. § **316**.**2045** criminalizes all activity that retards traffic. Therefore, any roadside speech—except for exempt § 501(c)(3) speech and political campaigning—whether political or solicitous, will violate the statute. The parties acknowledge that the Plaintiffs' action are more accurately described as "handbilling," an activity traditionally accorded more deference by the Supreme Court. *See United States v. Belsky,* 799 F.2d 1485, 1489 (11th Cir.1986) ("soliciting funds is an inherently more intrusive and complicated activity than is distributing literature"). Nevertheless, the activity may well be considered "solicitation" for the purposes of Fla. Stat. § **316**.**2045**(2)–(4). Indeed, the Attorney General argued at the hearing that Plaintiff Spangle's arrest record shows that he was arrested for solicitation, even though the protesters' activities bore none of the traditional hallmarks of solicitation. *Heffron,* 452 U.S. at 653, 665, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981) (Blackmun, J., concurring in part and dissenting in part) ("The distribution of literature does not require that the recipient stop in order to receive the message the speaker wishes to convey; instead, the recipient is free to read the message at a later time... [S]ales and the collection of solicited funds not only require the fairgoer to stop, but also 'engender additional confusion ... because they involve acts of exchanging articles for money, fumbling for and dropping money, making change, etc.' ").

11 The Florida Legislature adopted the Florida Uniform Disposition of Traffic Infractions Act in order to decriminalize certain violations of Chapter 316, the Florida Uniform Traffic Control Law, thereby facilitating the implementation of a more uniform and expeditious system for the disposition of traffic infractions. Fla. Stat. § 318.12. A person charged with a non-criminal infraction simply signs the citation, and promises to appear. Fla. Stat. § 318.14(2). A person who does not elect to appear, may pay the fine by mail or in person, and is deemed to have admitted the infraction. Fla. Stat. § 318.14(4). Such admission shall not be used as evidence in any other proceeding. *Id.* There is no right to a trial by jury or a right to court-appointed counsel for a non-criminal infraction. Fla. Stat. § 318.13(3).

12 All protesters nevertheless may be subject to non-criminal pedestrian violations under section one, which contains no § 501(c)(3) exemption. Persons who are engaged in "political campaigning," however, are exempt from both pedestrian and criminal violations under sections one and two. *See* Fla. Stat. § **316**.**2045**(4).

13 Defendants contend that the term "political campaigning" has a "clear meaning traditionally and commonly understood to refer to urging the election of a candidate to office." Docket No. 91 at 7. But the traditional and common understanding may be broader. Political campaigning may include urging the election of a slate of candidates; urging support for a political party; urging the defeat of an opposing candidate; urging the defeat of a proposition or initiative on the ballot; or urging a party-line vote on a political issue.

14 Under defendant's understanding of "political campaigning," the Osceola County Sheriff's Office must arrest the group on one side of the street holding "Impeach Clinton" posters, while the group on the other side of the street holding "Re–Elect Clinton" signs would be allowed to remain and wilfully retard traffic.

15 Section 337.406 of the Florida Statutes makes it lawful to use a state transportation facility right-of-way in a manner that interferes with traffic movement where the use is "otherwise authorized" by the rules of the Florida Department of Transportation. No such rules appear in the record.

16 There may nevertheless be a pedestrian violation. Section one contains no permitting exception.

17 Once again, there may nevertheless be a pedestrian violation. Section one contains no permitting exception.

18 Section two of Fla. Stat. § 337.406 also permits sales by persons "holding valid peddlers' licenses issued by appropriate governmental entities."

19 The Florida Department of Transportation designates roads as state-maintained roads. *See* Fla. Stat. § 316.106(50). Jurisdiction to control traffic on state roads is vested in the Florida Department of Transportation. Fla. Stat. § 316.006(1). Chartered municipalities have jurisdiction over all non-state roads in their boundaries, while counties have jurisdiction over all roads within their boundaries that do not fall under state or municipal jurisdiction. Fla. Stat. § 316.006(2)–(3).

20 Apparently some counties and some municipalities have permitting procedures, and others do not. A person's ability to obtain a permit for otherwise criminal conduct may vary from county to county, even along the same road.

21 Section one of Fla. Stat. § **316**.**2045** does not, standing alone, have the problems created by the preferences in § **316**.**2045**(2)–(4) for § 501(c)(3) speech, for "political campaigning," and for licensed speech. Standing alone, Fla. Stat. § **316**.**2045**(1) appears to be facially content-neutral. But the Florida legislature chose to include the specified exceptions

as important parts of the statute. Absent an express direction as to the legislature's intent, this Court will not sever the unconstitutional parts, and leave section one standing alone. That is a decision for the legislature.

22 The statute provides little guidance even for a permit for the use of a state-maintained road or right-of-way that is within an incorporated municipality. An unspecified local government entity "may" issue a limited and temporary permit for certain ambiguously specified uses if the entity determines that "the use will not interfere with the safe and efficient movement of traffic and the use will cause no danger to the public." Fla Stat. §§ **316**.**2045**(2) and 337.406(1).

End of Document

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice & Public Safety Subcommittee

Start Date and Time:	Wednesday, January 27, 2021 04:00 pm
End Date and Time:	Wednesday, January 27, 2021 06:00 pm
Location:	Webster Hall (212 Knott)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 1 Combating Public Disorder by Fernandez-Barquin

The Chair requests that all amendments should be filed by 6 p.m. on Tuesday, January 26, 2021, including amendments filed by Members of the Subcommittee.

This meeting will be live-streamed on https://thefloridachannel.org/. Audience seating will be socially distanced and limited to the press and those persons wishing to provide substantive testimony on the filed bills or draft legislation. Seating will be available on a first-come, first-served basis. Persons who wish to attend must register at www.myfloridahouse.gov, and pick up a pass at the Legislative Welcome Center on the 4th Floor of the Capitol beginning two hours before the start of the meeting. Registration closes three hours before the meeting starts.

NOTICE FINALIZED on 01/20/2021 4:16PM by Collins.Lindsey

HB 1 Combating Public Disorder
Rep. Fernandez-Barquin
Criminal Justice & Public Safety Subcommittee- Jan. 27, 2021

HB 1 combats public disorder and protects public safety in Florida by:

Criminal Protections

- Defining the existing crimes of **rioting** and **inciting a riot** (**F3**).

- Creating new crimes of **aggravated rioting** and **aggravated inciting a riot** (**F2**) and enhancing penalties when a person riots or incites a riot and in doing so:
    - Causes great bodily harm to another person not rioting,
    - Causes significant property damage (over $5,000),
    - Uses or gives another person a deadly weapon to be used in the riot,
    - Endangers vehicles traveling on the road by using or threatening force, or
    - Riots with 9 or more people thereby causing greater risk of injury or property damage.

- Reclassifying penalties for an **assault** (**M1**) or **battery** (**F3**) committed in furtherance of a riot and specified **thefts** and **burglaries** committed during a riot and facilitated by the condition of the riot.

- Increasing the minimum permissible sentence by increasing the **offense severity ranking** for specified felonies committed in furtherance of a riot including destroying a tomb or monument, disturbing the contents of a grave, and aggravated assault or battery.

- Protecting law enforcement officers attempting to quell a riot by requiring a **6-month minimum mandatory** sentence for **battery on a law enforcement** officer in furtherance a riot (**F3**).

- Creating new offenses to protect all historical **monuments** from being **destroyed** (**F2**), **vandalized**, or **graffiti** (**F3**).

- Protecting a person from being victimized by a group of people forcefully compelling him or her to do any act or assume or abandon a particular viewpoint by prohibiting **mob intimidation** (**M1**).

- Protecting victims from **cyberintimidation ("doxing")** through the publication of personal identification information meant to be used by the publisher, or a third party, to threaten, intimidate, or harass the victim, or incite violence or the commission of a crime against the victim (**M1**).

- Requiring persons arrested for offenses related to rioting including rioting, aggravated rioting, inciting a riot, aggravated inciting a riot, unlawful assembly, burglary or theft committed during a riot and facilitated by conditions of the riot, or mob intimidation to remain in custody until appearing for first appearance and having a judge determine bond.

Civil Protections

- Giving a resident of a municipality the opportunity challenge a reduction to the budget of a municipal law enforcement agency and allowing the Administration Commission (Gov. and Cabinet) to review and modify the budget as necessary to protect public safety.

- Corrects constitutional issues that have prohibited the current law against obstructing streets by impeding traffic from being enforced (**pedestrian violation**).

- Waives sovereign immunity and creates a cause of action allowing a person who suffers injury or property damage to sue a municipality if the municipality intentionally obstructed or interfered with the municipal law enforcement agency's ability to provide reasonable police protection during a riot or unlawful assembly, if such failure is the proximate cause of the plaintiff's injury or damages.

- Provides an affirmative defense for a person who is sued for civil damages for injuries that were sustained by a plaintiff who participated in a riot or unlawful assembly.

FICTION/FACT HB1

COMBATING PUBLIC DISORDER

FICTION: It Values Monuments Over People!

FACT: HB 1 is about protecting Floridians' lives. Along with protecting people, the bill also includes protections for property. The bill protects all memorials dedicated to preserving U.S. and Florida history, and makes no distinction based on the type or viewpoint of the memorial. For property, the focus is on destroying a monument without permission of the owner. If the owner chooses to remove or destroy the memorial, it may do so.

FICTION: It is Dangerous!

FACT: No one has a right to riot. The bill is solely focused on preventing violence and rioting. All Americans have the right to protest, but no American has the right to destroy others' property, no American has the right to physically endanger others. HB 1 does not target communities of color. This bill actually protects peaceful protesters from bad actors that want to perpetrate violence.

FICTION: It is Unnecessary!

FACT: Thankfully, there wasn't the kind of violence we saw around the country over the summer and in January in Florida. Government's first priority is protecting the public. We need to send a message that we intend to keep Florida safe - HB 1 gives the justice system additional tools to keep peaceful protests safe from those trying to abuse a movement.

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FICTION: It Silences Protest!

- **FACT:** The bill does not impact the ability of local governments to give a permit for public demonstrations.

FICTION: It Takes Away Local Control!

- **FACT:** HB 1 only allows the Administration Commission (the Governor and cabinet) to review local budgets if a resident of that community files an appeal by petition. This builds on an existing process of law; it's not brand new. Government's first priority is protecting the public – we won't stand for defunding the police.

FICTION: It Protects the Guilty!

- **FACT:** HB 1 would not stop someone from assisting law enforcement in identifying criminals. HB 1 only prevents persons from posting personal identification information with the intent to, or with the intent the information will be used by another to, threaten, intimidate, harass, incite violence, or commit a crime against a person, or place a person in reasonable fear of death or great bodily harm.

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Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Criminal Justice & Public Safety Subcommittee

Representative Chambliss offered the following:

Amendment (with title amendment)

Remove line 379 and insert:

admittance to bail in accordance with chapter 903. This subsection does not apply when the available facilities to house arrestees are filled to 75 percent of their capacity or greater.

T I T L E A M E N D M E N T

Remove line 41 and insert:

first appearance; providing an exception; amending s. 784.07, F.S.; requiring

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SUN CITY STRATEGIES

SUN CITY
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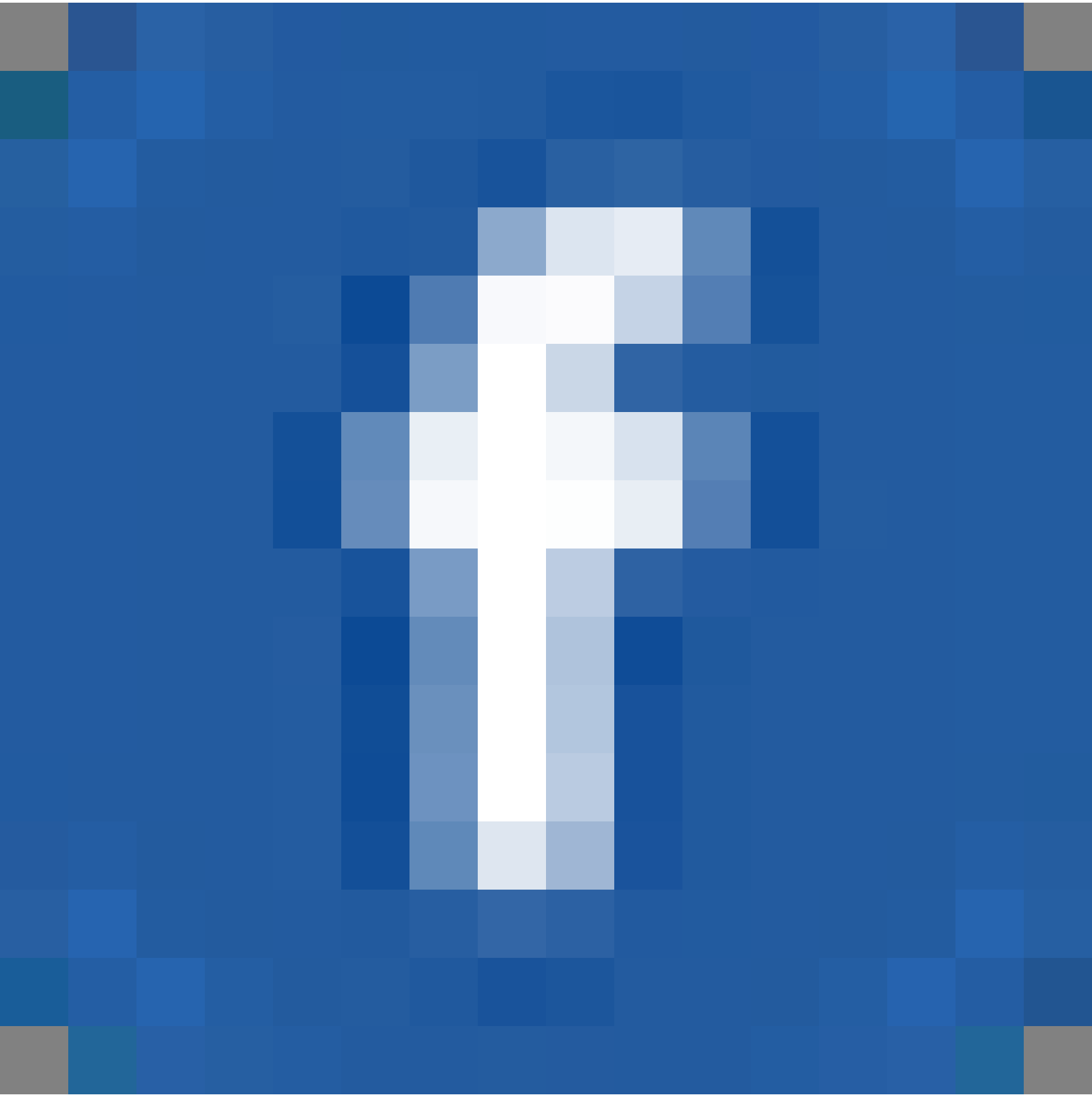

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Florida House of Representatives

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HB 1: Combating Public Disorder Crimes

Section	Statute	Crime	Offense Degree	Offense Severity Ranking	FAR?
2	316.2045	Obstructing public street, highway, and road	Noncriminal pedestrian violation	NA	NA
4	784.011(3)	Assault in furtherance of a riot or aggravated riot	M1	NA	No
5	784.021(3)	Aggravated assault in furtherance of a riot or aggravated riot	F3	Level 7	No
6	784.03(3)	Battery in furtherance of a riot or aggravated riot	F3	Level 2	No
7	784.045(3)	Aggravated battery in furtherance of a riot or aggravated riot	F2	Level 8	No
8	784.0495	Mob intimidation	M1	NA	Yes
9	784.07	Assault or *battery on LEO in furtherance of a riot or aggravated riot*	Varies *6 month min man*	Assault (NA), Battery (Level 5), Agg. Assault (Level 7), Agg. Battery (Level 8)	No
10	806.13	Criminal mischief of memorial, over $200 damages	F3	Level 2	No
11	806.135	Destroying or demolishing a memorial	F2	Level 4	No
12	810.02(3)	Burglary in the second degree during a riot or aggravated riot	F1	Occupied dwelling; unoccupied dwelling; occupied conveyance; or authorized emergency vehicle (Offender not armed; no assault or battery)(Level 8) Occupied structure (Offender not armed; no assault or battery) (Level 7)	Yes
12	810.02(4)	Burglary during a riot or aggravated riot	F2	Unoccupied structure; unoccupied conveyance (Offender not armed; no assault or battery) (Level 5)	Yes
13	812.014 (2)(b)	Grand theft in the second degree during a riot or aggravated riot	F1	$20k < $100k (Level 7) Cargo valued at < $50k; $300+ of emergency medical equipment or law enforcement equipment taken from an authorized emergency vehicle (Level 8)	Yes
13	812.014 (2)(c)	Grand theft in the third degree during a riot or aggravated riot	F2	$750 < $5k (Level 3) $5k < $10k (Level 4) $10k < $20k (Level 5) Will, codicil, firearm, fire extinguisher, etc. (Level 5)	Yes
14	836.115	Cyberintimidation by Publication (Doxing)	M1	NA	No
15	870.01(1)	Affray	M1	NA	No
15	870.01(2)	Riot	F3	Level 3	Yes
15	870.01(3)	Aggravated Rioting	F2	Level 4	Yes
15	870.01(4)	Inciting or Encouraging a Riot	F3	Level 3	Yes
15	870.01(5)	Aggravated Inciting or Encouraging a Riot	F2	Level 4	Yes
16	870.02	Unlawful Assemblies	M2	NA	Yes
17	870.03	Riots and Routs	F3	Unranked- Level 1	Yes
19	872.02(3)	Injuring or Removing tomb or monument in furtherance of a riot or aggravated riot	F3- Destroy, mutilate, deface, injure, remove a tomb/ monument/ gravestone etc. F2- Remove or disturb contents of a grave/tomb	F3 Violation (Level 2) F2 Violation (Level 5)	No

New Crime CF/MM Degree Reclassification Offense Severity Ranking Level Increase

PEACEFUL PROTEST PROTECTION ACT

WHEREAS, Floridians have the right to engage in peaceful assembly and protests, and many peaceful protests and demonstrations have occurred across Florida; and

WHEREAS, the rights to free speech and assembly are guaranteed under the First Amendment to the United States Constitution and the Florida State Constitution, and such peaceful protests and lawful demonstrations should always be protected activity; and

WHEREAS some protests and demonstrations have resulted in physical attacks on and injury to first responders, as well as injury to innocent bystanders and participants; and

WHEREAS persons who abuse these fundamental liberties by committing violent or destructive acts endanger the safety and well-being of those who exercise that right to affect positive change in public policy; and

WHEREAS, this legislation is needed to establish a uniform framework of laws that will protect the rights of all Floridians to peacefully demonstrate, and is not intended to interfere with these rights but rather, is narrowly tailored to protect the safety of participants, bystanders and first responders; now, therefore,

BE IT ENACTED BY THE FLORIDA HOUSE OF REPRESENTATIVES/SENATE:

FLORIDA STATUTES CHAPTER 870.01 shall be amended to add the following new language as a new subdivision:

(3) A law enforcement officer may lawfully confiscate any and every weapon, stick, laser, firework, chemical, mask, helmet, shield, bat, rock, leaf blower, or any other item or piece of equipment that may be used as a weapon or to thwart or attempt to thwart law enforcement action whether located or brought by any individual within one-half mile of a protest, demonstration or riot. Such items may be held in law enforcement possession for up to ninety (90) days following confiscation, or maintained as long as needed if evidence of a crime.

(a) Any individual bringing such an item within one-half mile of a then-occurring protest, demonstration or riot, with the intent that the item be used as a weapon or to thwart or attempt to thwart law enforcement action, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082(4)(b) with up to a maximum of 60 days in jail and fines pursuant to s.775.083(1)(e) in an amount not to exceed $500.00.

(b) Any individual that conceals, attempts to conceal, or refuses to cooperate with the confiscation of such items within one-half mile of a then-occurring protest, demonstration or riot shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082(4)(a) with up to 1 year in prison and a fine pursuant to s. 775.083(1)(d) in an amount not to exceed $1,000.00.

(c) Any individual who attends a protest, demonstration or riot and displays, brandishes or threatens to use or uses any one or more of the items described in paragraph (3) above, in connection with any other criminal violation, shall be guilty of a felony in the third degree, punishable as provided in s. 775.081(e) with up to 5 years in prison and a fine pursuant to s. 775.083(1)(c) in an amount not to exceed $5,000.00.

Note: *Felony 3 for inciting is s. 775.081(e) up to 5 years and s. 775.083(1)(c) for up to a $5000 fine.*

2020 WL 6020484
Only the Westlaw citation is currently available.
United States District Court, M.D. Florida,
Jacksonville Division.

Peter VIGUE, Plaintiff,

v.

David B. SHOAR, in his official capacity as Sheriff of St. Johns County, Defendant.

Case No. 3:19-cv-186-J-32JBT
|
Signed 10/12/2020

West Codenotes

Held Unconstitutional
Fla. Stat. Ann. §§ 316.2045, 337.406(1)

Attorneys and Law Firms

Jodi Lynn Siegel, Kirsten Anderson, Southern Legal Counsel, Inc., Gainesville, FL, Tristia Bauman, Pro Hac Vice, National Law Center on Homelessness & Poverty, Washington, DC, for Plaintiff.

Bruce R. Bogan, Hilyard, Bogan & Palmer, PA, Orlando, FL, Melissa Jean Sydow, Tampa, FL, for Defendant.

ORDER

TIMOTHY J. CORRIGAN, United States District Judge

***1** Peter Vigue is a homeless resident of St. Johns County who stands on public roadways and holds signs to solicit charitable donations from passersby. Mr. Vigue's signs often bear messages like "God Bless, Be Safe" or "Please Care." In busy areas of town, Mr. Vigue may see up to ten thousand people per day.

Two Florida laws, FLA. STAT. §§ 316.2045 and 337.406 (2019), prohibit individuals from soliciting charity on roadways in Florida without a permit issued by a local government. Sections 316.2045(2)–(4) contain exceptions to the permitting requirement for Internal Revenue Code § 501(c)(3) registered organizations and for political campaigning. Mr. Vigue claims that St. Johns County Sheriff David B. Shoar enforces §§ 316.2045 and 337.406 against homeless individuals to forbid them from soliciting charitable donations in public spaces, including sidewalks and roadways. In this 42 U.S.C. § 1983 action, he contends these statutes are facially unconstitutional.

This case is before the Court on cross-motions for summary judgment. (Docs. 59, 60). The Court held oral argument on June 2, 2020, the record of which is incorporated by reference. (Doc. 75).

I. FACTS AND PROCEDURAL HISTORY

A. Preliminary Injunction

On May 6, 2019, the Court entered a preliminary injunction enjoining both Sheriff Shoar and Gene Spaulding, in his official capacity as Director of the Florida Highway Patrol ("FHP"), from enforcing § 316.2045 against Mr. Vigue during the pendency of this case. (Doc. 32). In so doing, the Court relied on the decisions of two other district courts in the Eleventh Circuit that found § 316.2045 unconstitutional and issued preliminary and permanent injunctions, as well as on the Florida Attorney General's opinion that subsequent amendments have not cured the statute's constitutional infirmities. Id. at 3–5. The Court declined, however, to extend the preliminary injunction to § 337.406 because at that time, Mr. Vigue had "not sufficiently shown he ha[d] standing to obtain an injunction against enforcement of a statute under which he ha[d] not been cited." Id. at 3 n.1. The Court limited injunctive relief to Mr. Vigue only. Id. at 7.

On August 16, 2019, in response to the preliminary injunction (Doc. 32), Sheriff Shoar enacted Policy 41.39 for the St. Johns County Sheriff's Office ("SJSO") which states that officers are not to enforce § 316.2045(2)–(4), are to limit enforcement of §§ 316.2045(1) and 337.406, and are to receive training regarding the policy change.[1] (Doc. 59-16). The policy is a response to litigation and may be changed depending on the outcome of this case. (Docs. 59-16; 59-8 at 17:1–16, 59:1–19, 61:19–20). Additionally, Sheriff's deputies were told not to arrest, cite, or stop Mr. Vigue for violations of either statute unless he was committing other crimes. (Docs. 59-8 at 81–98; 59-10 at 21:24–22:19; 59-5 at 33:8–15; 59-4 at 28:11–25; 59-6 at 43:6–15; 59-11 at 36:19–25).

B. Florida Highway Patrol Settlement

***2** Mr. Vigue originally brought this lawsuit against both Sheriff Shoar and FHP. (See Doc. 1). The Office of the Florida Attorney General represented FHP. (Doc. 15). The Court anticipated that the Attorney General, charged with defending Florida laws, would provide a comprehensive argument regarding the constitutionality of §§ 316.2045 and 337.406, and that Sheriff Shoar would be important, though not primary, to that discussion.

However, on October 28, 2019, FHP settled with Mr. Vigue. (Docs. 45, 45-1). Almost identical to the language of Sheriff Shoar's Policy 41.39, FHP agreed to prohibit enforcement of § 316.2045(2)–(4), limit its enforcement of § 316.2045(1) and § 337.406, provide FHP officers with related training, and circulate a bulletin regarding its new enforcement scheme.[2] (Doc. 45-1). The Florida Department of Highway Safety and Motor Vehicles, of which FHP is one component, agreed to remove § 316.2045(2)–(4) from the Uniform Traffic Citations, communicate its enforcement policy to various law enforcement entities, include edited versions of the statutes at issue in its annual package of requested legislation, and provide Mr. Vigue's counsel with a report of arrests and citations under the statutes. Id. The agreeement also stated that Mr. Vigue would continue litigation against Sheriff Shoar, seeking an order to permanently enjoin enforcement of §§ 316.2045 and 337.406, and that the Florida Attorney General retained authority to intervene to defend the statutes, though she has not done so.[3] Id. Thus, FHP has agreed not to enforce the statutes at issue and is no longer a party to this lawsuit, while Sheriff Shoar has decided to continue to defend the case. The Court proceeds in that context.

C. Enforcement of §§ 316.2045 and 337.406 Prior to Preliminary Injunction

Before this lawsuit, Sheriff Shoar had not issued formal written guidance, policies, or directives regarding how to enforce §§ 316.2045 or 337.406. (Doc. 59-8 at 48:13–20, 50:8–20). From 2016 to 2019, deputies used their own discretion to issue citations and warnings to Mr. Vigue under §§ 316.2045 and 337.406. (Docs. 59-5 at 10:8–11:3; 59-9 at 20:24–21:6; 59-6 at 49:11–16; 59-10 at 20:23– 21:14). Between January 17, 2017 and July 29, 2019, the SJSO states that it received fifty-four calls for assistance related to Vigue standing in roadways. (Doc. 66 at 3). Mr. Vigue, for his part, says that he has felt harassed by Sheriff's deputies and does not try to cause any traffic issues when he holds his sign requesting charitable donations.[4] (Doc. 60-9). The Court enumerates the relevant warnings, citations, and arrests that Mr. Vigue has received under each of the statutes below.

i. Mr. Vigue has been cited under § 316.2045.

***3** Section 316.2045(1) prohibits obstructing the use of public streets, highways, and roads. Violations of § 316.2045(1) may result in noncriminal traffic citations. § 316.2045(1). Section 316.2045(1) states:

> It is unlawful for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, by standing or approaching motor vehicles thereon, or by endangering the safe movement of vehicles or pedestrians traveling thereon; and any person or persons who violate the provisions of this subsection, upon conviction, shall be cited for a pedestrian violation, punishable as provided in chapter 318.

§ 316.2045(1).

Sheriff's deputies have issued warnings or citations to Mr. Vigue under § 316.2045(1) six times:

- June 28, 2016 – Guilty, paid fine on December 21, 2016. (Docs. 2-7 at 2–3; 60-1).
- October 2, 2018 – Dismissed on December 27, 2018. (Docs. 2-7 at 14–15; 60-4).
- October 28, 2018 – Issued written traffic warning. (Doc. 59-2 at 1).
- January 8, 2019 – Dismissed on January 10, 2019. (Doc. 2-7 at 23– 24).
- March 7, 2019 – Dismissed on May 17, 2019. (Doc. 23 at 6; 59-1 at 1).
- March 11, 2019 – Dismissed on May 9, 2019. (Doc. 23 at 7; 59-1 at 1).

Violations of § 316.2045(2) are more serious and may result in second-degree misdemeanor charges. Like § 316.2045(1), § 316.2045(2) prohibits obstructing the use of public streets,

highways, and roads, but § 316.2045(2) specifically disallows individuals from obstructing roads to solicit when they have no permit. Section 316.2045(2) grants an exception to the permit requirement for 501(c)(3) organizations and their representatives on streets and roads not maintained by the state, and the statute cross-references the other law that Mr. Vigue claims is unconstitutional, § 337.406. Section 316.2045(2) provides that:

> It is unlawful, without proper authorization or a lawful permit, for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by any of the means specified in subsection (1) in order to solicit. Any person who violates the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Organizations qualified under s. 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, or persons or organizations acting on their behalf are exempted from the provisions of this subsection for activities on streets or roads not maintained by the state. Permits for the use of any portion of a state-maintained road or right-of-way shall be required only for those purposes and in the manner set out in s. 337.406.

§ 316.2045(2).

Sheriff's deputies have cited or arrested Mr. Vigue under § 316.2045(2) seven times:

- April 18, 2017 – Nolle prossed on June 2, 2017. (Docs. 2-7 at 4–5; 60-2; 59-1 at 1).
- November 25, 2017 – No information on disposition. (Docs. 2-7 at 11–13; 60-3; 59-1 at 1).
- November 13, 2018 – Arrested and booked into St. Johns County Jail; nolle prossed on December 2, 2018. (Docs. 2-7 at 16–22; 60-5; 59-1 at 1).

*4 • January 8, 2019 – Arrested and booked into St. Johns County Jail; nolle prossed on January 15, 2019. (Docs. 2-7 at 25–31; 60-7; 59-1 at 1).

- January 13, 2019 – Arrested and booked into St. Johns County Jail; nolle prossed on February 11, 2019.[5] (Doc. 2-7 at 32–36; 59-1 at 1).
- February 13, 2019 – Nolle prossed on April 26, 2019. (Doc. 23 at 3; 59-1 at 9).
- February 22, 2019 – Nolle prossed on March 12, 2019. (Doc. 23 at 4–5; 59-1 at 1).

Section 316.2045(3) elaborates on the conditions under which 501(c)(3) organizations may be exempt from the requirement to obtain a permit from a local government for the use of streets, roads, or rights-of-way not maintained by the state.[6] Finally, § 316.2045(4) clarifies that no part of the law "shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity." Thus, representatives of political campaigns may also lawfully solicit donations without a permit.

ii. Mr. Vigue has been warned under § 337.406 and other statutes.

Violation of § 337.406 is a second-degree misdemeanor offense. § 337.406(5). Like § 316.2045, § 337.406(1) prohibits solicitation without a permit, but it applies to rights-of-way of state transportation facilities and lists various prohibited uses of those rights-of-way in addition to solicitation. Section 337.406(1) provides:

> *5 Except when leased as provided in s. 337.25(5) or otherwise authorized by the rules of the department, it is unlawful to make any use of the right-of-way of any state transportation facility, including appendages thereto, outside of an incorporated municipality in any manner that interferes with the safe and efficient movement of people and property from place to place on the transportation facility. Failure to prohibit the use of right-of-way in this manner will endanger the health, safety, and general welfare of the public by causing distractions to motorists, unsafe pedestrian movement within travel lanes, sudden stoppage or slowdown of traffic, rapid lane changing and other dangerous traffic movement, increased vehicular accidents, and motorist injuries and fatalities. Such prohibited uses include, but are not limited to, the free distribution or sale, or display or solicitation for free distribution or sale, of any merchandise, goods, property or services; the solicitation for charitable purposes; the servicing or repairing of any vehicle, except the rendering of emergency service; the storage of vehicles being serviced or repaired on abutting property or elsewhere; and the display of advertising of any sort, except that any portion of a state transportation facility may be used for an art festival, parade, fair, or other special event if

> permitted by the appropriate local governmental entity. Local government entities may issue permits of limited duration for the temporary use of the right-of-way of a state transportation facility for any of these prohibited uses if it is determined that the use will not interfere with the safe and efficient movement of traffic and the use will cause no danger to the public. The permitting authority granted in this subsection shall be exercised by the municipality within incorporated municipalities and by the county outside an incorporated municipality. Before a road on the State Highway System may be temporarily closed for a special event, the local governmental entity which permits the special event to take place must determine that the temporary closure of the road is necessary and must obtain the prior written approval for the temporary road closure from the department. Nothing in this subsection shall be construed to authorize such activities on any limited access highway. Local governmental entities may, within their respective jurisdictions, initiate enforcement action by the appropriate code enforcement authority or law enforcement authority for a violation of this section.

Sheriff's deputies have warned Mr. Vigue twice under § 337.406:

***6** • December 7, 2015 – Written traffic warning. (Doc. 59-2 at 5).

• December 31, 2017 – Verbal warning.[7] (Doc. 59-2 at 9).

Mr. Vigue has not been cited or arrested under § 337.406. (See Doc. 59-2). Deputies' reports reflect that Mr. Vigue received verbal warnings in three other instances:

- August 11, 2015 – Verbal warning for violation of unspecified statutes. (Doc. 59-2 at 3).
- December 7, 2016 – Verbal warning for violation of unspecified statutes. (Doc. 59-2 at 7).
- April 1, 2019 — Verbal warning for soliciting charitable donations in an intersection.[8] (Doc. 59-2 at 13).

Following the Court's preliminary injunction (Doc. 32), pending prosecutions against Mr. Vigue were dismissed. (Docs. 59-1). All but one of the prosecutions against Mr. Vigue under § 316.2045 were dismissed or nolle prossed, and Mr. Vigue was never found guilty of the other charges. (Docs. 59-1, 2–7, 23).

D. History of Florida Non-Solicitation Statutes

This Court is not the first to address the constitutionality of §§ 316.2045 or 337.406. In this District in 2003, the Honorable John Antoon II issued a permanent injunction against enforcement of § 316.2045, declaring the statute facially unconstitutional. Bischoff v. Florida, 242 F. Supp. 2d 1226 (M.D. Fla. 2003). In 2006, the Honorable Stephan P. Mickle in the Northern District of Florida issued a preliminary injunction as to both statutes at issue here. Chase v. City of Gainesville, No. 1:06-CV-044-SPM/AK, 2006 WL 2620260 (N.D. Fla. Sept. 11, 2006). Subsequently, the parties in Chase agreed to have the court permanently enjoin enforcement of §§ 316.2045 and 337.406 and find both statutes facially unconstitutional. Chase v. City of Gainesville, No. 1:06-CV-44-SPM/AK, 2006 WL 3826983 (N.D. Fla. Dec. 28, 2006).

***7** In 2007, the Florida Legislature amended § 316.2045(3) to exempt certain 501(c)(3) organizations from the permit requirements for charitable solicitation and to establish conditions with which the organizations must comply to take advantage of that exemption. Fla. Att'y Gen. Op. 2007-50 (2007). On November 7, 2007, Florida Attorney General Bill McCollum issued an opinion that the amendments did not address the constitutional infirmities identified in Bischoff and recommended that the Florida Legislature address those issues. Id.[9] To date, the Legislature has not done so.

Both §§ 316.2045 and 337.406 reference a permitting scheme. However, there is not (and never has been) a permit process established in St. Johns County, St. Augustine, or the state of Florida for Mr. Vigue or other individuals wishing to engage in charitable solicitation on public streets, highways, or roads. (Doc. 59-3 at 1–3). Thus, Mr. Vigue does not have such a permit, and Sheriff Shoar does not point to any avenue through which he may obtain one to solicit donations lawfully. Id. Mr. Vigue is not alone in soliciting charity on St. Johns County roadways, and authorities have questioned other individuals about whether they possessed appropriate permits. (Docs. 59-9 at 27:14–28:2, 59-10 at 15:15–25, 59-4 at 35:24–36:15, 59-14 at 18:17–19:1). Authorities have enforced §§ 316.2045 and 337.406 against others through citations, arrests, and warnings. (Docs. 2-4, 59-15, 59-11 at 13:14–14:8, 59-4 at 36:2–15, 59-10 at 19:12–14).

E. Procedural Posture

The parties filed cross-motions for summary judgment (Docs. 59, 60), and the Court received responses to both motions (Docs. 65, 66). There are no disputed issues of material fact.[10] Though Mr. Vigue asserts that the statutes are unconstitutional facially and as-applied, he confirmed through counsel at the hearing that he now asks for a ruling only as to the facial challenge. (Doc. 75 at 50). Mr. Vigue requests that the Court enter a declaratory judgment that both statutes are facially unconstitutional in violation of the First and Fourteenth Amendments; that the Court enter a permanent injunction prohibiting Sheriff Shoar from enforcing both statutes; and that the Court enter judgment in favor of Mr. Vigue, finding Sheriff Shoar liable for damages for past enforcement of the statutes against Mr. Vigue, in an amount to be determined at trial. (Doc. 59 at 4). Sheriff Shoar claims that the evidence "does not support the existence of the alleged official policy, practice and/or custom of the Sheriff." (Doc. 60 at 2). He also maintains that Mr. Vigue's challenge to § 337.406 should be denied for lack of standing and asks that the permanent injunction be denied in its entirety. Id.

II. DISCUSSION

Section 1983 establishes a cause of action against state officials who violate constitutional rights while acting under color of state law. 42 U.S.C. § 1983 (2018). Mr. Vigue mounts a facial challenge as to both statutes at issue. (Docs. 59, 75). "A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." United States v. Salerno, 481 U.S. 739, 745 (1987). In contrast to an as-applied challenge, a facial challenge "seeks to invalidate a statute or regulation itself." United States v. Frandsen, 212 F.3d 1231, 1235 (11th Cir. 2000). Here, Mr. Vigue challenges the constitutionality of §§ 316.2045 and 337.406 as content-based, overbroad, vague prior restraints on speech, and adds that § 316.2045 unconstitutionally favors 501(c)(3) organizations and campaign speech. (Doc. 59).

A. Standing to Challenge §§ 316.2045 and 337.406

***8** For constitutional standing to challenge the statutes, Mr. Vigue must show (1) that he suffered an injury in fact, or invasion of a legally protected interest, that is concrete and particularized as well as actual and imminent; (2) that there is a causal connection between that injury and the alleged conduct, traceable to the action of the Defendant; and (3) that it is likely and not merely speculative that the injury will be redressed by a favorable decision in this case. Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992). When a lawsuit challenges the legality of government action or inaction:

> [T]he nature and extent of facts that must be averred (at the summary judgment stage)...in order to establish standing depends considerably upon whether the Plaintiff is himself an object of the action (or foregone action) at issue. If he is, there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it.

Id. at 561–62.

Soliciting charity is constitutionally protected expression. See Vill. of Schaumburg v. Citizens for a Better Env't, 444 U.S. 620, 632 (1980) ("[C]haritable appeals for funds, on the street or door to door, involve a variety of speech interests —communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes —that are within the protection of the First Amendment."); Smith v. City of Fort Lauderdale, 177 F.3d 954, 956 (11thCir. 1999) ("Like other charitable solicitation, begging is speech entitled to First Amendment protection."). Mr. Vigue gained a legally cognizable interest in challenging § 316.2045 when St. Johns County law enforcement took concrete action against him with a combined twelve arrests and citations under § 316.2045. (Docs. 2-7, 23, 59-1). Those citations demonstrate that Mr. Vigue was the object of government action under the statute. There is "little question" that action under the statute caused him injury, and a judgment permanently preventing the enforcement of § 316.2045 would directly redress that injury. Thus, Mr. Vigue has standing to bring this § 1983 action challenging § 316.2045.

Mr. Vigue also has standing to challenge § 337.406 even though he has not been cited or arrested under the statute. Threats of arrest for engaging in free speech activities are evidence of "an actual and concrete injury wholly adequate to satisfy the injury in fact requirement of standing." Bischoff v. Osceola Cty., 222 F.3d 874, 884 (11th Cir. 2000). When there is a credible threat of prosecution, a plaintiff is not required to expose himself to actual arrest and prosecution to have standing to challenge statutory provisions. Steffel v. Thompson, 415 U.S. 452, 459 (1974) (finding that plaintiff had standing to challenge constitutionality of trespass statute after he was warned twice to stop handbilling and told he

would be arrested if he repeated such conduct); see also Wilson v. State Bar of Ga., 132 F.3d 1422, 1428 (11th Cir. 1998) ("[S]tanding exists at the summary judgment stage when the plaintiff has submitted evidence indicating an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution." (internal quotation omitted)).

Bischoff sheds light on this issue. The case went to the Eleventh Circuit in 2000 on the issue of standing prior to the ultimate ruling from Judge Antoon in 2003. Plaintiffs Bischoff and Stites were not actually arrested during the relevant demonstration, but other protesters were arrested. Bischoff, 222 F.3d at 877. The Eleventh Circuit reasoned that the threat of arrest under the challenged statutes was adequate to show injury in fact to establish standing. Id. at 884. Thus, Bischoff and Stites were ultimately found to have standing when "[b]oth Plaintiffs testified that they were threatened with arrest for engaging in the same handbilling conduct that resulted in the arrest and charge under the challenged statutes of [other protesters]." 222 F.3d at 885.

***9** Similarly, Mr. Vigue received one written traffic warning in 2015 and one verbal warning in 2017 under § 337.406 but was never arrested or cited under the statute. (Doc. 59-2). On December 31, 2017, when Mr. Vigue was threatened with arrest under § 337.406, an officer informed Mr. Vigue that he was "acting contrary to FS 337.406" and "would be documented and appropriate law enforcement action would follow" if Mr. Vigue violated the statute again. (Doc. 59-2 at 9). Mr. Vigue ultimately satisfies the requirement for standing and need not expose himself to further threats to challenge the constitutionality of § 337.406. As in Bischoff, "it is clear that a decision in [Mr. Vigue's] favor declaring [§ 337.406] unconstitutional, either on [its] face or as applied to [Mr. Vigue], would redress the injury of being threatened with arrest for engaging in constitutionally protected activity." 222 F.3d at 885.

B. Sheriff's Liability Under 42 U.S.C. § 1983 in his Official Capacity

Sheriff Shoar makes little effort to defend the facial constitutionality of the statutes. (Docs. 60; 75). Instead, his primary argument is that Mr. Vigue may not hold him liable under 42 U.S.C. § 1983 because he has not established a custom, policy, or practice of enforcing the statutes at issue. Id.

Local governments may be held liable under § 1983 only when a constitutional deprivation arises from a governmental policy or custom. Monell v. Dep't of Soc. Servs. of New York, 436 U.S. 658, 694 (1978). "A policy is a decision that is officially adopted by the municipality, or created by an official of such rank that he or she could be said to be acting on behalf of the municipality....A custom is a practice that is so settled and permanent that it takes on theforce of law." Cooper v. Dillon, 403 F.3d 1208, 1221 (11th Cir. 2005) (quoting Sewell v. Town of Lake Hamilton, 117 F.3d 488, 489 (11th Cir. 1997)). "[I]t is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." Monell, 436 U.S. at 694. The government's official policy or custom must be the "moving force" behind the constitutional violation. Id.; see also Bd. of Cty. Comm'rs of Bryan Cty. v. Brown, 520 U.S. 397, 404 (1997) (stating that a municipality, through its deliberate conduct, must be the "moving force" behind an alleged injury for § 1983 liability).

In Cooper, the Eleventh Circuit answered the question of whether a police chief enforcing a state law may subject a municipality to liability under § 1983. Cooper, 403 F.3d at 1223. The Court determined that a police chief's decision to enforce a Florida statute constituted the adoption of a policy sufficient to trigger municipal liability under § 1983. Id. at 1221. Chief Dillon, like Sheriff Shoar, argued that enforcement of a state law could not subject him to liability. Id. The Eleventh Circuit disagreed, stating:

> Dillon was clothed with final policymaking authority for law enforcement matters in Key West and in this capacity he chose to enforce the statute against Cooper. While the unconstitutional statute authorized Dillon to act, it was his deliberate decision to enforce the statute that ultimately deprived Cooper of constitutional rights and therefore triggered municipal liability. Thus, Dillon's choice to enforce an unconstitutional statute against Cooper constituted a deliberate choice to follow a course of action...made from among various alternatives by the official or officials responsible for establishing final policy. Accordingly, we find that the City of Key West, through the actions of Dillon, adopted a policy that caused the deprivation of Cooper's constitutional rights which rendered the municipality liable under § 1983.

*10 Id. at 1223 (internal citations and quotations omitted).

Cooper bears a striking resemblance to this case. Chief Dillon oversaw enforcement of the state statute on only one occasion and was held liable, while Sheriff Shoar has overseen repeated instances of enforcing § 316.2045 and § 337.406 over a four-year period.[11] (Docs. 2-7, 23). Like Mr. Vigue, Cooper argued that the statute improperly abridged First Amendment freedom. Cooper, 403 F.3d at 1213. The Court ultimately found that the statute was "a content-based restriction that chill[ed] the exercise of fundamental First Amendment rights without a compelling justification for doing so and accordingly [was] unconstitutional." Id. at 1223.

The Court does not overlook that Sheriff Shoar's role derives from Art. VIII, § 1(d), FLA. CONST., a different constitutional provision than those regarding municipalities and city police. "Whether an official has final policymaking authority is a question of state law." Church v. City of Huntsville, 30 F.3d 1332, 1342 (11th Cir. 1994). Courts have consistently held that "police chiefs in Florida have final policymaking authority in their respective municipalities for law enforcement matters" under state and local law. See, e.g., Cooper, 403 F.3d at 1222 (citing various statutes); Davis v. City of Apopka, 734 Fed. App'x 616, 619 (11th Cir. 2018) (citing to the Florida Constitution, local ordinances, and Cooper to determine that a city's police chief was a final policymaker); Rojas v. City of Ocala, 315 F. Supp. 3d 1256, 1288 (M.D. Fla. 2018) (analyzing the Florida Constitution, state law, and local ordinances to conclude that a police chief had authority that could subject a city to liability). Similarly, under the Florida Constitution, sheriffs are elected constitutional officers who can exercise final policymaking authority regarding law enforcement in their counties. Art. VIII, § 1(d), FLA. CONST. They have "absolute control over the selection and retention of deputies in order that law enforcement be centralized in the county, and in order that the people be able to place responsibility upon a particular officer for failure of law enforcement." Szell v. Lamar, 414 So.2d 276, 277 (Fla. 5th DCA 1982) (citing § 30.53, FLA. STAT. (1981)). Said another way, "[i]t is essential to law enforcement in the various counties of the State that the people shall be able to place responsibility upon a particular individual, the sheriff." Blackburn v. Brorein, 70 So. 2d 293, 298 (Fla. 1954).

*11 "[C]ases on the liability of local governments under § 1983 instruct us to ask whether governmental officials are final policymakers for the local government in a particular area, or on a particular issue." McMillian v. Monroe Cty., 520 U.S. 781, 785 (1997). Under Florida law, Sheriff Shoar is a final policymaker in St. Johns County for the enforcement of the two statutes at issue here. His position as a final policymaker for the St. Johns County is directly analogous to Chief Dillon's position as a final policymaker for Key West in Cooper.

Sheriff Shoar claims that a review of the relevant testimony reveals that "there was no promulgated policy to enforce these particular statutes."[12] (Doc. 66 at 8). However, local government liability attaches where a "deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." Pembaur v. City of Cincinnati, 475 U.S. 469, 470 (1986). "[I]f a municipality decides to enforce a statute that it is authorized, but not required, to enforce, it may have created a municipal policy." Vives v. City of New York, 524 F.3d 346, 353 (2d Cir. 2008). The statutes being challenged here authorized Sheriff Shoar to act, but that is not the issue; the issue is whether Sheriff Shoar made a deliberate decision to enforce the statutes that ultimately deprived Mr. Vigue of his constitutional rights.

St. Johns County Sheriff's deputies arrested, cited, and warned Mr. Vigue from 2016 to 2019 under § 316.2045 and § 337.406 on at least fifteen occasions. (Docs. 2-7, 23). In doing so, they acted within SJSO unwritten policy from before this litigation. (Doc. 59-8 at 97: 4–13). Sheriff Shoar, as the final authority in SJSO, has the authority to decide whether to enforce a Florida statute as a matter of interpretation and enforcement discretion. Id. at 28:15–19. The record demonstrates that Sheriff Shoar made the deliberate decision (even following Bischoff, Chase, and the Attorney General's criticism of the 2007 amendment) to enforce the statutes. That the "on the street" decisions to warn, cite, and arrest Mr. Vigue were made by his deputies instead of the Sheriff himself does not matter. Quoting Cooper: "[Sheriff Shoar] was clothed with final policymaking authority for law enforcement matters in [St. Johns County] and in this capacity he chose to enforce the statute against [Mr. Vigue]." 403 F.3d at 1223.

At the hearing, Sheriff Shoar's counsel argued that it was not the Sheriff's role to justify the language of the statute because he did not draft or enact it. (Doc. 75 at 19:19–27:3). As a result, he claimed, Sheriff Shoar should be insulated from legal exposure. Id. But in the wake of Cooper, and with Sheriff

Shoar's deliberate decision to repeatedly enforce §§ 316.2045 and 337.406, Sheriff Shoar may be held liable under § 1983 in his official capacity.

C. The Constitutionality of § 316.2045

The Court's role in deciding whether a state law is constitutional is summarized well by Judge Antoon in Bischoff:

> Federal courts are courts of limited jurisdiction. The courts do not reach out to reform or rewrite state statutes that seem to require some improvement. Neither do the federal courts strike down valid laws of which they disapprove. It is the state legislature's duty to enact valid laws, and the Court's duty to declare what the law is, and how the law applies to the facts. The federal courts do not substitute laws they prefer for the will of the elected state legislature. But where parties in a controversy ask a federal court to declare whether a state law violates the Constitution of the United States, the Court must not shrink from its duty to adjudicate the question presented.

***12** 242 F. Supp. 2d at 1241. Here, the Court is asked to declare whether § 316.2045 violates the First and Fourteenth Amendments.[13]

Every court previously asked to evaluate § 316.2045 has declared the statute unconstitutional. Judge Antoon provided an in-depth analysis of § 316.2045 and concluded that the statute was unconstitutional for multiple reasons under First and Fourteenth Amendment jurisprudence. Bischoff, 242 F. Supp. 2d. 1226. In 2006, Judge Mickle adopted the logic and rationale of the Bischoff decision to grant a preliminary injunction enjoining enforcement of § 316.2045, which was later converted to a permanent injunction through settlement, finding that the statute violated the First and Fourteenth Amendments. Chase, 2006 WL 3826983, at *1–2. Finally, the Honorable William Terrell Hodges found a similar panhandling ordinance unconstitutional in Booher v. Marion County, No. 5:07-CV-00282WTHGRJ, 2007 WL 9684182 (M.D. Fla. Sept. 21, 2007).

The Court sees no reason to depart from the analysis of those courts. Accordingly, the Court limits discussion here to recent case law and the ineffectiveness of the 2007 amendments.

i. Section 316.2045 remains an unconstitutional content-based prohibition on speech in public fora.

Content-based regulations of speech in public fora target speech based on its communicative content and "distinguish favored speech from disfavored speech on the basis of the ideas or viewpoints expressed." Cooper, 403 F.3d at 1215 (quoting Turner Broad. Sys., Inc. v. FCC, 512 U.S. 622, 643 (1994)); see also Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd., 502 U.S. 105, 115 (1991). Content-based regulations are subject to strict scrutiny. "Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." Reed v. Town of Gilbert, 576 U.S. 155, 163 (2015) (citations omitted). In Reed, the Supreme Court clarified that "a speech regulation targeted at specific subject matter is content-based even if it does not discriminate among viewpoints within that subject matter." Id. at 169 (finding town code to be content-based because the application of the code to public signs depended on the communicative content of the signs). Courts must:

> [C]onsider whether a regulation of speech "on its face" draws distinctions based on the message a speaker conveys. Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.

Id. at 163-64 (internal citation omitted).

Following Reed, multiple statutes that restrict charitable solicitation have been viewed as content-based and struck down because they cannot survive strict scrutiny. In this district, for example, the Honorable Steven D. Merryday permanently enjoined the City of Tampa from enforcing an ordinance that banned charitable solicitation in certain areas. Homeless Helping Homeless, Inc. v. City of Tampa, No. 8:15-CV-1219-T-23AAS, 2016 WL 4162882, at *5–6 (M.D. Fla. Aug. 5, 2016). Also applying Reed, the Seventh Circuit and a Massachusetts district court found that anti-panhandling statutes were content-based and violated free speech rights under the First Amendment. Norton v. City of Springfield, 806 F.3d 411 (7th Cir. 2015) (striking down statute as unconstitutional when it prohibited oral requests for

immediate payment of money but allowed signs requesting money and oral requests to send money later); Thayer v. City of Worcester, 576 U.S. 1048 (2015) (remanding case to district court for further consideration in light of Reed); Thayer v. City of Worcester, 144 F. Supp. 3d 218 (D. Mass. 2015) (concluding that statute prohibiting begging, panhandling, or soliciting in an aggressive manner was content-based, subject to strict scrutiny, and unconstitutional).

***13** Even before Reed, the court in Bischoff found that § 316.2045 regulated speech on the basis of ideas expressed and was therefore content-based.

> Section 316.2045 selectively proscribes protected First Amendment activity—i.e., it impermissibly prefers speech by § 501(c)(3) charities and by persons who are engaged in "political campaigning" over all other activity that retards traffic, without any showing that the latter is more disruptive than the former.
>
> Section 316.2045 makes the legality of conduct that retards traffic depend solely on the nature of the message being conveyed. Said differently, the Florida statute facially prefers the viewpoints expressed by registered charities and political campaigners by allowing ubiquitous and free dissemination of their views, but restricts discussion of all other issues and subjects. Section 316.2045 of the Florida Statutes, therefore, is presumptively invalid under the Equal Protection Clause and the First Amendment of the United States Constitution because it imposes content-based restrictions on speech in a traditional public forum.

242 F. Supp. 2d at 1256 (internal citations omitted). This analysis of § 316.2045 remains true for the current version of the statute. Most of the content-based restrictions that made the law facially unconstitutional in Bischoff remain in the current version of the law. In particular, § 316.2045(2) still exempts 501(c)(3) organizations, and persons or organizations acting on their behalf, from the permitting requirements for streets or roads not maintained by the state, and it still, confusingly, conditions the need for permits on state-maintained roads or rights-of-way "only for those purposes and in the manner set out in s. 337.406." (More about § 337.406 later.)

The language of § 316.2045(4) is identical to the 2003 version of the statute when Bischoff was decided: "[n]othing in this section shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity." § 316.2045(4). The law impermissibly favors organizational, campaign, and other group speech over other types of speech, like individual charitable solicitation. Thus, § 316.2045 remains a presumptively invalid content-based regulation on protected speech. See, e.g., R.A.V. v. City of St. Paul, 505 U.S. 377, 382 (1992) ("Content-based regulations are presumptively invalid.").[14] The Bischoff court further concluded that § 316.2045 could not survive strict scrutiny, as is required of content-based regulations of speech in public fora, because it was not narrowly tailored to meet a compelling state interest. 242 F. Supp. 2d at 1236-37, 1256-59.

ii. The Court adopts the reasoning of Bischoff.

***14** Bischoff identified additional constitutional infirmities in § 316.2045, deeming the statute content-based and vague, insufficiently tailored to serve the compelling interest of safety, overbroad, and an unconstitutional prior restraint on speech. 242 F. Supp. 2d at 1250–59. At the preliminary injunction stage, the Court relied on Bischoff and Chase to support its finding that Mr. Vigue had a substantial likelihood of success on the merits of his claim that § 316.2045 is unconstitutional. (Doc. 32). There has been no material change to the statute since Bischoff. Reed only strengthens Bischoff's holding. Thus, the Court adopts the reasoning in Bischoff regarding § 316.2045. Florida Statute § 316.2045 is facially unconstitutional.

D. The Constitutionality of § 337.406

Mr. Vigue contests the validity of § 337.406 on the grounds that it is unconstitutionally overbroad, vague, imposes an improper prior restraint on speech, and violates equal protection. (Doc. 59 at 19).

Section 337.406 has received some criticism in the courts, but it has not garnered as much attention as § 316.2045. The court in Bischoff commented that § 337.406 contained "opaque and undecipherable permit provisions," which have remained unchanged, but § 337.406 was not directly at issue in that case. 242 F. Supp. 2d at 1256.

In News & Sun-Sentinel Co. v. Cox, 702 F. Supp. 891 (S.D. Fla. 1988), a court in the Southern District of Florida found a prior version of § 337.406 unconstitutional. There, a newspaper publisher sued the City of Fort Lauderdale, the city commission, and the police chief for enforcing § 337.406, which prohibited the commercial use, including

the sale of newspapers, of state-maintained roads. Id. at 893–94. The Cox court found that the prior version of § 337.406 was a content-neutral regulation of speech in public fora that was not narrowly tailored to serve a significant government interest and was therefore unconstitutional. Id. at 900–03. At that time, § 337.406 targeted commercial activity, whereas now, it prohibits using state rights-of-way of state transportation facilities "in any manner that interferes with the safe and efficient movement of people and property from place to place on the transportation facility." § 337.406(1); see Sentinel Commc'ns Co. v. Watts, 936 F.2d 1189, 1191 n.1, 1195 n.6 (11th Cir. 1991).

In 2006, although the new version of § 337.406 was in use at the time, the Court in Chase found "no reason to depart from the thorough analys[is] undertaken" in Cox and granted a preliminary injunction, finding a substantial likelihood that § 337.406 was unconstitutional. Chase, 2006 WL 2620260, at *1. The Court analyzes the new version of the statute here.

i. Section 337.406(1) imposes an unconstitutional prior restraint.

A prior restraint on speech exists "when the government can deny access to a public forum before the expression occurs." United States v. Frandsen, 212 F.3d 1231, 1236–37 (11th Cir. 2000). Prior restraints "are not per se unconstitutional," but there is a "strong presumption against their constitutionality." Id. at 1237. Attempts to subject the exercise of First Amendment freedoms to the prior restraint of a license are unconstitutional when they lack narrow, objective, and definite standards to guide the licensing authority. Shuttlesworth v. Birmingham, 394 U.S. 147, 150–51 (1969). A permissible prior restraint must include "adequate procedural safeguards to avoid unconstitutional censorship." Frandsen, 212 F.3d at 1239 n.7. Facially valid prior restraints require: (1) the burden of going to court to suppress speech and of proof once in court rests upon the government; (2) any restraint prior to a judicial determination may only be for a specified brief period to preserve the status quo; and (3) an avenue for prompt judicial review of the censor's decision must be available. Id. at 1238; Freedman v. Maryland, 380 U.S. 51, 58–59 (1965).

***15** Section 337.406(1) articulates a prior restraint on speech because anyone who wishes to solicit charitable donations on state rights of way must first obtain a permit:

> Local government entities may issue permits of limited duration for the temporary use of the right-of-way of a state transportation facility for any of these prohibited uses [including solicitation for charitable purposes] if it is determined that the use will not interfere with the safe and efficient movement of traffic and the use will cause no danger to the public. The permitting authority granted in this subsection shall be exercised by the municipality within incorporated municipalities and by the county outside an incorporated municipality.

§ 337.406(1).

The permitting scheme described in § 337.406(1) does not include adequate procedural safeguards. It includes no explicit standards for issuance other than general safety, no time limits, and no review process for denials. Local governments seem to have unfettered discretion not only regarding who receives a permit, but also regarding whether and how to institute a permitting procedure in the first place. This is brought into sharp focus here because neither the State, St. Johns County, nor Sheriff Shoar have ever created a process by which a person can obtain a permit under § 337.406(1), and the statute does not require them to do so. Thus, there is literally no way for Mr. Vigue to comply with the permitting requirement, even if he wanted to.

Courts have routinely struck down permitting schemes with similar deficiencies. FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 225–26 (1990) (stating that "cases addressing prior restraints have identified two evils that will not be tolerated," including unbridled government discretion and lack of time constraints); Solantic, LLC v. City of Neptune Beach, 410 F.3d 1250, 1272 (11th Cir. 2005) (finding a sign code's permitting requirement to be "precisely the type of prior restraint on speech that the First Amendment will not bear" when it contained no time limit for decisions and vested officials with unbridled discretion); Frandsen, 212 F.3d at 1240 (finding that a permit requirement to hold meetings in public parks was an unconstitutional prior restraint because it did not provide time constraints); Lady J. Lingerie, Inc. v. City of Jacksonville, 176 F.3d 1358, 1363 (11th Cir. 1999) (finding that a zoning board licensing requirement for sexually oriented businesses was an unconstitutional prior restraint because it vested too much discretion in the zoning board). The permitting scheme in § 337.406(1) for charitable solicitation is an unconstitutional prior restraint on speech.[15]

ii. The prohibition on charitable solicitation in Section 337.406(1) is unconstitutional.

**16 Beyond the unconstitutional permitting scheme, § 337.406(1) is written in a somewhat confusing manner, so it is worth reiterating its provisions. First, § 337.406(1) bans certain conduct on rights-of-way of state transportation facilities and their appendages:

> Except when leased as provided in s. 337.25(5) or otherwise authorized by the rules of the department, it is unlawful to make any use of the right-of-way of any state transportation facility, including appendages thereto, outside of an incorporated municipality in any manner that interferes with the safe and efficient movement of people and property from place to place on the transportation facility.

§ 337.406(1). Next, it specifies the prohibition's purpose:

> Failure to prohibit the use of right-of-way in this manner will endanger the health, safety, and general welfare of the public by causing distractions to motorists, unsafe pedestrian movement within travel lanes, sudden stoppage or slowdown of traffic, rapid lane changing and other dangerous traffic movement, increased vehicular accidents, and motorist injuries and fatalities.

Id. Then, it gives examples of "prohibited uses:"

> Such prohibited uses include, but are not limited to, the free distribution or sale, or display or solicitation for free distribution or sale, of any merchandise, goods, property or services; the solicitation for charitable purposes; the servicing or repairing of any vehicle, except the rendering of emergency service; the storage of vehicles being serviced or repaired on abutting property or elsewhere; and the display of advertising of any sort, except that any portion of a state transportation facility may be used for an art festival, parade, fair, or other special event if permitted by the appropriate local governmental entity.

Id. (emphasis added).

Finally, the law imposes the previously discussed permitting scheme. Id.

Section 337.406(1) appears to provide a content-neutral, outright prohibition on activity that interferes with the flow of people and property, followed by content-based list of prohibited uses and an impermissible permit scheme. The statute's imprecision led Judge Antoon to comment on its "opaque and undecipherable permit provisions,"[16] led the Cox court to find an earlier version of the statute unconstitutional, 702 F. Supp. at 900-03, and led the Chase court to find the current version of the statute unconstitutional, 2006 WL 3826983, at *1–2. The Court concurs with those courts, and additionally, finds that the current version of § 337.406(1) is overbroad as it pertains to charitable solicitation.

**17 Here, without the impermissible and unavailable permitting scheme, the remainder of § 337.406(1) prohibits all "solicitation for charitable purposes" on rights of way of state transportation facilities and appendages thereto. An outright prohibition on charitable solicitation is overbroad. Even if the statute is considered content-neutral, it must survive intermediate scrutiny—that is, the regulation must be narrowly tailored to serve a significant government interest and must leave open alternative channels of communication. See, e.g., McCullen v. Coakley, 573 U.S. 464, 477 (2014); see also United States v. Grace, 461 U.S. 171, 177 (1983). It cannot "burden substantially more speech than is necessary to further the government's legitimate interests." McCullen, 573 U.S. at 486 (internal quotation omitted). A narrowly tailored statute "targets and eliminates no more than the exact source of the 'evil' it seeks to remedy." Cox, 702 F. Supp. at 900 (quoting Frisby v. Schultz, 487 U.S. 474, 475 (1988)).

The Cox court found that § 337.406 was not narrowly tailored because the statute banned "any commercial activity by anyone, at any time, at any place on a state-maintained road." 702 F. Supp. at 901. Thus, the court concluded, it was not carefully drawn to meet the City's interests, made no attempt to restrict activity to certain times, failed to distinguish between children and adults who may be more safety-conscious, and failed to take into account that traffic hazards may vary. Id. Today, the same reasoning applies to the statute's ban on all charitable solicitation. The statute prohibits more than the exact source of evil that it seeks to remedy—solicitation that poses a true traffic safety threat.

In First Amendment cases, there exists a serious concern that overbroad laws may lead to a chilling effect on protected expression. See Nat'l Endowment for the Arts v. Finley, 524 U.S. 569, 582 (1998); Dombrowski v. Pfister, 380 U.S. 479, 487 (1965). Thus, courts invalidate statutes when "persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions provided by a statute susceptible of application to protected expression." Gooding v. Wilson, 405 U.S. 518,

521 (1972). When a statute implicates First Amendment rights, it must be written clearly and narrowly drawn. Section 337.406(1)'s provisions concerning charitable solicitation are not and are therefore unconstitutional.

E. First Amendment Freedom and Traffic Safety

The Supreme Court's articulation of why public streets, sidewalks, and parks are critical to First Amendment freedom resonates strongly in this case:

> It is no accident that public streets and sidewalks have developed as venues for the exchange of ideas. Even today, they remain one of the few places where a speaker can be confident that he is not simply preaching to the choir. With respect to other means of communication, an individual confronted with an uncomfortable message can always turn the page, change the channel, or leave the Web site. Not so on public streets and sidewalks. There, a listener often encounters speech he might otherwise tune out. In light of the First Amendment's purpose "to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail," this aspect of traditional public fora is a virtue, not a vice.

McCullen, 573 U.S. at 476 (internal citation omitted).

Mr. Vigue's right to free speech is vital. But to be sure, the Court finding § 316.2045 and portions of § 337.406(1) unconstitutional does not give Mr. Vigue and others carte blanche to solicit charity on roadways however they wish. "It requires neither towering intellect nor an expensive 'expert' study to conclude that mixing pedestrians and temporarily stopped motor vehicles in the same space at the same time is dangerous." Cox, 702 F. Supp. at 900 (quoting Int'l Soc. For Krishna Consciousness of New Orleans, Inc. v. City of Baton Rouge, 668 F. Supp. 527, 530 (M.D. La. 1987), aff'd, 876 F.2d 494 (5th Cir. 1989)). Thus, the Legislature may legislate on these topics so long as it strikes the careful balance between upholding First Amendment rights and ensuring traffic safety. Unfortunately, neither § 316.2045 nor § 337.406(1) meet this test.

***18** It is essential that law enforcement is not left without recourse for traffic safety problems posed by people blocking traffic in streets, asking for money or otherwise. In Booher, Judge Hodges stated that "concerns about traffic safety during the pendency of the injunction [were] adequately addressed by [other] existing laws." 2007 WL 9684182, at *4. Similarly, Mr. Vigue asserts that "there are other laws in place that better address pedestrian and vehicular safety," such as § 316.130. (Doc. 59 at 16). Florida's legitimate interest in road safety "can be better served by measures less intrusive than a direct prohibition on solicitation." Schaumburg, 444 U.S. at 637.

F. Severability

Having found portions of both statutes to be unconstitutional, the Court now turns to the question of whether those portions are severable from the rest of the statute. Severability is a question of state law. Wollschlaeger v. Governor, Fla., 848 F.3d 1293, 1317 (11th Cir. 2017). When, as here, there is no severability clause, the "key determination is whether the overall legislative intent is still accomplished without the invalid provisions." State v. Catalano, 104 So. 2d 1069, 1080–81 (Fla. 2012) (refusing to sever prior version of § 316.2045(1)(a) when severance would expand statute's reach beyond what the legislature contemplated); Lawnwood Med. Ctr., Inc. v. Seeger, 990 So. 2d 503, 518 (Fla. 2008) (refusing to sever hospital governance law when act would not be complete with invalid portions severed to accomplish what the legislature intended).[17]

In § 316.2045, the unconstitutional provision is the crux of the statute. If §§ 316.2045(1)–(4) were to be severed from the small portion of the statute that remains, § 316.2045(5), the law would fail to serve the legislative intent of regulating traffic safety through prohibiting solicitation and establishing a permit scheme. Thus, the Court cannot sever the unconstitutional provisions of § 316.2045 and salvage the remaining section.

On the other hand, the Court has found only the portions of Section 337.406(1) that prohibit charitable solicitation to be unconstitutional. The rest of § 337.406(1) is not at issue here; Mr. Vigue has mounted a facial challenge only to the statute's prohibition on charitable solicitation. The Court does not reach the portions of §§ 337.406(1) that do not pertain to charitable solicitation, or §§ 337.406(2)–(5). Thus, the portions of § 337.406(1) pertaining to charitable solicitation are severed from the statute. The portions of § 337.406(1) unrelated to charitable solicitation and the entirety of §§ 337.406(2)–(5) remain unaffected.

G. Permanent Injunction

***19** For a permanent injunction to be issued, Mr. Vigue must: (1) show actual success on the merits of claims asserted in the complaint; (2) establish that irreparable harm will result from failure to provide injunctive relief; (3) establish that the balance of equities tips in his favor; and (4) demonstrate that an injunction is in the public interest. KH Outdoor, LLC v. City of Trussville, 458 F.3d 1261, 1268 (11th Cir. 2006). Permanent injunction requirements are the same as those for a preliminary injunction, except that Mr. Vigue must show actual success on the merits as opposed to likelihood of success on the merits of his claims. Id.

Mr. Vigue has succeeded in his claims that §§ 316.2045 and portions of 337.406(1) are unconstitutional. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 373 (1976). Here, Mr. Vigue has suffered and will continue to suffer denial of his First Amendment right to expression in the form of charitable solicitation. Arrest and incarceration pursuant to §§ 316.2045(1) and 316.2045(2), as well as warnings and threats of arrest pursuant to § 337.406, prohibit Mr. Vigue from engaging in protected speech. With these statutes in effect and no available permitting scheme with procedural safeguards in place, Sheriff Shoar retains unbridled discretion to enforce the statutes that bar Mr. Vigue's protected speech activity. "Because chilled speech cannot be compensated by monetary damages, an ongoing violation of the First Amendment constitutes irreparable injury." Univ. Books & Videos, Inc. v. Metro. Dade Cty., 33 F. Supp. 2d 1264, 1373 (S.D. Fla. 1999).

Injury to Mr. Vigue also outweighs any harm the injunction might cause Sheriff Shoar. Even without §§ 316.2045 and 337.406, Sheriff Shoar is still free to enforce all other state and local laws to maintain safe roadways throughout the county. Sheriff Shoar has already altered enforcement of these statutes through Policy 41.39, and makes no claim of increased difficulty maintaining safe roadways as a result of the new policy. Courts regularly find that injury to plaintiffs outweighs harm to defendants in First Amendment cases. See Baumann v. City of Cumming, No. 2:07-CV-0095-WCO, 2007 WL 9710767, at *7 (N.D. Ga. Nov. 2, 2007) ("[T]he temporary infringement of First Amendment rights constitutes a serious and substantial injury, and the city has no legitimate interest in enforcing an unconstitutional ordinance.").

Finally, "[t]he public interest is served by the maintenance of First Amendment freedoms and could not possibly be served by the enforcement of an unconstitutional ordinance." Howard v. City of Jacksonville, 109 F. Supp. 2d 1360, 1365 (M.D. Fla. 2000). While citizens certainly have an interest in remaining safe, and Sheriff Shoar has an interest in ensuring traffic safety, the "interest[ ] in remaining safe while walking or driving [is] served by other statutes and codes available to law enforcement officers." Chase, 2006 WL 2620260, at *3.

H. Damages

Mr. Vigue claims that Sheriff Shoar is liable for compensatory damages for violation of Mr. Vigue's constitutional rights, and that he should proceed to trial on the issue of damages. (Doc. 59 at 24). Mr. Vigue relies primarily on Memphis Cmty. Sch. Dist. v. Stachura, 477 U.S. 299 (1986) to argue that compensatory damages should be available.

For actions under § 1983, "the rules governing compensation for injuries caused by the deprivation of constitutional rights should be tailored to the interests protected by the particular right in question." Carey v. Piphus, 435 U.S. 247, 259 (1978). In reviewing the law, the Court understands that nominal damages are available in First Amendment cases. Pelphrey v. Cobb Cty., 547 F.3d 1263, 1282 (11th Cir. 2008) ("This Court has found that 'nominal damages are similarly appropriate in the context of a First Amendment violation.' "); Familias Unidas v. Briscoe, 619 F.2d 391, 402 (5th Cir. 1980) (holding that nominal damages are available for violations of the First Amendment); see also Gonzalez v. Sch. Bd. of Okeechobee Cty., 250 F.R.D. 565, 570 (S.D. Fla. 2008) (finding that nominal damages were available in a § 1983 action for violations of the First Amendment).[18] But the Court is uncertain regarding whether there also exists a legal and factual basis for compensatory damages in this case. Compare Carey, 435 U.S. at 264 (stating compensatory damages under § 1983 are available only when plaintiff shows actual injury); with Stachura, 477 U.S. at 310-11 ("When a plaintiff seeks compensation for an injury that is likely to have occurred but difficult to establish, some form of presumed damages may possibly be appropriate."); see also King v. Zamiara, 788 F.3d 207, 213 (6th Cir. 2015) (surveying cases where compensatory damages were permitted for deprivation of constitutional rights and concluding that compensatory damages were appropriate "for specific, actual injuries [plaintiff] suffered that cannot be easily quantified"); Celli v. City of St. Augustine, 214 F. Supp. 2d 1255, 1262 (M.D. Fla. 2000) (allowing jury to place monetary value on intangible free speech rights to determine damages in § 1983 action). If Mr. Vigue wishes to pursue more than nominal damages, the

Court directs him to submit a proffer of the legal and factual basis for compensatory damages.

III. CONCLUSION

***20** In ruling in favor of Mr. Vigue on the constitutionality of §§ 337.2045 and 337.406, the Court is following precedent and upholding important First Amendment and Equal Protection principles. Of course, as suggested by Florida's Attorney General in 2007, the Legislature is free to rewrite these statutes to try to alleviate the constitutional infirmities. For now, Sheriff Shoar has demonstrated through his Policy Directive 41.39 that he can abide by the Court's decision on an ongoing basis such that Mr. Vigue will be free to exercise his constitutional right to solicit. However, the Court also addresses Mr. Vigue: this decision is not a license to trespass on private property, interfere with traffic, station himself where he obstructs traffic or creates a safety hazard to himself or others. If he does so, there are other laws which can be brought to bear. The Court is confident that both Sheriff Shoar and his deputies and Mr. Vigue will exercise common sense and good judgment.

Accordingly, it is hereby

ORDERED:

1. Plaintiff Peter Vigue's Motion for Partial Summary Judgment (Doc. 59) is **GRANTED** for the reasons stated herein.

2. Defendant David B. Shoar's Motion for Summary Judgment (Doc. 60) is **DENIED** for the reasons stated herein.

3. Florida Statute § 316.2045 is found to be facially unconstitutional under the First and Fourteenth Amendments. Declaratory Judgment to that effect will be entered at the conclusion of the case.

4. The portions of Florida Statute § 337.406(1) pertaining to charitable solicitation are found to be facially unconstitutional under the First and Fourteenth Amendments. Declaratory Judgment to that effect will be entered at the conclusion of the case.

5. Defendant David B. Shoar, in his official capacity as Sheriff of St. Johns County, is hereby permanently **ENJOINED** from enforcing Florida Statutes §§ 316.2045 and 337.406(1), the latter insofar as it pertains to charitable solicitation. A final permanent injunction will be entered at the conclusion of the case.

6. If he wishes to pursue compensatory damages, Mr. Vigue is directed to submit a proffer of the legal and factual basis for a claim for damages no later than **November 19, 2020**, and Sheriff Shoar is directed to respond no later than **December 21, 2020**. The Court will then determine how to proceed.

7. Any claim for attorneys fees and costs will await the conclusion of the case.

DONE AND ORDERED in Jacksonville, Florida the 12th day of October, 2020.

All Citations

Slip Copy, 2020 WL 6020484

Footnotes

1 Regarding enforcement of §§ 316.2045(1) and 337.406, Policy 41.39 provides:
So long as a person does not impede the free, convenient, and normal use of the road, SJSO will not treat entering or leaving a roadway while traffic is stopped pursuant to a traffic light as a violation of Section 316.2045(1). SJSO will not use this provision to prohibit persons from engaging in lawful conduct, such as charitable solicitation adjacent to public streets, highways, or roads, so long as any incursion is during stopped traffic pursuant to a traffic light and does not impede the free, convenient, and normal use of the road. Additionally, SJSO will not enforce this provision against a person who has left the roadway by the time traffic is permitted to move, so long as the person does not impede the free, convenient, and normal use of the road.
(Doc. 59-16 at 2–3).

2 FHP agreed to limit its enforcement of § 316.2045(1) and 337.406 as follows:
So long as a person does not impede the free, convenient, and normal use of the road, FHP will no longer treat entering or leaving a roadway while traffic is stopped pursuant to a traffic control device as a violation of Section 316.2045(1) [or of Section 337.406]. And FHP will no longer use th[ese] provision[s] to prohibit persons from engaging in lawful conduct

such as charitable solicitation adjacent to public streets, highways, or roads, so long as any incursion is during stopped traffic pursuant to a control device and does not impede free, convenient, and normal use of the road. Additionally, FHP will not enforce th[ese] provision[s] against a person who has left the roadway by the time traffic is permitted to move and does not impede the free, convenient, and normal use of the road.

(Doc. 45-1 at 11).

3 The settlement agreement included various other deadlines, directives, and provisions, including a payment to Vigue for the costs, attorneys' fees, and expenses incurred in litigation. (Doc. 45-1 at 4).

4 Mr. Vigue has stated that he feels he has been harassed for holding his sign. (Doc. 60-9 at 142:9–13). "I'm not out to bother people or hurt people on any—whether you're in a car, vehicle, on foot or you have a business, I'm not out there to bother you or hurt you. I just want to see people smile. Put a smile on your face, and I'll go on my way. If you give me something, that's good. If you don't, that's fine." (Doc. 60-9 at 147:14–20).

5 The Offense Report from January 13, 2019, includes the following Probable Cause Narrative, alluding to Mr. Vigue's other offenses:

> I observed the defendant standing at State Road 312 and Tingle Court holding a sign and approaching vehicles with their windows down. The defendant does not have a permit to solicit on a state road. I knew the defendant to have been issued a citation for Soliciting without a permit on October 2, 2018. The defendant was also placed under arrest for the same offense on November 13, 2018 and January 8, 2019.

(Doc. 59-1 at 3–4).

6 The full text of § 316.2045(3) reads:

> Permits for the use of any street, road, or right-of-way not maintained by the state may be issued by the appropriate local government. An organization that is qualified under s. 501(c)(3) of the Internal Revenue Code and registered under chapter 496, or a person or organization acting on behalf of that organization, is exempt from local requirements for a permit issued under this subsection for charitable solicitation activities on or along streets or roads that are not maintained by the state under the following conditions:
>
> (a) The organization, or the person or organization acting on behalf of the organization, must provide all of the following to the local government:
>
> 1. No fewer than 14 calendar days prior to the proposed solicitation, the name and address of the person or organization that will perform the solicitation and the name and address of the organization that will receive funds from the solicitation.
>
> 2. For review and comment, a plan for the safety of all persons participating in the solicitation, as well as the motoring public, at the locations where the solicitation will take place.
>
> 3. Specific details of the location or locations of the proposed solicitation and the hours during which the solicitation activities will occur.
>
> 4. Proof of commercial general liability insurance against claims for bodily injury and property damage occurring on streets, roads, or rights-of-way or arising from the solicitor's activities or use of the streets, roads, or rights-of-way by the solicitor or the solicitor's agents, contractors, or employees. The insurance shall have a limit of not less than $1 million per occurrence for the general aggregate. The certificate of insurance shall name the local government as an additional insured and shall be filed with the local government no later than 72 hours before the date of the solicitation.
>
> 5. Proof of registration with the Department of Agriculture and Consumer Services pursuant to s. 496.405 or proof that the soliciting organization is exempt from the registration requirement.
>
> (b) Organizations or persons meeting the requirements of subparagraphs (a)1.-5. may solicit for a period not to exceed 10 cumulative days within 1 calendar year.
>
> (c) All solicitation shall occur during daylight hours only.
>
> (d) Solicitation activities shall not interfere with the safe and efficient movement of traffic and shall not cause danger to the participants or the public.
>
> (e) No person engaging in solicitation activities shall persist after solicitation has been denied, act in a demanding or harassing manner, or use any sound or voice-amplifying apparatus or device. (f) All persons participating in the solicitation shall be at least 18 years of age and shall possess picture identification.
>
> (g) Signage providing notice of the solicitation shall be posted at least 500 feet before the site of the solicitation.
>
> (h) The local government may stop solicitation activities if any conditions or requirements of this subsection are not met.

§ 316.2045(3).

7 A Sheriff's deputy described his encounter with Mr. Vigue on December 31, 2017 in a Field Interview Narrative:

Peter was standing with a cardboard sign just outside Cobblestone property in the grass between the sidewalk and curb of Old Moultrie Rd. I observed Peter enter the roadway of Jenkins St just outside the CBL property line to receive money from a motorist exiting the plaza.

I made Peter distinctly aware where he was standing was within the right-of-way of Old Moultrie Rd and he was (1) using the right- of-way to solicit for charitable purposes and (2) entered the roadway, interfering with the safe movement of vehicles, contrary to FS 337.406.

Peter acknowledged he understands where the CBL property line is at the Old Moultrie Rd entrance and now thoroughly understands where the right-of-way is. He was informed this warning would be documented and appropriate law enforcement action would follow if he is located, committing the same offense.

At the time, he was wearing a grey vest with long-sleeve orange shirt under it, jeans, and green gloves. His sign read, "God Bless, Be Safe."

(Doc. 59-2 at 9).

8 A Sheriff's deputy's "Suspicious Person" report from April 1, 2019 includes the following narrative:

Peter Vigue was standing in the intersection holding a hand written sign, which read "God Bless." Once Peter saw my patrol vehicle, he walked away from the intersection, leaving another hand written sign and plastic bottle on the ground. I advised Peter to collect his items or he would be ticketed. Peter said he wasn't leaving the area and he wasn't breaking the law. Advised him to stay out of the roadway or he would be subject to arrest. Peter assured me he would not walk or stand in the road way.

(Doc. 59-2 at 13).

9 "To read the amended statutory language to allow only charities and political campaigners to solicit could, arguably, subject the statute to federal constitutional challenge as violating First Amendment free speech rights and Fourteenth Amendment equal protection rights....I would strongly suggest that the Florida Legislature revisit this statute to consider the First Amendment problems raised by the Bischoff case." Fla. Att'y Gen. Op. 2007-50 (2007).

10 "The principles governing summary judgment do not change when the parties file cross-motions for summary judgment." T-Mobile S. LLC v. City of Jacksonville, 564 F. Supp. 2d 1337, 1340 (M.D. Fla. 2008).

11 The Court acknowledges that in Cooper, Chief Dillon personally swore an affidavit and obtained a warrant for Cooper's arrest under the challenged statute. 403 F.3d at 1212. Here, Sheriff Shoar has not personally arrested or sworn an affidavit for the arrest of Mr. Vigue. Still, Cooper's reasoning applies. The question in Cooper was "whether Dillon had final policymaking authority for the City of Key West in law enforcement matters and whether his decision to enforce FLA. STAT. ch. 112.533(4) against Cooper was an adoption of 'policy' sufficient to trigger 1983 liability." Id. at 1221. The Court concluded that enforcement of a state law by a police chief may subject a municipality to liability. Id. at 1223. That conclusion did not hinge on personal enforcement by the police chief himself. Moreover, "when an officer is sued under Section 1983 in his or her official capacity, the suit is simply another way of pleading an action against an entity of which an officer is an agent." Busby v. City of Orlando, 931 F.2d 764, 776 (11th Cir. 1991) (internal quotation omitted). The record shows that SJSO repeatedly and deliberately decided to enforce the challenged statutes against Mr. Vigue.

12 Sheriff Shoar focuses on cases regarding deliberate indifference under the Eighth Amendment, exhaustion of administrative remedies, and excessive force violations to support his contention that he had no policy that would trigger municipal liability under § 1983. (Doc. 66 at 7–8). However, those cases are readily distinguishable.

13 The First Amendment is applicable to the states through the Fourteenth Amendment. Elrod v. Burns, 427 U.S. 347, 357 n.10 (1976).

14 The distinction between individuals and charitable or political groups may also be understood as the law favoring certain speakers. The Supreme Court in Reed commented on why speaker distinctions may be problematic under the First Amendment and are often subject to strict scrutiny:

> In any case, the fact that a distinction is speaker based does not...automatically render the distinction content neutral. Because [s]peech restrictions based on the identity of the speaker are all too often simply a means to control content, we have insisted that laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference. Thus, a law limiting the content of newspapers, but only newspapers, could not evade strict scrutiny simply because it could be characterized as speaker based. Likewise, a content-based law that restricted the political speech of all corporations would not become content neutral just because it singled out corporations as a class of speakers. Characterizing a distinction as speaker based is only the beginning—not the end — of the inquiry.

Reed, 576 U.S. at 170 (internal citations and quotations omitted). Section 316.2045 reflects the Legislature's preference for organizational and campaign speakers over individual speakers. This is yet another reason the law is subject to strict scrutiny.

15 The permitting scheme in § 337.406 explicitly lists "the solicitation for charitable purposes" as a prohibited use of the roadway for which one must obtain a permit. For that reason, the permitting scheme appears to be content- based. See Reed, 576 U.S. at 163 ("Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea of message expressed.") However, even if the permitting scheme were content-neutral, it could not pass constitutional muster. Though the Supreme Court has "never required that a content-neutral permit scheme regulating speech in a public forum adhere to the procedural requirements set forth in Freedman," still, "[w]here the licensing official enjoys unduly broad discretion in determining whether to grant or deny a permit, there is a risk that he will favor or disfavor speech based on its content." Thomas v. Chicago Park Dist., 534 U.S. 316, 322–23 (2002). Thus, even a content-neutral permitting scheme must "contain adequate standards to guide the official's decision and render it subject to effective judicial review." Id. The permitting scheme in § 337.406 does not contain such standards.

16 In Bischoff, Judge Antoon pointed out ambiguity in the type of conduct prohibited without a permit and troublesome cross-referencing between § 337.406 and § 316.2045(2):

> But § 337.406(1) is unclear as to whether the term "these prohibited uses" refers only to uses "for an art festival, parade, fair or other special event." May municipalities also permit other uses prohibited by § 337.406(1), such as charitable solicitation that interferes with traffic movement? The answer may be important not only to someone seeking a permit for soliciting in a municipality, but also to someone who simply wants to avoid using a state road for a purpose specified in § 337.406—i.e., a person who has no permit but wants to avoid violating § 316.2045(2). The statute provides no answer. This level of detail in the analysis is necessary because the Florida Legislature chose to make the criminality of a person's conduct under § 316.2045(2) dependent on the "purposes" set forth in § 337.406.

242 F. Supp. 2d at 1254–55.

17 The Florida Supreme Court in Catalano laid out the purpose of the severability doctrine and the test for severability in Florida:

> Severability is a judicially created doctrine which recognizes a court's obligation to uphold the constitutionality of legislative enactments where it is possible to remove the unconstitutional portions. It is derived from the respect of the judiciary for the separation of powers, and is designed to show great deference to the legislative prerogative to enact laws. The portion of a statute that is declared unconstitutional will be severed if: (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.

Catalano, 104 So. 3d at 1080 (internal citations and quotations omitted).

18 Fifth Circuit precedent prior to October 1, 1981 is binding on the Eleventh Circuit. Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981).

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2020 WL 6020484
Only the Westlaw citation is currently available.
United States District Court, M.D. Florida,
Jacksonville Division.

Peter VIGUE, Plaintiff,

v.

David B. SHOAR, in his official capacity as Sheriff of St. Johns County, Defendant.

Case No. 3:19-cv-186-J-32JBT
|
Signed 10/12/2020

West Codenotes

Held Unconstitutional
Fla. Stat. Ann. §§ 316.2045, 337.406(1)

Attorneys and Law Firms

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Bruce R. Bogan, Hilyard, Bogan & Palmer, PA, Orlando, FL, Melissa Jean Sydow, Tampa, FL, for Defendant.

ORDER

TIMOTHY J. CORRIGAN, United States District Judge

***1** Peter Vigue is a homeless resident of St. Johns County who stands on public roadways and holds signs to solicit charitable donations from passersby. Mr. Vigue's signs often bear messages like "God Bless, Be Safe" or "Please Care." In busy areas of town, Mr. Vigue may see up to ten thousand people per day.

Two Florida laws, FLA. STAT. §§ 316.2045 and 337.406 (2019), prohibit individuals from soliciting charity on roadways in Florida without a permit issued by a local government. Sections 316.2045(2)–(4) contain exceptions to the permitting requirement for Internal Revenue Code § 501(c)(3) registered organizations and for political campaigning. Mr. Vigue claims that St. Johns County Sheriff David B. Shoar enforces §§ 316.2045 and 337.406 against homeless individuals to forbid them from soliciting charitable donations in public spaces, including sidewalks and roadways. In this 42 U.S.C. § 1983 action, he contends these statutes are facially unconstitutional.

This case is before the Court on cross-motions for summary judgment. (Docs. 59, 60). The Court held oral argument on June 2, 2020, the record of which is incorporated by reference. (Doc. 75).

I. FACTS AND PROCEDURAL HISTORY

A. Preliminary Injunction

On May 6, 2019, the Court entered a preliminary injunction enjoining both Sheriff Shoar and Gene Spaulding, in his official capacity as Director of the Florida Highway Patrol ("FHP"), from enforcing § 316.2045 against Mr. Vigue during the pendency of this case. (Doc. 32). In so doing, the Court relied on the decisions of two other district courts in the Eleventh Circuit that found § 316.2045 unconstitutional and issued preliminary and permanent injunctions, as well as on the Florida Attorney General's opinion that subsequent amendments have not cured the statute's constitutional infirmities. Id. at 3–5. The Court declined, however, to extend the preliminary injunction to § 337.406 because at that time, Mr. Vigue had "not sufficiently shown he ha[d] standing to obtain an injunction against enforcement of a statute under which he ha[d] not been cited." Id. at 3 n.1. The Court limited injunctive relief to Mr. Vigue only. Id. at 7.

On August 16, 2019, in response to the preliminary injunction (Doc. 32), Sheriff Shoar enacted Policy 41.39 for the St. Johns County Sheriff's Office ("SJSO") which states that officers are not to enforce § 316.2045(2)–(4), are to limit enforcement of §§ 316.2045(1) and 337.406, and are to receive training regarding the policy change.[1] (Doc. 59-16). The policy is a response to litigation and may be changed depending on the outcome of this case. (Docs. 59-16; 59-8 at 17:1–16, 59:1–19, 61:19–20). Additionally, Sheriff's deputies were told not to arrest, cite, or stop Mr. Vigue for violations of either statute unless he was committing other crimes. (Docs. 59-8 at 81–98; 59-10 at 21:24–22:19; 59-5 at 33:8–15; 59-4 at 28:11–25; 59-6 at 43:6–15; 59-11 at 36:19–25).

B. Florida Highway Patrol Settlement

***2** Mr. Vigue originally brought this lawsuit against both Sheriff Shoar and FHP. (See Doc. 1). The Office of the Florida Attorney General represented FHP. (Doc. 15). The Court anticipated that the Attorney General, charged with defending Florida laws, would provide a comprehensive argument regarding the constitutionality of §§ 316.2045 and 337.406, and that Sheriff Shoar would be important, though not primary, to that discussion.

However, on October 28, 2019, FHP settled with Mr. Vigue. (Docs. 45, 45-1). Almost identical to the language of Sheriff Shoar's Policy 41.39, FHP agreed to prohibit enforcement of § 316.2045(2)–(4), limit its enforcement of § 316.2045(1) and § 337.406, provide FHP officers with related training, and circulate a bulletin regarding its new enforcement scheme.[2] (Doc. 45-1). The Florida Department of Highway Safety and Motor Vehicles, of which FHP is one component, agreed to remove § 316.2045(2)–(4) from the Uniform Traffic Citations, communicate its enforcement policy to various law enforcement entities, include edited versions of the statutes at issue in its annual package of requested legislation, and provide Mr. Vigue's counsel with a report of arrests and citations under the statutes. Id. The agreeement also stated that Mr. Vigue would continue litigation against Sheriff Shoar, seeking an order to permanently enjoin enforcement of §§ 316.2045 and 337.406, and that the Florida Attorney General retained authority to intervene to defend the statutes, though she has not done so.[3] Id. Thus, FHP has agreed not to enforce the statutes at issue and is no longer a party to this lawsuit, while Sheriff Shoar has decided to continue to defend the case. The Court proceeds in that context.

C. Enforcement of §§ 316.2045 and 337.406 Prior to Preliminary Injunction

Before this lawsuit, Sheriff Shoar had not issued formal written guidance, policies, or directives regarding how to enforce §§ 316.2045 or 337.406. (Doc. 59-8 at 48:13–20, 50:8–20). From 2016 to 2019, deputies used their own discretion to issue citations and warnings to Mr. Vigue under §§ 316.2045 and 337.406. (Docs. 59-5 at 10:8–11:3; 59-9 at 20:24–21:6; 59-6 at 49:11–16; 59-10 at 20:23– 21:14). Between January 17, 2017 and July 29, 2019, the SJSO states that it received fifty-four calls for assistance related to Vigue standing in roadways. (Doc. 66 at 3). Mr. Vigue, for his part, says that he has felt harassed by Sheriff's deputies and does not try to cause any traffic issues when he holds his sign requesting charitable donations.[4] (Doc. 60-9). The Court enumerates the relevant warnings, citations, and arrests that Mr. Vigue has received under each of the statutes below.

i. Mr. Vigue has been cited under § 316.2045.

***3** Section 316.2045(1) prohibits obstructing the use of public streets, highways, and roads. Violations of § 316.2045(1) may result in noncriminal traffic citations. § 316.2045(1). Section 316.2045(1) states:

> It is unlawful for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, by standing or approaching motor vehicles thereon, or by endangering the safe movement of vehicles or pedestrians traveling thereon; and any person or persons who violate the provisions of this subsection, upon conviction, shall be cited for a pedestrian violation, punishable as provided in chapter 318.

§ 316.2045(1).

Sheriff's deputies have issued warnings or citations to Mr. Vigue under § 316.2045(1) six times:

- June 28, 2016 – Guilty, paid fine on December 21, 2016. (Docs. 2-7 at 2–3; 60-1).
- October 2, 2018 – Dismissed on December 27, 2018. (Docs. 2-7 at 14–15; 60-4).
- October 28, 2018 – Issued written traffic warning. (Doc. 59-2 at 1).
- January 8, 2019 – Dismissed on January 10, 2019. (Doc. 2-7 at 23– 24).
- March 7, 2019 – Dismissed on May 17, 2019. (Doc. 23 at 6; 59-1 at 1).
- March 11, 2019 – Dismissed on May 9, 2019. (Doc. 23 at 7; 59-1 at 1).

Violations of § 316.2045(2) are more serious and may result in second-degree misdemeanor charges. Like § 316.2045(1), § 316.2045(2) prohibits obstructing the use of public streets,

highways, and roads, but § 316.2045(2) specifically disallows individuals from obstructing roads to solicit when they have no permit. Section 316.2045(2) grants an exception to the permit requirement for 501(c)(3) organizations and their representatives on streets and roads not maintained by the state, and the statute cross-references the other law that Mr. Vigue claims is unconstitutional, § 337.406. Section 316.2045(2) provides that:

> It is unlawful, without proper authorization or a lawful permit, for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by any of the means specified in subsection (1) in order to solicit. Any person who violates the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Organizations qualified under s. 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, or persons or organizations acting on their behalf are exempted from the provisions of this subsection for activities on streets or roads not maintained by the state. Permits for the use of any portion of a state-maintained road or right-of-way shall be required only for those purposes and in the manner set out in s. 337.406.

§ 316.2045(2).

Sheriff's deputies have cited or arrested Mr. Vigue under § 316.2045(2) seven times:

- April 18, 2017 – Nolle prossed on June 2, 2017. (Docs. 2-7 at 4–5; 60-2; 59-1 at 1).
- November 25, 2017 – No information on disposition. (Docs. 2-7 at 11–13; 60-3; 59-1 at 1).
- November 13, 2018 – Arrested and booked into St. Johns County Jail; nolle prossed on December 2, 2018. (Docs. 2-7 at 16–22; 60-5; 59-1 at 1).

*4 • January 8, 2019 – Arrested and booked into St. Johns County Jail; nolle prossed on January 15, 2019. (Docs. 2-7 at 25–31; 60-7; 59-1 at 1).

- January 13, 2019 – Arrested and booked into St. Johns County Jail; nolle prossed on February 11, 2019.[5] (Doc. 2-7 at 32–36; 59-1 at 1).
- February 13, 2019 – Nolle prossed on April 26, 2019. (Doc. 23 at 3; 59-1 at 9).
- February 22, 2019 – Nolle prossed on March 12, 2019. (Doc. 23 at 4–5; 59-1 at 1).

Section 316.2045(3) elaborates on the conditions under which 501(c)(3) organizations may be exempt from the requirement to obtain a permit from a local government for the use of streets, roads, or rights-of-way not maintained by the state.[6] Finally, § 316.2045(4) clarifies that no part of the law "shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity." Thus, representatives of political campaigns may also lawfully solicit donations without a permit.

ii. Mr. Vigue has been warned under § 337.406 and other statutes.

Violation of § 337.406 is a second-degree misdemeanor offense. § 337.406(5). Like § 316.2045, § 337.406(1) prohibits solicitation without a permit, but it applies to rights-of-way of state transportation facilities and lists various prohibited uses of those rights-of-way in addition to solicitation. Section 337.406(1) provides:

> *5 Except when leased as provided in s. 337.25(5) or otherwise authorized by the rules of the department, it is unlawful to make any use of the right-of-way of any state transportation facility, including appendages thereto, outside of an incorporated municipality in any manner that interferes with the safe and efficient movement of people and property from place to place on the transportation facility. Failure to prohibit the use of right-of-way in this manner will endanger the health, safety, and general welfare of the public by causing distractions to motorists, unsafe pedestrian movement within travel lanes, sudden stoppage or slowdown of traffic, rapid lane changing and other dangerous traffic movement, increased vehicular accidents, and motorist injuries and fatalities. Such prohibited uses include, but are not limited to, the free distribution or sale, or display or solicitation for free distribution or sale, of any merchandise, goods, property or services; the solicitation for charitable purposes; the servicing or repairing of any vehicle, except the rendering of emergency service; the storage of vehicles being serviced or repaired on abutting property or elsewhere; and the display of advertising of any sort, except that any portion of a state transportation facility may be used for an art festival, parade, fair, or other special event if

> permitted by the appropriate local governmental entity. Local government entities may issue permits of limited duration for the temporary use of the right-of-way of a state transportation facility for any of these prohibited uses if it is determined that the use will not interfere with the safe and efficient movement of traffic and the use will cause no danger to the public. The permitting authority granted in this subsection shall be exercised by the municipality within incorporated municipalities and by the county outside an incorporated municipality. Before a road on the State Highway System may be temporarily closed for a special event, the local governmental entity which permits the special event to take place must determine that the temporary closure of the road is necessary and must obtain the prior written approval for the temporary road closure from the department. Nothing in this subsection shall be construed to authorize such activities on any limited access highway. Local governmental entities may, within their respective jurisdictions, initiate enforcement action by the appropriate code enforcement authority or law enforcement authority for a violation of this section.

Sheriff's deputies have warned Mr. Vigue twice under § 337.406:

***6** • December 7, 2015 – Written traffic warning. (Doc. 59-2 at 5).

• December 31, 2017 – Verbal warning.[7] (Doc. 59-2 at 9).

Mr. Vigue has not been cited or arrested under § 337.406. (See Doc. 59-2). Deputies' reports reflect that Mr. Vigue received verbal warnings in three other instances:

- August 11, 2015 – Verbal warning for violation of unspecified statutes. (Doc. 59-2 at 3).
- December 7, 2016 – Verbal warning for violation of unspecified statutes. (Doc. 59-2 at 7).
- April 1, 2019 — Verbal warning for soliciting charitable donations in an intersection.[8] (Doc. 59-2 at 13).

Following the Court's preliminary injunction (Doc. 32), pending prosecutions against Mr. Vigue were dismissed. (Docs. 59-1). All but one of the prosecutions against Mr. Vigue under § 316.2045 were dismissed or nolle prossed, and Mr. Vigue was never found guilty of the other charges. (Docs. 59-1, 2–7, 23).

D. History of Florida Non-Solicitation Statutes

This Court is not the first to address the constitutionality of §§ 316.2045 or 337.406. In this District in 2003, the Honorable John Antoon II issued a permanent injunction against enforcement of § 316.2045, declaring the statute facially unconstitutional. Bischoff v. Florida, 242 F. Supp. 2d 1226 (M.D. Fla. 2003). In 2006, the Honorable Stephan P. Mickle in the Northern District of Florida issued a preliminary injunction as to both statutes at issue here. Chase v. City of Gainesville, No. 1:06-CV-044-SPM/AK, 2006 WL 2620260 (N.D. Fla. Sept. 11, 2006). Subsequently, the parties in Chase agreed to have the court permanently enjoin enforcement of §§ 316.2045 and 337.406 and find both statutes facially unconstitutional. Chase v. City of Gainesville, No. 1:06-CV-44-SPM/AK, 2006 WL 3826983 (N.D. Fla. Dec. 28, 2006).

***7** In 2007, the Florida Legislature amended § 316.2045(3) to exempt certain 501(c)(3) organizations from the permit requirements for charitable solicitation and to establish conditions with which the organizations must comply to take advantage of that exemption. Fla. Att'y Gen. Op. 2007-50 (2007). On November 7, 2007, Florida Attorney General Bill McCollum issued an opinion that the amendments did not address the constitutional infirmities identified in Bischoff and recommended that the Florida Legislature address those issues. Id.[9] To date, the Legislature has not done so.

Both §§ 316.2045 and 337.406 reference a permitting scheme. However, there is not (and never has been) a permit process established in St. Johns County, St. Augustine, or the state of Florida for Mr. Vigue or other individuals wishing to engage in charitable solicitation on public streets, highways, or roads. (Doc. 59-3 at 1–3). Thus, Mr. Vigue does not have such a permit, and Sheriff Shoar does not point to any avenue through which he may obtain one to solicit donations lawfully. Id. Mr. Vigue is not alone in soliciting charity on St. Johns County roadways, and authorities have questioned other individuals about whether they possessed appropriate permits. (Docs. 59-9 at 27:14–28:2, 59-10 at 15:15–25, 59-4 at 35:24–36:15, 59-14 at 18:17–19:1). Authorities have enforced §§ 316.2045 and 337.406 against others through citations, arrests, and warnings. (Docs. 2-4, 59-15, 59-11 at 13:14–14:8, 59-4 at 36:2–15, 59-10 at 19:12–14).

E. Procedural Posture

The parties filed cross-motions for summary judgment (Docs. 59, 60), and the Court received responses to both motions (Docs. 65, 66). There are no disputed issues of material fact.[10] Though Mr. Vigue asserts that the statutes are unconstitutional facially and as-applied, he confirmed through counsel at the hearing that he now asks for a ruling only as to the facial challenge. (Doc. 75 at 50). Mr. Vigue requests that the Court enter a declaratory judgment that both statutes are facially unconstitutional in violation of the First and Fourteenth Amendments; that the Court enter a permanent injunction prohibiting Sheriff Shoar from enforcing both statutes; and that the Court enter judgment in favor of Mr. Vigue, finding Sheriff Shoar liable for damages for past enforcement of the statutes against Mr. Vigue, in an amount to be determined at trial. (Doc. 59 at 4). Sheriff Shoar claims that the evidence "does not support the existence of the alleged official policy, practice and/or custom of the Sheriff." (Doc. 60 at 2). He also maintains that Mr. Vigue's challenge to § 337.406 should be denied for lack of standing and asks that the permanent injunction be denied in its entirety. Id.

II. DISCUSSION

Section 1983 establishes a cause of action against state officials who violate constitutional rights while acting under color of state law. 42 U.S.C. § 1983 (2018). Mr. Vigue mounts a facial challenge as to both statutes at issue. (Docs. 59, 75). "A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." United States v. Salerno, 481 U.S. 739, 745 (1987). In contrast to an as-applied challenge, a facial challenge "seeks to invalidate a statute or regulation itself." United States v. Frandsen, 212 F.3d 1231, 1235 (11th Cir. 2000). Here, Mr. Vigue challenges the constitutionality of §§ 316.2045 and 337.406 as content-based, overbroad, vague prior restraints on speech, and adds that § 316.2045 unconstitutionally favors 501(c)(3) organizations and campaign speech. (Doc. 59).

A. Standing to Challenge §§ 316.2045 and 337.406

***8** For constitutional standing to challenge the statutes, Mr. Vigue must show (1) that he suffered an injury in fact, or invasion of a legally protected interest, that is concrete and particularized as well as actual and imminent; (2) that there is a causal connection between that injury and the alleged conduct, traceable to the action of the Defendant; and (3) that it is likely and not merely speculative that the injury will be redressed by a favorable decision in this case. Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992). When a lawsuit challenges the legality of government action or inaction:

> [T]he nature and extent of facts that must be averred (at the summary judgment stage)...in order to establish standing depends considerably upon whether the Plaintiff is himself an object of the action (or foregone action) at issue. If he is, there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it.

Id. at 561–62.

Soliciting charity is constitutionally protected expression. See Vill. of Schaumburg v. Citizens for a Better Env't, 444 U.S. 620, 632 (1980) ("[C]haritable appeals for funds, on the street or door to door, involve a variety of speech interests —communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes —that are within the protection of the First Amendment."); Smith v. City of Fort Lauderdale, 177 F.3d 954, 956 (11thCir. 1999) ("Like other charitable solicitation, begging is speech entitled to First Amendment protection."). Mr. Vigue gained a legally cognizable interest in challenging § 316.2045 when St. Johns County law enforcement took concrete action against him with a combined twelve arrests and citations under § 316.2045. (Docs. 2-7, 23, 59-1). Those citations demonstrate that Mr. Vigue was the object of government action under the statute. There is "little question" that action under the statute caused him injury, and a judgment permanently preventing the enforcement of § 316.2045 would directly redress that injury. Thus, Mr. Vigue has standing to bring this § 1983 action challenging § 316.2045.

Mr. Vigue also has standing to challenge § 337.406 even though he has not been cited or arrested under the statute. Threats of arrest for engaging in free speech activities are evidence of "an actual and concrete injury wholly adequate to satisfy the injury in fact requirement of standing." Bischoff v. Osceola Cty., 222 F.3d 874, 884 (11th Cir. 2000). When there is a credible threat of prosecution, a plaintiff is not required to expose himself to actual arrest and prosecution to have standing to challenge statutory provisions. Steffel v. Thompson, 415 U.S. 452, 459 (1974) (finding that plaintiff had standing to challenge constitutionality of trespass statute after he was warned twice to stop handbilling and told he

would be arrested if he repeated such conduct); see also Wilson v. State Bar of Ga., 132 F.3d 1422, 1428 (11th Cir. 1998) ("[S]tanding exists at the summary judgment stage when the plaintiff has submitted evidence indicating an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution." (internal quotation omitted)).

Bischoff sheds light on this issue. The case went to the Eleventh Circuit in 2000 on the issue of standing prior to the ultimate ruling from Judge Antoon in 2003. Plaintiffs Bischoff and Stites were not actually arrested during the relevant demonstration, but other protesters were arrested. Bischoff, 222 F.3d at 877. The Eleventh Circuit reasoned that the threat of arrest under the challenged statutes was adequate to show injury in fact to establish standing. Id. at 884. Thus, Bischoff and Stites were ultimately found to have standing when "[b]oth Plaintiffs testified that they were threatened with arrest for engaging in the same handbilling conduct that resulted in the arrest and charge under the challenged statutes of [other protesters]." 222 F.3d at 885.

***9** Similarly, Mr. Vigue received one written traffic warning in 2015 and one verbal warning in 2017 under § 337.406 but was never arrested or cited under the statute. (Doc. 59-2). On December 31, 2017, when Mr. Vigue was threatened with arrest under § 337.406, an officer informed Mr. Vigue that he was "acting contrary to FS 337.406" and "would be documented and appropriate law enforcement action would follow" if Mr. Vigue violated the statute again. (Doc. 59-2 at 9). Mr. Vigue ultimately satisfies the requirement for standing and need not expose himself to further threats to challenge the constitutionality of § 337.406. As in Bischoff, "it is clear that a decision in [Mr. Vigue's] favor declaring [§ 337.406] unconstitutional, either on [its] face or as applied to [Mr. Vigue], would redress the injury of being threatened with arrest for engaging in constitutionally protected activity." 222 F.3d at 885.

B. Sheriff's Liability Under 42 U.S.C. § 1983 in his Official Capacity

Sheriff Shoar makes little effort to defend the facial constitutionality of the statutes. (Docs. 60; 75). Instead, his primary argument is that Mr. Vigue may not hold him liable under 42 U.S.C. § 1983 because he has not established a custom, policy, or practice of enforcing the statutes at issue. Id.

Local governments may be held liable under § 1983 only when a constitutional deprivation arises from a governmental policy or custom. Monell v. Dep't of Soc. Servs. of New York, 436 U.S. 658, 694 (1978). "A policy is a decision that is officially adopted by the municipality, or created by an official of such rank that he or she could be said to be acting on behalf of the municipality....A custom is a practice that is so settled and permanent that it takes on theforce of law." Cooper v. Dillon, 403 F.3d 1208, 1221 (11th Cir. 2005) (quoting Sewell v. Town of Lake Hamilton, 117 F.3d 488, 489 (11th Cir. 1997)). "[I]t is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." Monell, 436 U.S. at 694. The government's official policy or custom must be the "moving force" behind the constitutional violation. Id.; see also Bd. of Cty. Comm'rs of Bryan Cty. v. Brown, 520 U.S. 397, 404 (1997) (stating that a municipality, through its deliberate conduct, must be the "moving force" behind an alleged injury for § 1983 liability).

In Cooper, the Eleventh Circuit answered the question of whether a police chief enforcing a state law may subject a municipality to liability under § 1983. Cooper, 403 F.3d at 1223. The Court determined that a police chief's decision to enforce a Florida statute constituted the adoption of a policy sufficient to trigger municipal liability under § 1983. Id. at 1221. Chief Dillon, like Sheriff Shoar, argued that enforcement of a state law could not subject him to liability. Id. The Eleventh Circuit disagreed, stating:

> Dillon was clothed with final policymaking authority for law enforcement matters in Key West and in this capacity he chose to enforce the statute against Cooper. While the unconstitutional statute authorized Dillon to act, it was his deliberate decision to enforce the statute that ultimately deprived Cooper of constitutional rights and therefore triggered municipal liability. Thus, Dillon's choice to enforce an unconstitutional statute against Cooper constituted a deliberate choice to follow a course of action...made from among various alternatives by the official or officials responsible for establishing final policy. Accordingly, we find that the City of Key West, through the actions of Dillon, adopted a policy that caused the deprivation of Cooper's constitutional rights which rendered the municipality liable under § 1983.

*10 Id. at 1223 (internal citations and quotations omitted).

Cooper bears a striking resemblance to this case. Chief Dillon oversaw enforcement of the state statute on only one occasion and was held liable, while Sheriff Shoar has overseen repeated instances of enforcing § 316.2045 and § 337.406 over a four-year period.[11] (Docs. 2-7, 23). Like Mr. Vigue, Cooper argued that the statute improperly abridged First Amendment freedom. Cooper, 403 F.3d at 1213. The Court ultimately found that the statute was "a content-based restriction that chill[ed] the exercise of fundamental First Amendment rights without a compelling justification for doing so and accordingly [was] unconstitutional." Id. at 1223.

The Court does not overlook that Sheriff Shoar's role derives from Art. VIII, § 1(d), FLA. CONST., a different constitutional provision than those regarding municipalities and city police. "Whether an official has final policymaking authority is a question of state law." Church v. City of Huntsville, 30 F.3d 1332, 1342 (11th Cir. 1994). Courts have consistently held that "police chiefs in Florida have final policymaking authority in their respective municipalities for law enforcement matters" under state and local law. See, e.g., Cooper, 403 F.3d at 1222 (citing various statutes); Davis v. City of Apopka, 734 Fed. App'x 616, 619 (11th Cir. 2018) (citing to the Florida Constitution, local ordinances, and Cooper to determine that a city's police chief was a final policymaker); Rojas v. City of Ocala, 315 F. Supp. 3d 1256, 1288 (M.D. Fla. 2018) (analyzing the Florida Constitution, state law, and local ordinances to conclude that a police chief had authority that could subject a city to liability). Similarly, under the Florida Constitution, sheriffs are elected constitutional officers who can exercise final policymaking authority regarding law enforcement in their counties. Art. VIII, § 1(d), FLA. CONST. They have "absolute control over the selection and retention of deputies in order that law enforcement be centralized in the county, and in order that the people be able to place responsibility upon a particular officer for failure of law enforcement." Szell v. Lamar, 414 So.2d 276, 277 (Fla. 5th DCA 1982) (citing § 30.53, FLA. STAT. (1981)). Said another way, "[i]t is essential to law enforcement in the various counties of the State that the people shall be able to place responsibility upon a particular individual, the sheriff." Blackburn v. Brorein, 70 So. 2d 293, 298 (Fla. 1954).

*11 "[C]ases on the liability of local governments under § 1983 instruct us to ask whether governmental officials are final policymakers for the local government in a particular area, or on a particular issue." McMillian v. Monroe Cty., 520 U.S. 781, 785 (1997). Under Florida law, Sheriff Shoar is a final policymaker in St. Johns County for the enforcement of the two statutes at issue here. His position as a final policymaker for the St. Johns County is directly analogous to Chief Dillon's position as a final policymaker for Key West in Cooper.

Sheriff Shoar claims that a review of the relevant testimony reveals that "there was no promulgated policy to enforce these particular statutes."[12] (Doc. 66 at 8). However, local government liability attaches where a "deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." Pembaur v. City of Cincinnati, 475 U.S. 469, 470 (1986). "[I]f a municipality decides to enforce a statute that it is authorized, but not required, to enforce, it may have created a municipal policy." Vives v. City of New York, 524 F.3d 346, 353 (2d Cir. 2008). The statutes being challenged here authorized Sheriff Shoar to act, but that is not the issue; the issue is whether Sheriff Shoar made a deliberate decision to enforce the statutes that ultimately deprived Mr. Vigue of his constitutional rights.

St. Johns County Sheriff's deputies arrested, cited, and warned Mr. Vigue from 2016 to 2019 under § 316.2045 and § 337.406 on at least fifteen occasions. (Docs. 2-7, 23). In doing so, they acted within SJSO unwritten policy from before this litigation. (Doc. 59-8 at 97: 4–13). Sheriff Shoar, as the final authority in SJSO, has the authority to decide whether to enforce a Florida statute as a matter of interpretation and enforcement discretion. Id. at 28:15–19. The record demonstrates that Sheriff Shoar made the deliberate decision (even following Bischoff, Chase, and the Attorney General's criticism of the 2007 amendment) to enforce the statutes. That the "on the street" decisions to warn, cite, and arrest Mr. Vigue were made by his deputies instead of the Sheriff himself does not matter. Quoting Cooper: "[Sheriff Shoar] was clothed with final policymaking authority for law enforcement matters in [St. Johns County] and in this capacity he chose to enforce the statute against [Mr. Vigue]." 403 F.3d at 1223.

At the hearing, Sheriff Shoar's counsel argued that it was not the Sheriff's role to justify the language of the statute because he did not draft or enact it. (Doc. 75 at 19:19–27:3). As a result, he claimed, Sheriff Shoar should be insulated from legal exposure. Id. But in the wake of Cooper, and with Sheriff

Shoar's deliberate decision to repeatedly enforce §§ 316.2045 and 337.406, Sheriff Shoar may be held liable under § 1983 in his official capacity.

C. The Constitutionality of § 316.2045

The Court's role in deciding whether a state law is constitutional is summarized well by Judge Antoon in Bischoff:

> Federal courts are courts of limited jurisdiction. The courts do not reach out to reform or rewrite state statutes that seem to require some improvement. Neither do the federal courts strike down valid laws of which they disapprove. It is the state legislature's duty to enact valid laws, and the Court's duty to declare what the law is, and how the law applies to the facts. The federal courts do not substitute laws they prefer for the will of the elected state legislature. But where parties in a controversy ask a federal court to declare whether a state law violates the Constitution of the United States, the Court must not shrink from its duty to adjudicate the question presented.

***12** 242 F. Supp. 2d at 1241. Here, the Court is asked to declare whether § 316.2045 violates the First and Fourteenth Amendments.[13]

Every court previously asked to evaluate § 316.2045 has declared the statute unconstitutional. Judge Antoon provided an in-depth analysis of § 316.2045 and concluded that the statute was unconstitutional for multiple reasons under First and Fourteenth Amendment jurisprudence. Bischoff, 242 F. Supp. 2d. 1226. In 2006, Judge Mickle adopted the logic and rationale of the Bischoff decision to grant a preliminary injunction enjoining enforcement of § 316.2045, which was later converted to a permanent injunction through settlement, finding that the statute violated the First and Fourteenth Amendments. Chase, 2006 WL 3826983, at *1–2. Finally, the Honorable William Terrell Hodges found a similar panhandling ordinance unconstitutional in Booher v. Marion County, No. 5:07-CV-00282WTHGRJ, 2007 WL 9684182 (M.D. Fla. Sept. 21, 2007).

The Court sees no reason to depart from the analysis of those courts. Accordingly, the Court limits discussion here to recent case law and the ineffectiveness of the 2007 amendments.

i. Section 316.2045 remains an unconstitutional content-based prohibition on speech in public fora.

Content-based regulations of speech in public fora target speech based on its communicative content and "distinguish favored speech from disfavored speech on the basis of the ideas or viewpoints expressed." Cooper, 403 F.3d at 1215 (quoting Turner Broad. Sys., Inc. v. FCC, 512 U.S. 622, 643 (1994)); see also Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd., 502 U.S. 105, 115 (1991). Content-based regulations are subject to strict scrutiny. "Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." Reed v. Town of Gilbert, 576 U.S. 155, 163 (2015) (citations omitted). In Reed, the Supreme Court clarified that "a speech regulation targeted at specific subject matter is content-based even if it does not discriminate among viewpoints within that subject matter." Id. at 169 (finding town code to be content-based because the application of the code to public signs depended on the communicative content of the signs). Courts must:

> [C]onsider whether a regulation of speech "on its face" draws distinctions based on the message a speaker conveys. Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.

Id. at 163-64 (internal citation omitted).

Following Reed, multiple statutes that restrict charitable solicitation have been viewed as content-based and struck down because they cannot survive strict scrutiny. In this district, for example, the Honorable Steven D. Merryday permanently enjoined the City of Tampa from enforcing an ordinance that banned charitable solicitation in certain areas. Homeless Helping Homeless, Inc. v. City of Tampa, No. 8:15-CV-1219-T-23AAS, 2016 WL 4162882, at *5–6 (M.D. Fla. Aug. 5, 2016). Also applying Reed, the Seventh Circuit and a Massachusetts district court found that anti-panhandling statutes were content-based and violated free speech rights under the First Amendment. Norton v. City of Springfield, 806 F.3d 411 (7th Cir. 2015) (striking down statute as unconstitutional when it prohibited oral requests for

immediate payment of money but allowed signs requesting money and oral requests to send money later); Thayer v. City of Worcester, 576 U.S. 1048 (2015) (remanding case to district court for further consideration in light of Reed); Thayer v. City of Worcester, 144 F. Supp. 3d 218 (D. Mass. 2015) (concluding that statute prohibiting begging, panhandling, or soliciting in an aggressive manner was content-based, subject to strict scrutiny, and unconstitutional).

***13** Even before Reed, the court in Bischoff found that § 316.2045 regulated speech on the basis of ideas expressed and was therefore content-based.

> Section 316.2045 selectively proscribes protected First Amendment activity—i.e., it impermissibly prefers speech by § 501(c)(3) charities and by persons who are engaged in "political campaigning" over all other activity that retards traffic, without any showing that the latter is more disruptive than the former.
>
> Section 316.2045 makes the legality of conduct that retards traffic depend solely on the nature of the message being conveyed. Said differently, the Florida statute facially prefers the viewpoints expressed by registered charities and political campaigners by allowing ubiquitous and free dissemination of their views, but restricts discussion of all other issues and subjects. Section 316.2045 of the Florida Statutes, therefore, is presumptively invalid under the Equal Protection Clause and the First Amendment of the United States Constitution because it imposes content-based restrictions on speech in a traditional public forum.

242 F. Supp. 2d at 1256 (internal citations omitted). This analysis of § 316.2045 remains true for the current version of the statute. Most of the content-based restrictions that made the law facially unconstitutional in Bischoff remain in the current version of the law. In particular, § 316.2045(2) still exempts 501(c)(3) organizations, and persons or organizations acting on their behalf, from the permitting requirements for streets or roads not maintained by the state, and it still, confusingly, conditions the need for permits on state-maintained roads or rights-of-way "only for those purposes and in the manner set out in s. 337.406." (More about § 337.406 later.)

The language of § 316.2045(4) is identical to the 2003 version of the statute when Bischoff was decided: "[n]othing in this section shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity." § 316.2045(4). The law impermissibly favors organizational, campaign, and other group speech over other types of speech, like individual charitable solicitation. Thus, § 316.2045 remains a presumptively invalid content-based regulation on protected speech. See, e.g., R.A.V. v. City of St. Paul, 505 U.S. 377, 382 (1992) ("Content-based regulations are presumptively invalid.").[14] The Bischoff court further concluded that § 316.2045 could not survive strict scrutiny, as is required of content-based regulations of speech in public fora, because it was not narrowly tailored to meet a compelling state interest. 242 F. Supp. 2d at 1236-37, 1256-59.

ii. The Court adopts the reasoning of Bischoff.

***14** Bischoff identified additional constitutional infirmities in § 316.2045, deeming the statute content-based and vague, insufficiently tailored to serve the compelling interest of safety, overbroad, and an unconstitutional prior restraint on speech. 242 F. Supp. 2d at 1250–59. At the preliminary injunction stage, the Court relied on Bischoff and Chase to support its finding that Mr. Vigue had a substantial likelihood of success on the merits of his claim that § 316.2045 is unconstitutional. (Doc. 32). There has been no material change to the statute since Bischoff. Reed only strengthens Bischoff's holding. Thus, the Court adopts the reasoning in Bischoff regarding § 316.2045. Florida Statute § 316.2045 is facially unconstitutional.

D. The Constitutionality of § 337.406

Mr. Vigue contests the validity of § 337.406 on the grounds that it is unconstitutionally overbroad, vague, imposes an improper prior restraint on speech, and violates equal protection. (Doc. 59 at 19).

Section 337.406 has received some criticism in the courts, but it has not garnered as much attention as § 316.2045. The court in Bischoff commented that § 337.406 contained "opaque and undecipherable permit provisions," which have remained unchanged, but § 337.406 was not directly at issue in that case. 242 F. Supp. 2d at 1256.

In News & Sun-Sentinel Co. v. Cox, 702 F. Supp. 891 (S.D. Fla. 1988), a court in the Southern District of Florida found a prior version of § 337.406 unconstitutional. There, a newspaper publisher sued the City of Fort Lauderdale, the city commission, and the police chief for enforcing § 337.406, which prohibited the commercial use, including

the sale of newspapers, of state-maintained roads. Id. at 893–94. The Cox court found that the prior version of § 337.406 was a content-neutral regulation of speech in public fora that was not narrowly tailored to serve a significant government interest and was therefore unconstitutional. Id. at 900–03. At that time, § 337.406 targeted commercial activity, whereas now, it prohibits using state rights-of-way of state transportation facilities "in any manner that interferes with the safe and efficient movement of people and property from place to place on the transportation facility." § 337.406(1); see Sentinel Commc'ns Co. v. Watts, 936 F.2d 1189, 1191 n.1, 1195 n.6 (11th Cir. 1991).

In 2006, although the new version of § 337.406 was in use at the time, the Court in Chase found "no reason to depart from the thorough analys[is] undertaken" in Cox and granted a preliminary injunction, finding a substantial likelihood that § 337.406 was unconstitutional. Chase, 2006 WL 2620260, at *1. The Court analyzes the new version of the statute here.

i. Section 337.406(1) imposes an unconstitutional prior restraint.

A prior restraint on speech exists "when the government can deny access to a public forum before the expression occurs." United States v. Frandsen, 212 F.3d 1231, 1236–37 (11th Cir. 2000). Prior restraints "are not per se unconstitutional," but there is a "strong presumption against their constitutionality." Id. at 1237. Attempts to subject the exercise of First Amendment freedoms to the prior restraint of a license are unconstitutional when they lack narrow, objective, and definite standards to guide the licensing authority. Shuttlesworth v. Birmingham, 394 U.S. 147, 150–51 (1969). A permissible prior restraint must include "adequate procedural safeguards to avoid unconstitutional censorship." Frandsen, 212 F.3d at 1239 n.7. Facially valid prior restraints require: (1) the burden of going to court to suppress speech and of proof once in court rests upon the government; (2) any restraint prior to a judicial determination may only be for a specified brief period to preserve the status quo; and (3) an avenue for prompt judicial review of the censor's decision must be available. Id. at 1238; Freedman v. Maryland, 380 U.S. 51, 58–59 (1965).

***15** Section 337.406(1) articulates a prior restraint on speech because anyone who wishes to solicit charitable donations on state rights of way must first obtain a permit:

> Local government entities may issue permits of limited duration for the temporary use of the right-of-way of a state transportation facility for any of these prohibited uses [including solicitation for charitable purposes] if it is determined that the use will not interfere with the safe and efficient movement of traffic and the use will cause no danger to the public. The permitting authority granted in this subsection shall be exercised by the municipality within incorporated municipalities and by the county outside an incorporated municipality.

§ 337.406(1).

The permitting scheme described in § 337.406(1) does not include adequate procedural safeguards. It includes no explicit standards for issuance other than general safety, no time limits, and no review process for denials. Local governments seem to have unfettered discretion not only regarding who receives a permit, but also regarding whether and how to institute a permitting procedure in the first place. This is brought into sharp focus here because neither the State, St. Johns County, nor Sheriff Shoar have ever created a process by which a person can obtain a permit under § 337.406(1), and the statute does not require them to do so. Thus, there is literally no way for Mr. Vigue to comply with the permitting requirement, even if he wanted to.

Courts have routinely struck down permitting schemes with similar deficiencies. FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 225–26 (1990) (stating that "cases addressing prior restraints have identified two evils that will not be tolerated," including unbridled government discretion and lack of time constraints); Solantic, LLC v. City of Neptune Beach, 410 F.3d 1250, 1272 (11th Cir. 2005) (finding a sign code's permitting requirement to be "precisely the type of prior restraint on speech that the First Amendment will not bear" when it contained no time limit for decisions and vested officials with unbridled discretion); Frandsen, 212 F.3d at 1240 (finding that a permit requirement to hold meetings in public parks was an unconstitutional prior restraint because it did not provide time constraints); Lady J. Lingerie, Inc. v. City of Jacksonville, 176 F.3d 1358, 1363 (11th Cir. 1999) (finding that a zoning board licensing requirement for sexually oriented businesses was an unconstitutional prior restraint because it vested too much discretion in the zoning board). The permitting scheme in § 337.406(1) for charitable solicitation is an unconstitutional prior restraint on speech.[15]

ii. The prohibition on charitable solicitation in Section 337.406(1) is unconstitutional.

**16 Beyond the unconstitutional permitting scheme, § 337.406(1) is written in a somewhat confusing manner, so it is worth reiterating its provisions. First, § 337.406(1) bans certain conduct on rights-of-way of state transportation facilities and their appendages:

> Except when leased as provided in s. 337.25(5) or otherwise authorized by the rules of the department, it is unlawful to make any use of the right-of-way of any state transportation facility, including appendages thereto, outside of an incorporated municipality in any manner that interferes with the safe and efficient movement of people and property from place to place on the transportation facility.

§ 337.406(1). Next, it specifies the prohibition's purpose:

> Failure to prohibit the use of right-of-way in this manner will endanger the health, safety, and general welfare of the public by causing distractions to motorists, unsafe pedestrian movement within travel lanes, sudden stoppage or slowdown of traffic, rapid lane changing and other dangerous traffic movement, increased vehicular accidents, and motorist injuries and fatalities.

Id. Then, it gives examples of "prohibited uses:"

> Such prohibited uses include, but are not limited to, the free distribution or sale, or display or solicitation for free distribution or sale, of any merchandise, goods, property or services; the solicitation for charitable purposes; the servicing or repairing of any vehicle, except the rendering of emergency service; the storage of vehicles being serviced or repaired on abutting property or elsewhere; and the display of advertising of any sort, except that any portion of a state transportation facility may be used for an art festival, parade, fair, or other special event if permitted by the appropriate local governmental entity.

Id. (emphasis added).

Finally, the law imposes the previously discussed permitting scheme. Id.

Section 337.406(1) appears to provide a content-neutral, outright prohibition on activity that interferes with the flow of people and property, followed by content-based list of prohibited uses and an impermissible permit scheme. The statute's imprecision led Judge Antoon to comment on its "opaque and undecipherable permit provisions,"[16] led the Cox court to find an earlier version of the statute unconstitutional, 702 F. Supp. at 900-03, and led the Chase court to find the current version of the statute unconstitutional, 2006 WL 3826983, at *1–2. The Court concurs with those courts, and additionally, finds that the current version of § 337.406(1) is overbroad as it pertains to charitable solicitation.

**17 Here, without the impermissible and unavailable permitting scheme, the remainder of § 337.406(1) prohibits all "solicitation for charitable purposes" on rights of way of state transportation facilities and appendages thereto. An outright prohibition on charitable solicitation is overbroad. Even if the statute is considered content-neutral, it must survive intermediate scrutiny—that is, the regulation must be narrowly tailored to serve a significant government interest and must leave open alternative channels of communication. See, e.g., McCullen v. Coakley, 573 U.S. 464, 477 (2014); see also United States v. Grace, 461 U.S. 171, 177 (1983). It cannot "burden substantially more speech than is necessary to further the government's legitimate interests." McCullen, 573 U.S. at 486 (internal quotation omitted). A narrowly tailored statute "targets and eliminates no more than the exact source of the 'evil' it seeks to remedy." Cox, 702 F. Supp. at 900 (quoting Frisby v. Schultz, 487 U.S. 474, 475 (1988)).

The Cox court found that § 337.406 was not narrowly tailored because the statute banned "any commercial activity by anyone, at any time, at any place on a state-maintained road." 702 F. Supp. at 901. Thus, the court concluded, it was not carefully drawn to meet the City's interests, made no attempt to restrict activity to certain times, failed to distinguish between children and adults who may be more safety-conscious, and failed to take into account that traffic hazards may vary. Id. Today, the same reasoning applies to the statute's ban on all charitable solicitation. The statute prohibits more than the exact source of evil that it seeks to remedy—solicitation that poses a true traffic safety threat.

In First Amendment cases, there exists a serious concern that overbroad laws may lead to a chilling effect on protected expression. See Nat'l Endowment for the Arts v. Finley, 524 U.S. 569, 582 (1998); Dombrowski v. Pfister, 380 U.S. 479, 487 (1965). Thus, courts invalidate statutes when "persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions provided by a statute susceptible of application to protected expression." Gooding v. Wilson, 405 U.S. 518,

521 (1972). When a statute implicates First Amendment rights, it must be written clearly and narrowly drawn. Section 337.406(1)'s provisions concerning charitable solicitation are not and are therefore unconstitutional.

E. First Amendment Freedom and Traffic Safety

The Supreme Court's articulation of why public streets, sidewalks, and parks are critical to First Amendment freedom resonates strongly in this case:

> It is no accident that public streets and sidewalks have developed as venues for the exchange of ideas. Even today, they remain one of the few places where a speaker can be confident that he is not simply preaching to the choir. With respect to other means of communication, an individual confronted with an uncomfortable message can always turn the page, change the channel, or leave the Web site. Not so on public streets and sidewalks. There, a listener often encounters speech he might otherwise tune out. In light of the First Amendment's purpose "to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail," this aspect of traditional public fora is a virtue, not a vice.

McCullen, 573 U.S. at 476 (internal citation omitted).

Mr. Vigue's right to free speech is vital. But to be sure, the Court finding § 316.2045 and portions of § 337.406(1) unconstitutional does not give Mr. Vigue and others carte blanche to solicit charity on roadways however they wish. "It requires neither towering intellect nor an expensive 'expert' study to conclude that mixing pedestrians and temporarily stopped motor vehicles in the same space at the same time is dangerous." Cox, 702 F. Supp. at 900 (quoting Int'l Soc. For Krishna Consciousness of New Orleans, Inc. v. City of Baton Rouge, 668 F. Supp. 527, 530 (M.D. La. 1987), aff'd, 876 F.2d 494 (5th Cir. 1989)). Thus, the Legislature may legislate on these topics so long as it strikes the careful balance between upholding First Amendment rights and ensuring traffic safety. Unfortunately, neither § 316.2045 nor § 337.406(1) meet this test.

***18** It is essential that law enforcement is not left without recourse for traffic safety problems posed by people blocking traffic in streets, asking for money or otherwise. In Booher, Judge Hodges stated that "concerns about traffic safety during the pendency of the injunction [were] adequately addressed by [other] existing laws." 2007 WL 9684182, at *4. Similarly, Mr. Vigue asserts that "there are other laws in place that better address pedestrian and vehicular safety," such as § 316.130. (Doc. 59 at 16). Florida's legitimate interest in road safety "can be better served by measures less intrusive than a direct prohibition on solicitation." Schaumburg, 444 U.S. at 637.

F. Severability

Having found portions of both statutes to be unconstitutional, the Court now turns to the question of whether those portions are severable from the rest of the statute. Severability is a question of state law. Wollschlaeger v. Governor, Fla., 848 F.3d 1293, 1317 (11th Cir. 2017). When, as here, there is no severability clause, the "key determination is whether the overall legislative intent is still accomplished without the invalid provisions." State v. Catalano, 104 So. 2d 1069, 1080–81 (Fla. 2012) (refusing to sever prior version of § 316.2045(1)(a) when severance would expand statute's reach beyond what the legislature contemplated); Lawnwood Med. Ctr., Inc. v. Seeger, 990 So. 2d 503, 518 (Fla. 2008) (refusing to sever hospital governance law when act would not be complete with invalid portions severed to accomplish what the legislature intended).[17]

In § 316.2045, the unconstitutional provision is the crux of the statute. If §§ 316.2045(1)–(4) were to be severed from the small portion of the statute that remains, § 316.2045(5), the law would fail to serve the legislative intent of regulating traffic safety through prohibiting solicitation and establishing a permit scheme. Thus, the Court cannot sever the unconstitutional provisions of § 316.2045 and salvage the remaining section.

On the other hand, the Court has found only the portions of Section 337.406(1) that prohibit charitable solicitation to be unconstitutional. The rest of § 337.406(1) is not at issue here; Mr. Vigue has mounted a facial challenge only to the statute's prohibition on charitable solicitation. The Court does not reach the portions of §§ 337.406(1) that do not pertain to charitable solicitation, or §§ 337.406(2)–(5). Thus, the portions of § 337.406(1) pertaining to charitable solicitation are severed from the statute. The portions of § 337.406(1) unrelated to charitable solicitation and the entirety of §§ 337.406(2)–(5) remain unaffected.

G. Permanent Injunction

***19** For a permanent injunction to be issued, Mr. Vigue must: (1) show actual success on the merits of claims asserted in the complaint; (2) establish that irreparable harm will result from failure to provide injunctive relief; (3) establish that the balance of equities tips in his favor; and (4) demonstrate that an injunction is in the public interest. KH Outdoor, LLC v. City of Trussville, 458 F.3d 1261, 1268 (11th Cir. 2006). Permanent injunction requirements are the same as those for a preliminary injunction, except that Mr. Vigue must show actual success on the merits as opposed to likelihood of success on the merits of his claims. Id.

Mr. Vigue has succeeded in his claims that §§ 316.2045 and portions of 337.406(1) are unconstitutional. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 373 (1976). Here, Mr. Vigue has suffered and will continue to suffer denial of his First Amendment right to expression in the form of charitable solicitation. Arrest and incarceration pursuant to §§ 316.2045(1) and 316.2045(2), as well as warnings and threats of arrest pursuant to § 337.406, prohibit Mr. Vigue from engaging in protected speech. With these statutes in effect and no available permitting scheme with procedural safeguards in place, Sheriff Shoar retains unbridled discretion to enforce the statutes that bar Mr. Vigue's protected speech activity. "Because chilled speech cannot be compensated by monetary damages, an ongoing violation of the First Amendment constitutes irreparable injury." Univ. Books & Videos, Inc. v. Metro. Dade Cty., 33 F. Supp. 2d 1264, 1373 (S.D. Fla. 1999).

Injury to Mr. Vigue also outweighs any harm the injunction might cause Sheriff Shoar. Even without §§ 316.2045 and 337.406, Sheriff Shoar is still free to enforce all other state and local laws to maintain safe roadways throughout the county. Sheriff Shoar has already altered enforcement of these statutes through Policy 41.39, and makes no claim of increased difficulty maintaining safe roadways as a result of the new policy. Courts regularly find that injury to plaintiffs outweighs harm to defendants in First Amendment cases. See Baumann v. City of Cumming, No. 2:07-CV-0095-WCO, 2007 WL 9710767, at *7 (N.D. Ga. Nov. 2, 2007) ("[T]he temporary infringement of First Amendment rights constitutes a serious and substantial injury, and the city has no legitimate interest in enforcing an unconstitutional ordinance.").

Finally, "[t]he public interest is served by the maintenance of First Amendment freedoms and could not possibly be served by the enforcement of an unconstitutional ordinance." Howard v. City of Jacksonville, 109 F. Supp. 2d 1360, 1365 (M.D. Fla. 2000). While citizens certainly have an interest in remaining safe, and Sheriff Shoar has an interest in ensuring traffic safety, the "interest[ ] in remaining safe while walking or driving [is] served by other statutes and codes available to law enforcement officers." Chase, 2006 WL 2620260, at *3.

H. Damages

Mr. Vigue claims that Sheriff Shoar is liable for compensatory damages for violation of Mr. Vigue's constitutional rights, and that he should proceed to trial on the issue of damages. (Doc. 59 at 24). Mr. Vigue relies primarily on Memphis Cmty. Sch. Dist. v. Stachura, 477 U.S. 299 (1986) to argue that compensatory damages should be available.

For actions under § 1983, "the rules governing compensation for injuries caused by the deprivation of constitutional rights should be tailored to the interests protected by the particular right in question." Carey v. Piphus, 435 U.S. 247, 259 (1978). In reviewing the law, the Court understands that nominal damages are available in First Amendment cases. Pelphrey v. Cobb Cty., 547 F.3d 1263, 1282 (11th Cir. 2008) ("This Court has found that 'nominal damages are similarly appropriate in the context of a First Amendment violation.' "); Familias Unidas v. Briscoe, 619 F.2d 391, 402 (5th Cir. 1980) (holding that nominal damages are available for violations of the First Amendment); see also Gonzalez v. Sch. Bd. of Okeechobee Cty., 250 F.R.D. 565, 570 (S.D. Fla. 2008) (finding that nominal damages were available in a § 1983 action for violations of the First Amendment).[18] But the Court is uncertain regarding whether there also exists a legal and factual basis for compensatory damages in this case. Compare Carey, 435 U.S. at 264 (stating compensatory damages under § 1983 are available only when plaintiff shows actual injury); with Stachura, 477 U.S. at 310-11 ("When a plaintiff seeks compensation for an injury that is likely to have occurred but difficult to establish, some form of presumed damages may possibly be appropriate."); see also King v. Zamiara, 788 F.3d 207, 213 (6th Cir. 2015) (surveying cases where compensatory damages were permitted for deprivation of constitutional rights and concluding that compensatory damages were appropriate "for specific, actual injuries [plaintiff] suffered that cannot be easily quantified"); Celli v. City of St. Augustine, 214 F. Supp. 2d 1255, 1262 (M.D. Fla. 2000) (allowing jury to place monetary value on intangible free speech rights to determine damages in § 1983 action). If Mr. Vigue wishes to pursue more than nominal damages, the

Court directs him to submit a proffer of the legal and factual basis for compensatory damages.

III. CONCLUSION

***20** In ruling in favor of Mr. Vigue on the constitutionality of §§ 337.2045 and 337.406, the Court is following precedent and upholding important First Amendment and Equal Protection principles. Of course, as suggested by Florida's Attorney General in 2007, the Legislature is free to rewrite these statutes to try to alleviate the constitutional infirmities. For now, Sheriff Shoar has demonstrated through his Policy Directive 41.39 that he can abide by the Court's decision on an ongoing basis such that Mr. Vigue will be free to exercise his constitutional right to solicit. However, the Court also addresses Mr. Vigue: this decision is not a license to trespass on private property, interfere with traffic, station himself where he obstructs traffic or creates a safety hazard to himself or others. If he does so, there are other laws which can be brought to bear. The Court is confident that both Sheriff Shoar and his deputies and Mr. Vigue will exercise common sense and good judgment.

Accordingly, it is hereby

ORDERED:

1. Plaintiff Peter Vigue's Motion for Partial Summary Judgment (Doc. 59) is **GRANTED** for the reasons stated herein.

2. Defendant David B. Shoar's Motion for Summary Judgment (Doc. 60) is **DENIED** for the reasons stated herein.

3. Florida Statute § 316.2045 is found to be facially unconstitutional under the First and Fourteenth Amendments. Declaratory Judgment to that effect will be entered at the conclusion of the case.

4. The portions of Florida Statute § 337.406(1) pertaining to charitable solicitation are found to be facially unconstitutional under the First and Fourteenth Amendments. Declaratory Judgment to that effect will be entered at the conclusion of the case.

5. Defendant David B. Shoar, in his official capacity as Sheriff of St. Johns County, is hereby permanently **ENJOINED** from enforcing Florida Statutes §§ 316.2045 and 337.406(1), the latter insofar as it pertains to charitable solicitation. A final permanent injunction will be entered at the conclusion of the case.

6. If he wishes to pursue compensatory damages, Mr. Vigue is directed to submit a proffer of the legal and factual basis for a claim for damages no later than **November 19, 2020**, and Sheriff Shoar is directed to respond no later than **December 21, 2020**. The Court will then determine how to proceed.

7. Any claim for attorneys fees and costs will await the conclusion of the case.

DONE AND ORDERED in Jacksonville, Florida the 12th day of October, 2020.

All Citations

Slip Copy, 2020 WL 6020484

Footnotes

1 Regarding enforcement of §§ 316.2045(1) and 337.406, Policy 41.39 provides:
So long as a person does not impede the free, convenient, and normal use of the road, SJSO will not treat entering or leaving a roadway while traffic is stopped pursuant to a traffic light as a violation of Section 316.2045(1). SJSO will not use this provision to prohibit persons from engaging in lawful conduct, such as charitable solicitation adjacent to public streets, highways, or roads, so long as any incursion is during stopped traffic pursuant to a traffic light and does not impede the free, convenient, and normal use of the road. Additionally, SJSO will not enforce this provision against a person who has left the roadway by the time traffic is permitted to move, so long as the person does not impede the free, convenient, and normal use of the road.
(Doc. 59-16 at 2–3).

2 FHP agreed to limit its enforcement of § 316.2045(1) and 337.406 as follows:
So long as a person does not impede the free, convenient, and normal use of the road, FHP will no longer treat entering or leaving a roadway while traffic is stopped pursuant to a traffic control device as a violation of Section 316.2045(1) [or of Section 337.406]. And FHP will no longer use th[ese] provision[s] to prohibit persons from engaging in lawful conduct

such as charitable solicitation adjacent to public streets, highways, or roads, so long as any incursion is during stopped traffic pursuant to a control device and does not impede free, convenient, and normal use of the road. Additionally, FHP will not enforce th[ese] provision[s] against a person who has left the roadway by the time traffic is permitted to move and does not impede the free, convenient, and normal use of the road.

(Doc. 45-1 at 11).

3 The settlement agreement included various other deadlines, directives, and provisions, including a payment to Vigue for the costs, attorneys' fees, and expenses incurred in litigation. (Doc. 45-1 at 4).

4 Mr. Vigue has stated that he feels he has been harassed for holding his sign. (Doc. 60-9 at 142:9–13). "I'm not out to bother people or hurt people on any—whether you're in a car, vehicle, on foot or you have a business, I'm not out there to bother you or hurt you. I just want to see people smile. Put a smile on your face, and I'll go on my way. If you give me something, that's good. If you don't, that's fine." (Doc. 60-9 at 147:14–20).

5 The Offense Report from January 13, 2019, includes the following Probable Cause Narrative, alluding to Mr. Vigue's other offenses:

> I observed the defendant standing at State Road 312 and Tingle Court holding a sign and approaching vehicles with their windows down. The defendant does not have a permit to solicit on a state road. I knew the defendant to have been issued a citation for Soliciting without a permit on October 2, 2018. The defendant was also placed under arrest for the same offense on November 13, 2018 and January 8, 2019.

(Doc. 59-1 at 3–4).

6 The full text of § 316.2045(3) reads:

> Permits for the use of any street, road, or right-of-way not maintained by the state may be issued by the appropriate local government. An organization that is qualified under s. 501(c)(3) of the Internal Revenue Code and registered under chapter 496, or a person or organization acting on behalf of that organization, is exempt from local requirements for a permit issued under this subsection for charitable solicitation activities on or along streets or roads that are not maintained by the state under the following conditions:
>
> (a) The organization, or the person or organization acting on behalf of the organization, must provide all of the following to the local government:
>
> 1. No fewer than 14 calendar days prior to the proposed solicitation, the name and address of the person or organization that will perform the solicitation and the name and address of the organization that will receive funds from the solicitation.
>
> 2. For review and comment, a plan for the safety of all persons participating in the solicitation, as well as the motoring public, at the locations where the solicitation will take place.
>
> 3. Specific details of the location or locations of the proposed solicitation and the hours during which the solicitation activities will occur.
>
> 4. Proof of commercial general liability insurance against claims for bodily injury and property damage occurring on streets, roads, or rights-of-way or arising from the solicitor's activities or use of the streets, roads, or rights-of-way by the solicitor or the solicitor's agents, contractors, or employees. The insurance shall have a limit of not less than $1 million per occurrence for the general aggregate. The certificate of insurance shall name the local government as an additional insured and shall be filed with the local government no later than 72 hours before the date of the solicitation.
>
> 5. Proof of registration with the Department of Agriculture and Consumer Services pursuant to s. 496.405 or proof that the soliciting organization is exempt from the registration requirement.
>
> (b) Organizations or persons meeting the requirements of subparagraphs (a)1.-5. may solicit for a period not to exceed 10 cumulative days within 1 calendar year.
>
> (c) All solicitation shall occur during daylight hours only.
>
> (d) Solicitation activities shall not interfere with the safe and efficient movement of traffic and shall not cause danger to the participants or the public.
>
> (e) No person engaging in solicitation activities shall persist after solicitation has been denied, act in a demanding or harassing manner, or use any sound or voice-amplifying apparatus or device. (f) All persons participating in the solicitation shall be at least 18 years of age and shall possess picture identification.
>
> (g) Signage providing notice of the solicitation shall be posted at least 500 feet before the site of the solicitation.
>
> (h) The local government may stop solicitation activities if any conditions or requirements of this subsection are not met.

§ 316.2045(3).

7 A Sheriff's deputy described his encounter with Mr. Vigue on December 31, 2017 in a Field Interview Narrative:

Peter was standing with a cardboard sign just outside Cobblestone property in the grass between the sidewalk and curb of Old Moultrie Rd. I observed Peter enter the roadway of Jenkins St just outside the CBL property line to receive money from a motorist exiting the plaza.

I made Peter distinctly aware where he was standing was within the right-of-way of Old Moultrie Rd and he was (1) using the right- of-way to solicit for charitable purposes and (2) entered the roadway, interfering with the safe movement of vehicles, contrary to FS 337.406.

Peter acknowledged he understands where the CBL property line is at the Old Moultrie Rd entrance and now thoroughly understands where the right-of-way is. He was informed this warning would be documented and appropriate law enforcement action would follow if he is located, committing the same offense.

At the time, he was wearing a grey vest with long-sleeve orange shirt under it, jeans, and green gloves. His sign read, "God Bless, Be Safe."

(Doc. 59-2 at 9).

8 A Sheriff's deputy's "Suspicious Person" report from April 1, 2019 includes the following narrative:

Peter Vigue was standing in the intersection holding a hand written sign, which read "God Bless." Once Peter saw my patrol vehicle, he walked away from the intersection, leaving another hand written sign and plastic bottle on the ground. I advised Peter to collect his items or he would be ticketed. Peter said he wasn't leaving the area and he wasn't breaking the law. Advised him to stay out of the roadway or he would be subject to arrest. Peter assured me he would not walk or stand in the road way.

(Doc. 59-2 at 13).

9 "To read the amended statutory language to allow only charities and political campaigners to solicit could, arguably, subject the statute to federal constitutional challenge as violating First Amendment free speech rights and Fourteenth Amendment equal protection rights....I would strongly suggest that the Florida Legislature revisit this statute to consider the First Amendment problems raised by the Bischoff case." Fla. Att'y Gen. Op. 2007-50 (2007).

10 "The principles governing summary judgment do not change when the parties file cross-motions for summary judgment." T-Mobile S. LLC v. City of Jacksonville, 564 F. Supp. 2d 1337, 1340 (M.D. Fla. 2008).

11 The Court acknowledges that in Cooper, Chief Dillon personally swore an affidavit and obtained a warrant for Cooper's arrest under the challenged statute. 403 F.3d at 1212. Here, Sheriff Shoar has not personally arrested or sworn an affidavit for the arrest of Mr. Vigue. Still, Cooper's reasoning applies. The question in Cooper was "whether Dillon had final policymaking authority for the City of Key West in law enforcement matters and whether his decision to enforce FLA. STAT. ch. 112.533(4) against Cooper was an adoption of 'policy' sufficient to trigger 1983 liability." Id. at 1221. The Court concluded that enforcement of a state law by a police chief may subject a municipality to liability. Id. at 1223. That conclusion did not hinge on personal enforcement by the police chief himself. Moreover, "when an officer is sued under Section 1983 in his or her official capacity, the suit is simply another way of pleading an action against an entity of which an officer is an agent." Busby v. City of Orlando, 931 F.2d 764, 776 (11th Cir. 1991) (internal quotation omitted). The record shows that SJSO repeatedly and deliberately decided to enforce the challenged statutes against Mr. Vigue.

12 Sheriff Shoar focuses on cases regarding deliberate indifference under the Eighth Amendment, exhaustion of administrative remedies, and excessive force violations to support his contention that he had no policy that would trigger municipal liability under § 1983. (Doc. 66 at 7–8). However, those cases are readily distinguishable.

13 The First Amendment is applicable to the states through the Fourteenth Amendment. Elrod v. Burns, 427 U.S. 347, 357 n.10 (1976).

14 The distinction between individuals and charitable or political groups may also be understood as the law favoring certain speakers. The Supreme Court in Reed commented on why speaker distinctions may be problematic under the First Amendment and are often subject to strict scrutiny:

> In any case, the fact that a distinction is speaker based does not...automatically render the distinction content neutral. Because [s]peech restrictions based on the identity of the speaker are all too often simply a means to control content, we have insisted that laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference. Thus, a law limiting the content of newspapers, but only newspapers, could not evade strict scrutiny simply because it could be characterized as speaker based. Likewise, a content-based law that restricted the political speech of all corporations would not become content neutral just because it singled out corporations as a class of speakers. Characterizing a distinction as speaker based is only the beginning—not the end — of the inquiry.

Reed, 576 U.S. at 170 (internal citations and quotations omitted). Section 316.2045 reflects the Legislature's preference for organizational and campaign speakers over individual speakers. This is yet another reason the law is subject to strict scrutiny.

15 The permitting scheme in § 337.406 explicitly lists "the solicitation for charitable purposes" as a prohibited use of the roadway for which one must obtain a permit. For that reason, the permitting scheme appears to be content- based. See Reed, 576 U.S. at 163 ("Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea of message expressed.") However, even if the permitting scheme were content-neutral, it could not pass constitutional muster. Though the Supreme Court has "never required that a content-neutral permit scheme regulating speech in a public forum adhere to the procedural requirements set forth in Freedman," still, "[w]here the licensing official enjoys unduly broad discretion in determining whether to grant or deny a permit, there is a risk that he will favor or disfavor speech based on its content." Thomas v. Chicago Park Dist., 534 U.S. 316, 322–23 (2002). Thus, even a content-neutral permitting scheme must "contain adequate standards to guide the official's decision and render it subject to effective judicial review." Id. The permitting scheme in § 337.406 does not contain such standards.

16 In Bischoff, Judge Antoon pointed out ambiguity in the type of conduct prohibited without a permit and troublesome cross-referencing between § 337.406 and § 316.2045(2):

> But § 337.406(1) is unclear as to whether the term "these prohibited uses" refers only to uses "for an art festival, parade, fair or other special event." May municipalities also permit other uses prohibited by § 337.406(1), such as charitable solicitation that interferes with traffic movement? The answer may be important not only to someone seeking a permit for soliciting in a municipality, but also to someone who simply wants to avoid using a state road for a purpose specified in § 337.406—i.e., a person who has no permit but wants to avoid violating § 316.2045(2). The statute provides no answer. This level of detail in the analysis is necessary because the Florida Legislature chose to make the criminality of a person's conduct under § 316.2045(2) dependent on the "purposes" set forth in § 337.406.

242 F. Supp. 2d at 1254–55.

17 The Florida Supreme Court in Catalano laid out the purpose of the severability doctrine and the test for severability in Florida:

> Severability is a judicially created doctrine which recognizes a court's obligation to uphold the constitutionality of legislative enactments where it is possible to remove the unconstitutional portions. It is derived from the respect of the judiciary for the separation of powers, and is designed to show great deference to the legislative prerogative to enact laws. The portion of a statute that is declared unconstitutional will be severed if: (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.

Catalano, 104 So. 3d at 1080 (internal citations and quotations omitted).

18 Fifth Circuit precedent prior to October 1, 1981 is binding on the Eleventh Circuit. Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981).

End of Document

From: Munero, Armando
To: "Juan Fernandez-Barquin"
Subject: FW: PRR # 24 Bennett (Fernandez-Barquin)
Date: Tuesday, January 26, 2021 4:59:48 PM
Attachments: PRR # 24 Response.pdf
PRR # 24 Response Exempt.pdf

-----Original Message-----
From: Office of Open Government <opengovernment@myfloridahouse.gov>
Sent: Monday, January 25, 2021 9:14 PM
To: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Subject: PRR #24 Bennett (Fernandez-Barquin)

Hi Armando...

The House received the request below for certain public records that are maintained by the House on Representative Fernandez-Barquin's behalf. Attached are the responsive records that IT found in the Representative's accounts on the House server. Bill drafts and requests for bill drafts have been redacted. I am simply sending the records to you as a "heads up" before I send them to the requester. You do not need to do anything other than let me know if you or the Representative have any questions. I'll send the records to the requester in the next day or two after I review them one last time.

Kind regards,

Karen Camechis, Director
Office of Open Government
Florida House of Representatives
850-717-5650

Please Note: The Florida Constitution requires disclosure of public records unless a Florida Statute exempts the records from the disclosure requirement. Therefore, the contents of your email and your email address are subject to public disclosure unless a specific statute exempts them from the Constitution's disclosure requirements. Most emails to and from House members and staff that were sent or received in connection with the transaction of legislative business are public records that will be made available to the public and media upon request.

-----Original Message-----
From: Office of Open Government
Sent: Friday, January 15, 2021 10:53 AM
To: 'anthony.john.bennett@gmail.com' <anthony.john.bennett@gmail.com>
Subject: PRR #24 Bennett (Fernandez-Barquin)

The Office of Open Government received the request below. Representative Fernandez-Barquin's House email account and document drives, which are maintained by the House on the House server, will be searched for public records that meet the criteria of the request. If any such records are located, copies will be provided to you in accordance with Article 1, Section 24(c) of the Florida Constitution; section 11.0431, Florida Statutes; and House Rules 14.1 and 14.2. For your information, chapter 119, Florida Statutes, does not apply to the legislative or judicial branches of Florida's state government.

Pursuant to House Rule 14.2, members are the custodians of records located in their offices or held by them personally. Therefore, requests for public records that are maintained by a member must be submitted directly to the member.

Kind regards,

Office of Open Government
Florida House of Representatives

-----Original Message-----
From: anthony.john.bennett@gmail.com <anthony.john.bennett@gmail.com>
Sent: Thursday, January 14, 2021 5:20 PM
To: Office of Open Government <opengovernment@myfloridahouse.gov>
Subject: From 'Public Records Request' Form

Anthony
Bennett
12783 Longview Dr W
Jacksonville,FL 32223-
(850) 240-3234

01/14/21 5:19 PM

Anthony Bennett
12783 Longview Dr W
Jacksonville, FL 32223

January 14, 2021

Dear Public Records Manager:
Pursuant to Article I, section 24 of the Florida Constitution, and chapter 119, F.S., I am requesting an opportunity to inspect or obtain copies of public records of:

* Any and all communications of Representative Juan Alfonso Fernandez-Barquin pertaining to the drafting of Senate Bill 484/ House Bill 1 (Combating Public Disorder)

* Any and all communications of Representative Fernandez-Barquin regarding Governor DeSantis's proposed Combating Violence, Disorder and Looting and Law Enforcement Protection Act

* The minutes of any and all meetings at which Representative Fernandez-Barquin was present wherein SB 484/HB 1 and/or the governor's proposal were discussed.

I request a waiver of all fees for this request since the disclosure of the information I seek is not primarily in my commercial interest, and is likely to contribute significantly to public understanding of the operations or activities of the government, making the disclosure a matter of public interest. SB 484/HB 1 do not contain significant elements of the Governor's proposal, notably including a permanent ban on state employment or benefits. These records will provide crucial context as to these edits. Should you deny my request, or any part of the request, please state in writing the basis for the denial, including the exact statutory citation authorizing the denial as required by s. 119.07(1)(d), F.S.

I will contact your office within 48 hours to discuss when I may expect fulfillment of my request, and payment of any statutorily prescribed fees. If you have any questions in the interim, you may contact me at (850) 240-3234 or at this email address.

Thank you,
Anthony Bennett
anthony.john.bennett@gmail.com
(850) 240-3234

From: Munero, Armando
To: "Juan Fernandez-Barquin"
Subject: FW: PRR # 24 Bennett (Fernandez-Barquin)
Date: Tuesday, January 26, 2021 4:59:48 PM
Attachments: PRR # 24 Response.pdf
PRR # 24 Response Exempt.pdf

-----Original Message-----
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Sent: Monday, January 25, 2021 9:14 PM
To: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Subject: PRR #24 Bennett (Fernandez-Barquin)

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Kind regards,

Karen Camechis, Director
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850-717-5650

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Kind regards,

Office of Open Government
Florida House of Representatives

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Sent: Thursday, January 14, 2021 5:20 PM
To: Office of Open Government <opengovernment@myfloridahouse.gov>
Subject: From 'Public Records Request' Form

Anthony
Bennett
12783 Longview Dr W
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(850) 240-3234

01/14/21 5:19 PM

Anthony Bennett
12783 Longview Dr W
Jacksonville, FL 32223

January 14, 2021

Dear Public Records Manager:
Pursuant to Article I, section 24 of the Florida Constitution, and chapter 119, F.S., I am requesting an opportunity to inspect or obtain copies of public records of:

* Any and all communications of Representative Juan Alfonso Fernandez-Barquin pertaining to the drafting of Senate Bill 484/ House Bill 1 (Combating Public Disorder)

* Any and all communications of Representative Fernandez-Barquin regarding Governor DeSantis's proposed Combating Violence, Disorder and Looting and Law Enforcement Protection Act

* The minutes of any and all meetings at which Representative Fernandez-Barquin was present wherein SB 484/HB 1 and/or the governor's proposal were discussed.

I request a waiver of all fees for this request since the disclosure of the information I seek is not primarily in my commercial interest, and is likely to contribute significantly to public understanding of the operations or activities of the government, making the disclosure a matter of public interest. SB 484/HB 1 do not contain significant elements of the Governor's proposal, notably including a permanent ban on state employment or benefits. These records will provide crucial context as to these edits. Should you deny my request, or any part of the request, please state in writing the basis for the denial, including the exact statutory citation authorizing the denial as required by s. 119.07(1)(d), F.S.

I will contact your office within 48 hours to discuss when I may expect fulfillment of my request, and payment of any statutorily prescribed fees. If you have any questions in the interim, you may contact me at (850) 240-3234 or at this email address.

Thank you,
Anthony Bennett
anthony.john.bennett@gmail.com
(850) 240-3234

From: Barquin, JuanF
To: Munero, Armando
Subject: Fw: Draft Request with Tracking Number 75370 submitted
Date: Monday, December 21, 2020 9:19:46 PM
Attachments: OutlookEmoji-1568727030772c00a8899-5e7c-4230-a21b-2102304f781e.png

[redacted]

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Leagis.notify@myfloridahouse.gov
Sent: Monday, December 21, 2020 2:11 PM
To: Barquin, JuanF
Subject: Draft Request with Tracking Number 75370 submitted

Draft Request Tracking #:75370
Draft Request Subject [redacted]
Draft Request Type :BILL

Made by user: FLHOUSE\Munero.Armando

Above referenced draft request was submitted.

From: Munero, Armando
To: Barquin, JuanF
Subject: RE: Draft Request with Tracking Number 75370 submitted
Date: Tuesday, December 22, 2020 3:14:29 PM
Attachments: image001.png

Juan,

[redacted]

Best,
Armando

From: Barquin, JuanF
Sent: Monday, December 21, 2020 9:20 PM
To: Munero, Armando
Subject: Fw: Draft Request with Tracking Number 75370 submitted

[redacted]

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Leagis.notify@myfloridahouse.gov <Leagis.notify@myfloridahouse.gov>
Sent: Monday, December 21, 2020 2:11 PM
To: Barquin, JuanF
Subject: Draft Request with Tracking Number 75370 submitted

Draft Request Tracking #:75370
Draft Request Subject [redacted]
Draft Request Type :BILL

Made by user: FLHOUSE\Munero.Armando

Above referenced draft request was submitted.

From: Munero, Armando
To: Barquin, JuanF; "Juan Fernandez-Barquin"
Subject: Riot Bill Draft 1
Date: Thursday, December 31, 2020 12:19:27 PM
Attachments: [redacted]

Juan,

The [redacted] was released for approval, and I have attached the draft above. Let me know if it is ready to file, or if you want any changes made.

Best,

Armando

From: Munero, Armando
To: Barquin, JuanF; "Juan Fernandez-Barquin"
Subject: [redacted]
Date: Wednesday, January 06, 2021 4:53:28 PM
Attachments: [redacted]

Juan,
Let me know if you want me to file it.
Best,
Armando

From: shellyengland@mac.com
To: Barquin, JuanF
Subject: From "Write Your Representative" Website
Date: Thursday, January 07, 2021 5:39:01 PM

Rochelle England
5187 NW 57th DR
Coral Springs, FL 33067

01/07/21 5:39 PM

To the Honorable Juan Alfonso Fernandez-Barquin ;

I am very concerned with Governor DeSantis's purposed legislation on “Combatting Violence, Disorder and Looting and Law Enforcement Protection Act”.
My son was a peaceful protestor (I have the video) in downtown Miami and was herded along with 40 other protestors into the back of 20 patrol cars when police officers were instructed to "Start grabbing bodies!". They were thrown to the ground, handcuffed and held in the cars with out access to a bathroom or water for 6 hours while the question "What should we do with them?" was answered. They were subsequently taken to Turner Guilford Knight Correctional Center for processing. This process consisted disposing of (not processing) my sons personal items, which included his backpack, car and apartment keys, water thermos, safety gear and only after the police officer took the cash out of my son's wallet and put it in his own pocket, did he then throw the wallet and it's contents, in the trash can, as well. He was then stripped searched, put in an orange jump suit and booked. Just before sunrise, I had my son in my car and was driving him back to his apartment in Miami. My son is well educated, works full time and we have the means to have expedited the process. The next day he was back at the Torch of Friendship with his fist held high in the air fighting for Social Justice. I am writing because if this purposed legislation is signed into law, things would have looked very different for a young man exercising his First Amendment rights. My son was on the side walk when officers begin grabbing protestors, he was forced off the curb and into the street, he then was charge with "Obstruction of Traffic". If this law would have been in place at that time, in the component of New Criminal Offenses to Combat Rioting, Looting and Violence (#2), he would have been charge with a 3rd degree felony under "Prohibition on Obstructing Roadways" and if he was hit by a car, the driver would NOT have been liable.
This legislation is also attempting to punish the group for the actions of one by including RICO liability (#5) I certainly do not support destruction and violence, but collective punishment is simply a tactic used to scare citizens from exercising their constitutional rights.
The final point that I would like to discuss is in the component Citizen and Taxpayer Protection Measures, Bail (#4). As I mentioned, my son is a productive member of society. He was arrested on July 19, 2020 and his arraignment was scheduled Aug. 11, 2020. If he was held without bail until his first appearance in court, he not only would have lost a month of wages but most likely his job and it would have cost tax payers an exorbitant amount of money to house him during that time, especially considering the charge. In the end, all charges were dropped against my son.
I implore you to consider the ramifications of the wording and inclusiveness of this purposed legislation.
Sincerely,

Rochelle England

From: Leagis.notify@myfloridahouse.gov
To: Barquin, JuanF
Subject: Approval of cosponsorship for bill: HB 1
Date: Wednesday, January 13, 2021 10:21:54 AM

Approval of cosponsorship for bill: HB 1 Sent to: Scott Plakon, Made by user: FLHOUSE\Munero.Armando

Approval of cosponsorship for bill: HB 1 Sent to: Brad Drake, Made by user: FLHOUSE\Munero.Armando

Approval of cosponsorship for bill: HB 1 Sent to: Stan McClain, Made by user: FLHOUSE\Munero.Armando

Approval of cosponsorship for bill: HB 1 Sent to: Spencer Roach, Made by user: FLHOUSE\Munero.Armando

From: Leagis.notify@myfloridahouse.gov
To: Barquin, JuanF
Subject: Approval of cosponsorship for bill: HB 1
Date: Friday, January 15, 2021 11:56:55 AM

Approval of cosponsorship for bill: HB 1 Sent to: Mike Giallombardo, Made by user: FLHOUSE\Munero.Armando

From:	forrest.saunders@scripps.com
To:	Barquin, JuanF
Subject:	From "Write Your Representative" Website
Date:	Thursday, January 07, 2021 9:58:46 AM

Forrest Saunders
306 S Duval St
Tallahassee, FL 32301
(319)432-9722

01/07/21 9:58 AM

To the Honorable Juan Alfonso Fernandez-Barquin ;

Hey there!

Curious if the Rep. has a few moments to talk about HB1/SB484, filed last night. Looking for five/10 minutes via Zoom/FaceTime/Skype.

Let me know if that's possible and thank you!

-Forrest

Forrest Saunders
FLORIDA STATE CAPITOL REPORTER
WFTS / WPTV / WFTX / WTXL / WSFL
Email: Forrest.Saunders@scripps.com
Cell: 319.432.9722
Work: 850.510.2540
Twitter: @ForrestSaundersNews

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: The Florida Channel Interview
Date: Tuesday, January 12, 2021 11:30:33 AM
Attachments: image001.png
OutlookEmoji-1568727030772c18586d8-2a43-49df-b277-76f667c0cca8.png

---

Juan,

Would you like me to set up a meeting for you to talk to this reporter about HB1?

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Javonni Hampton
Sent: Monday, January 11, 2021 10:50 PM
To: Barquin, JuanF
Subject: The Florida Channel Interview

Hello,
My name is Javonni Hampton, I am a reporter with the Florida Channel. Was wondering if it was possible to set up an interview with the Representative sometime tomorrow morning before committees to discuss his new proposed legislation HB1. Tuesday before 9am, does that work?
Best,
Javonni

Javonni Hampton
Reporter/Producer- Florida Channel Programming

The FLORIDA Channel | Office: 850-488-1281
Direct: 407-680-7606 | FAX: 850-488-4876
jhampton@fsu.edu www.TheFloridaChannel.org

From: Barquin, JuanF
To: Munero, Armando
Subject: HB 1
Date: Friday, January 08, 2021 1:02:28 PM
Attachments: OutlookEmoji-1568727030772906667ca-2c90-42ec-82b8-375db044e6e5.png

Please approve the people asking to co-sponsor HB 1. There is a difference between Prime Co-Sponsor and Co-Sponsor. Do NOT approve Prime Co-Sponsors.

JFB

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Jeff Kottkamp
To: Barquin, JuanF
Subject: HB 1
Date: Thursday, January 14, 2021 5:03:38 PM

Representative---thank you for taking the time to discuss HB 1. I fully support the bill and have some ideas to make it stronger. Below are some initial thoughts:

-After the bill becomes law it will almost certainly get challenged in Court. For that reason--you should add a **severability clause**.

-Would love to see a **citizen standing** provision---for citizens of the state and members of historical preservation organizations.
Here's some language to consider:
A public entity owning a monument, any resident of this state, or an entity whose purpose is historic preservation, shall have standing to seek enforcement of this Act through civil action in the circuit court in the county in which a memorial which has been damaged, defaced, destroyed or removed is located.
If the State of Florida or a political subdivision of the state accepts, or has accepted,
the donation of a memorial the donor of the monument, and any organization of the state
organized for the purpose of historic preservation, shall have a continuing interest in
the monument and shall have standing to bring a cause of action to protect and preserve
the donated monument.
Waiver of Sovereign Immunity-Notwithstanding the provisions of s.768.28 sovereign immunity is waived by the state and its subdivisions for purposes of
permitting a victim of a crime resulting from a violent or disorderly assembly
to file an action for damages against any subdivision of the state when that subdivision was grossly negligent in failing to protect persons and property from
harm.

-It would be great if the **Secretary of State had the ability to pull back funding or remove a historic district designation** if a local government removes historic monuments. Here's some possible language:
Florida Statute 265.705 is amended to read:
Section 7. A. State policy relative to historical properties.—The rich and

unique heritage of historical properties in this state, representing more than 10,000 years of human presence, is an important legacy to be valued and conserved for present and future generations. The destruction of these nonrenewable historical resources will engender a significant loss to the state's quality of life, economy, and cultural environment. It is therefore declared to be state policy to provide leadership in the preservation of the state's historical resources and to administer state-owned or state-controlled historical resources in a spirit of stewardship and trusteeship, and accordingly the Secretary of State is hereby authorized to take such action necessary or appropriate to protect
and preserve the historical resources of the state, including but not limited to criminal referrals to
the Attorney General of Florida
B. The Secretary of State shall have authority to de-certifiy a Historic District in the State of Florida when a historic resource is removed from a Historic District and make reduce or eliminate funding to any historic district in the state that has removed any historic resource that served as the basis for the creation of the Historic District.
C. The Secretary of State shall have standing to pursue any legal action necessary to protect and preserve historic property or historic resources in this state as defined in s. 265.7025 (4).

-How about appointing a **Domestic Terrorism Task Force**. It would provide an opportunity to really dive into the tactics being used by Anitifa and others to intimidate local elected officials and coerce them into removing historical monuments.

-On line 442 you may want to consider removing the phrase "without consent of the owner thereof"....it is often difficult to determine who actually owns some of the historical monuments.

-You may want to look at Chapter 876 "Criminal Anarchy, Treason, and Other Crimes Against Public Order"....there are a number of provisions that could easily be amended to add some teeth to the bill.

Thank you again for taking the time to discuss the bill. Please consider me a resource and sounding board. This is an important piece of legislation and I would like to help you get it across the finish line.

Jeff Kottkamp
17th Lt. Governor of Florida
Jeff Kottkamp, PA
(239)297-9741-cell
JeffKottkamp@Gmail.com

From: Stan.McClain@myfloridahouse.gov
To: Barquin, JuanF
Subject: Request to cosponsor bill: HB 1
Date: Friday, January 08, 2021 8:49:46 AM

Juan Fernandez-Barquin,

Stan McClain has requested to cosponsor HB 1.

Please review your "Cosponsor Requests" and either approve or deny this user's request.

From: Brad.Drake@myfloridahouse.gov
To: Barquin, JuanF
Subject: Request to cosponsor bill: HB 1
Date: Friday, January 08, 2021 12:00:33 PM

Juan Fernandez-Barquin,

Brad Drake has requested to cosponsor HB 1.

Please review your "Cosponsor Requests" and either approve or deny this user's request.

From: Mike.Giallombardo@myfloridahouse.gov
To: Barquin, JuanF
Subject: Request to cosponsor bill: HB 1
Date: Thursday, January 14, 2021 11:18:26 AM

Juan Fernandez-Barquin,

Mike Giallombardo has requested to cosponsor HB 1.

Please review your "Cosponsor Requests" and either approve or deny this user's request.

From: Scott.Plakon@myfloridahouse.gov
To: Barquin, JuanF
Subject: Request to cosponsor bill: HB 1
Date: Thursday, January 07, 2021 7:23:44 AM

Juan Fernandez-Barquin,

Scott Plakon has requested to cosponsor HB 1.

Please review your "Cosponsor Requests" and either approve or deny this user's request.

From: Spencer.Roach@myfloridahouse.gov
To: Barquin, JuanF
Subject: Request to cosponsor bill: HB 1
Date: Thursday, January 07, 2021 11:07:10 AM

Juan Fernandez-Barquin,

Spencer Roach has requested to cosponsor HB 1.

Please review your "Cosponsor Requests" and either approve or deny this user's request.

From: Javonni Hampton
To: Barquin, JuanF
Subject: The Florida Channel Interview
Date: Monday, January 11, 2021 10:50:36 PM
Attachments: image001.png

Hello,

My name is Javonni Hampton, I am a reporter with the Florida Channel. Was wondering if it was possible to set up an interview with the Representative sometime tomorrow morning before committees to discuss his new proposed legislation HB1. Tuesday before 9am, does that work?

Best,

Javonni

Javonni Hampton
Reporter/Producer- Florida Channel Programming
The FLORIDA Channel | Office: 850-488-1281
Direct: 407-680-7606 | FAX: 850-488-4876
jhampton@fsu.edu www.TheFloridaChannel.org

From: Jake
To: Barquin, JuanF
Subject: Cap News Interview Request
Date: Friday, January 08, 2021 11:33:02 AM

Hey just following up on this. Is it looking like we may be able to set something up?

-Jake

On Jan 8, 2021, at 9:38 AM, Jake <jake@flanews.com> wrote:

Hello and good morning all,

This is Jake Stofan with Capitol News Service in Tallahassee. I'm doing a story today on Rep Fernandez-Barquin's Combating Public Disorder bill and was curious if he might have a few minutes to do a zoom interview before 1 pm on it?

Feel free to call/text or email back to coordinate.

Thanks!

Jake Stofan
Capitol News Service
www.flanews.com
Jake@flanews.com
Cell Phone 904-207-4245

Where to See Us

WFLA, Tampa

WBBH, Ft. Myers

WZVN, Ft. Myers

WCJB, Gainesville

WCTV, Tallahassee

WJHG, Panama City

WEAR, Pensacola

WJXT, Jacksonville

From: Jake
To: Barquin, JuanF
Subject: Cap News Interview Request
Date: Friday, January 08, 2021 9:35:15 AM

Hello and good morning all,

This is Jake Stofan with Capitol News Service in Tallahassee. I'm doing a story today on Rep Fernandez-Barquin's Combating Public Disorder bill and was curious if he might have a few minutes to do a zoom interview before 1 pm on it?

Feel free to call/text or email back to coordinate.

Thanks!

Jake Stofan
Capitol News Service
www.flanews.com
Jake@flanews.com
Cell Phone 904-207-4245

Where to See Us

WFLA, Tampa

WBBH, Ft. Myers

WZVN, Ft. Myers

WCJB, Gainesville

WCTV, Tallahassee

WJHG, Panama City

WEAR, Pensacola

WJXT, Jacksonville

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: materials for today"s meeting
Date: Monday, December 21, 2020 12:31:43 PM
Attachments: Combatting Public Disorder - Leadership Team.docx
HB Draft- Rioting Draft 3.docx
OutlookEmoji-1568727030772655576bde-0892-4859-a042-4726452b23b2.png

---

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

District Office:
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Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Kramer, Trina
Sent: Monday, December 21, 2020 9:10 AM
To: Barquin, JuanF
Cc: Hall, Whitney
Subject: materials for today's meeting

Good morning, Attached is a draft copy of the bill and a one page summary for today's meeting at 1pm. Thanks!

From: Barquin, JuanF
To: Jake
Subject: Re: Cap News Interview Request
Date: Friday, January 08, 2021 1:07:02 PM
Attachments: OutlookEmoji-1568727030772729d464525-3e1e-45c9-aa3c-e8c2391a8906.png
OutlookEmoji-1568727030772bbcc8cc6-aefe-4fe2-aa64-16088dabdbaa.png
OutlookEmoji-1568727030772854996f-f9e9-481c-b048-9677653e194c.png
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Hi Jake,

I am not available this afternoon. I will be driving to Tallahassee Monday morning, we can do a phone conference Monday morning or we can meet or zoom Monday afternoon if you like.

Juan

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

District Office:	Tallahassee Office:
2450 SW 137th Ave	1301 The Capitol
Suite 218	402 South Monroe Street
Miami, FL 33175	Tallahassee, FL 32399
(305) 222-4119	(850) 717-5119

From: Jake
Sent: Friday, January 8, 2021 11:32:59 AM
To: Barquin, JuanF
Subject: Cap News Interview Request

Hey just following up on this. Is it looking like we may be able to set something up?

-Jake

On Jan 8, 2021, at 9:38 AM, Jake <jake@flanews.com> wrote:

Hello and good morning all,

This is Jake Stofan with Capitol News Service in Tallahassee. I'm doing a story today on Rep

Fernandez-Barquin's Combating Public Disorder bill and was curious if he might have a few minutes to do a zoom interview before 1 pm on it?

Feel free to call/text or email back to coordinate.

Thanks!

Jake Stofan
Capitol News Service
www.flanews.com
Jake@flanews.com
Cell Phone 904-207-4245

Where to See Us

WFLA, Tampa

WBBH, Ft. Myers

WZVN, Ft. Myers

WCJB, Gainesville

WCTV, Tallahassee

WJHG, Panama City

WEAR, Pensacola

WJXT, Jacksonville

From: John O'Brien
To: Barquin, JuanF
Subject: Sinclair Broadcast Affiliate Interview
Date: Wednesday, January 13, 2021 11:25:38 PM

Hello Representative Fernandez-Barquin,

I'm Jay O'Brien with CBS 12 News in West Palm Beach and Sinclair Broadcast Group National Affiliates.

Would you be interested in a zoom interview tomorrow (Thursday) or Friday regarding the Combating Public Disorder bill? We're working on a special report for West Palm Beach, as well as our affiliates statewide.

Thanks so much!

Jay O'Brien
Reporter | CBS 12 News
561-356-6135
jjobrien@sbgtv.com
@jayobtv

From: Kramer, Trina
To: Barquin, JuanF
Cc: Hall, Whitney
Subject: materials for today"s meeting
Date: Monday, December 21, 2020 9:10:31 AM
Attachments: Combatting Public Disorder - Leadership Team.docx
HB Draft- Rioting Draft 3.docx

Good morning, Attached is a draft copy of the bill and a one page summary for today's meeting at 1pm. Thanks!

From: Leagis.notify@myfloridahouse.gov
To: Barquin, JuanF
Subject: Approval of cosponsorship for bill: HB 1
Date: Wednesday, January 13, 2021 10:21:54 AM

Approval of cosponsorship for bill: HB 1 Sent to: Scott Plakon, Made by user: FLHOUSE\Munero.Armando

Approval of cosponsorship for bill: HB 1 Sent to: Brad Drake, Made by user: FLHOUSE\Munero.Armando

Approval of cosponsorship for bill: HB 1 Sent to: Stan McClain, Made by user: FLHOUSE\Munero.Armando

Approval of cosponsorship for bill: HB 1 Sent to: Spencer Roach, Made by user: FLHOUSE\Munero.Armando

From: Leagis.notify@myfloridahouse.gov
To: Barquin, JuanF
Subject: Approval of cosponsorship for bill: HB 1
Date: Friday, January 15, 2021 11:56:55 AM

Approval of cosponsorship for bill: HB 1 Sent to: Mike Giallombardo, Made by user: FLHOUSE\Munero.Armando

From: Jake
To: Barquin, JuanF
Subject: Cap News Interview Request
Date: Friday, January 08, 2021 11:33:02 AM

Hey just following up on this. Is it looking like we may be able to set something up?

-Jake

On Jan 8, 2021, at 9:38 AM, Jake <jake@flanews.com> wrote:

Hello and good morning all,

This is Jake Stofan with Capitol News Service in Tallahassee. I'm doing a story today on Rep Fernandez-Barquin's Combating Public Disorder bill and was curious if he might have a few minutes to do a zoom interview before 1 pm on it?

Feel free to call/text or email back to coordinate.

Thanks!

Jake Stofan
Capitol News Service
www.flanews.com
Jake@flanews.com
Cell Phone 904-207-4245

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WZVN, Ft. Myers

WCJB, Gainesville

WCTV, Tallahassee

WJHG, Panama City

WEAR, Pensacola

WJXT, Jacksonville

From: Jake
To: Barquin, JuanF
Subject: Cap News Interview Request
Date: Friday, January 08, 2021 9:35:15 AM

Hello and good morning all,

This is Jake Stofan with Capitol News Service in Tallahassee. I'm doing a story today on Rep Fernandez-Barquin's Combating Public Disorder bill and was curious if he might have a few minutes to do a zoom interview before 1 pm on it?

Feel free to call/text or email back to coordinate.

Thanks!

Jake Stofan
Capitol News Service
www.flanews.com
Jake@flanews.com
Cell Phone 904-207-4245

Where to See Us

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WBBH, Ft. Myers

WZVN, Ft. Myers

WCJB, Gainesville

WCTV, Tallahassee

WJHG, Panama City

WEAR, Pensacola

WJXT, Jacksonville

From:	forrest.saunders@scripps.com
To:	Barquin, JuanF
Subject:	From "Write Your Representative" Website
Date:	Thursday, January 07, 2021 9:58:46 AM

Forrest Saunders
306 S Duval St
Tallahassee, FL 32301
(319)432-9722

01/07/21 9:58 AM

To the Honorable Juan Alfonso Fernandez-Barquin ;

Hey there!

Curious if the Rep. has a few moments to talk about HB1/SB484, filed last night. Looking for five/10 minutes via Zoom/FaceTime/Skype.

Let me know if that's possible and thank you!

-Forrest

Forrest Saunders
FLORIDA STATE CAPITOL REPORTER
WFTS / WPTV / WFTX / WTXL / WSFL
Email: Forrest.Saunders@scripps.com
Cell: 319.432.9722
Work: 850.510.2540
Twitter: @ForrestSaundersNews

From: shellyengland@mac.com
To: Barquin, JuanF
Subject: From "Write Your Representative" Website
Date: Thursday, January 07, 2021 5:39:01 PM

Rochelle England
5187 NW 57th DR
Coral Springs, FL 33067

01/07/21 5:39 PM

To the Honorable Juan Alfonso Fernandez-Barquin ;

I am very concerned with Governor DeSantis's purposed legislation on “Combatting Violence, Disorder and Looting and Law Enforcement Protection Act”.
My son was a peaceful protestor (I have the video) in downtown Miami and was herded along with 40 other protestors into the back of 20 patrol cars when police officers were instructed to "Start grabbing bodies!". They were thrown to the ground, handcuffed and held in the cars with out access to a bathroom or water for 6 hours while the question "What should we do with them?" was answered. They were subsequently taken to Turner Guilford Knight Correctional Center for processing. This process consisted disposing of (not processing) my sons personal items, which included his backpack, car and apartment keys, water thermos, safety gear and only after the police officer took the cash out of my son's wallet and put it in his own pocket, did he then throw the wallet and it's contents, in the trash can, as well. He was then stripped searched, put in an orange jump suit and booked. Just before sunrise, I had my son in my car and was driving him back to his apartment in Miami. My son is well educated, works full time and we have the means to have expedited the process. The next day he was back at the Torch of Friendship with his fist held high in the air fighting for Social Justice. I am writing because if this purposed legislation is signed into law, things would have looked very different for a young man exercising his First Amendment rights. My son was on the side walk when officers begin grabbing protestors, he was forced off the curb and into the street, he then was charge with "Obstruction of Traffic". If this law would have been in place at that time, in the component of New Criminal Offenses to Combat Rioting, Looting and Violence (#2), he would have been charge with a 3rd degree felony under "Prohibition on Obstructing Roadways" and if he was hit by a car, the driver would NOT have been liable.
This legislation is also attempting to punish the group for the actions of one by including RICO liability (#5) I certainly do not support destruction and violence, but collective punishment is simply a tactic used to scare citizens from exercising their constitutional rights.
The final point that I would like to discuss is in the component Citizen and Taxpayer Protection Measures, Bail (#4). As I mentioned, my son is a productive member of society. He was arrested on July 19, 2020 and his arraignment was scheduled Aug. 11, 2020. If he was held without bail until his first appearance in court, he not only would have lost a month of wages but most likely his job and it would have cost tax payers an exorbitant amount of money to house him during that time, especially considering the charge. In the end, all charges were dropped against my son.
I implore you to consider the ramifications of the wording and inclusiveness of this purposed legislation.
Sincerely,

Rochelle England

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: materials for today"s meeting
Date: Monday, December 21, 2020 12:31:43 PM
Attachments: Combatting Public Disorder - Leadership Team.docx
HB Draft- Rioting Draft 3.docx
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Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Kramer, Trina
Sent: Monday, December 21, 2020 9:10 AM
To: Barquin, JuanF
Cc: Hall, Whitney
Subject: materials for today's meeting

Good morning, Attached is a draft copy of the bill and a one page summary for today's meeting at 1pm. Thanks!

Combatting Public Disorder Draft Talking Points

The bill will align with the themes and goals presented in the Governor's bill and create strong protections for our communities that will make Florida a leader in this effort. It will do this by building on current law whenever possible rather than creating new offenses that will not be familiar to law enforcement and prosecutors. This approach will:

- Codify current offense of rioting and create new offenses of aggravated rioting and aggravated inciting or encouraging a riot.

- Enhance penalties for defacing a memorial, create offense of destroying a memorial and require mandatory restitution for the full cost of repair or replacement of the memorial.

- Create offense of mob intimidation for an assembly of three or more persons to act together to compel another person by force, or threat of force, to do any act or assume or abandon a particular viewpoint. This is broader than the language in the Governor's draft which applied to actions taken in public accommodations like restaurants and movie theaters.

- Create offense of doxing which was not included in Governor's draft that will make it a 1st degree misdemeanor to electronically publish another's personal identification information with the intent the information will be used to threaten, intimidate, harass, or place a person in fear of death or great bodily harm.

- Create a minimum mandatory sentence of six months in jail for a person convicted of battery of a law enforcement officer in furtherance of a riot or aggravated riot.

- Instead of creating minimum mandatory sentences which were sometimes overbroad, the bill will reclassify the misdemeanor or felony degree of the offenses of assault, battery, theft and burglary offenses when committed in furtherance of a riot or aggravated riot.

- Increase the ranking in the offense severity ranking chart for specified crimes committed in furtherance of a riot including: aggravated assault or battery, assault or battery on a law enforcement officer, removing a tomb or monument or disturbing a grave, and specified thefts or burglaries.

- Rather than prohibiting a particular percentage of reduction in police funding, the bill will provide a process for objecting to a reduction in a police budget and will allow the Governor and Cabinet to overturn a reduction upon a finding that public safety would be compromised.

- Create a cause of action and waives sovereign immunity to allow a victim of a crime resulting from a riot to sue a municipality for damages, if the municipality obstructed or interfered with law enforcement's ability to provide police protection during a riot or unlawful assembly.

- Correct constitutional infirmities in current law to permit law enforcement to prohibit obstructing streets, highways, and roads and create a defense to civil liability for personal injury, wrongful death, or property damage arising from injury or damage sustained by a person participating in a riot or unlawful assembly.

- Require a person to be held in jail until appearing before a court for first appearance when he or she is arrested for certain rioting offenses.

- Termination of reemployment benefits upon rioting conviction not included because this would violate Federal law. Termination of state or local government employment not included because it would create a scenario where a violent protester would be completely barred from government employment but a sexual predator would not be.

RICO provision not included because not a tool frequently used or easily accessed by state prosecutors. Stand your ground is not included because current law is sufficient.

A bill to be entitled

An act relating to combating public disorder; amending s. 166.241, F.S., authorizing a citizen of a municipality to file an appeal to the Administration Commission if the governing body of a municipality makes a specified reduction to the operating budget of a municipal law enforcement agency; requiring the petition to contain specified information; requiring the Executive Office of the Governor to conduct a budget hearing considering the matter and make findings and recommendations to the Administration Commission; requiring the Administration to approve, amend, or modify the municipality's budget; amending s. 316.2045, F.S., prohibiting obstructing traffic by standing on the street, highway, or road; amending s. 768.28, F.S., creating a cause of action against a municipality for failing to provide reasonable law enforcement protection during a riot or unlawful assembly; waiving sovereign immunity for a municipality in specified circumstances; amending s. 784.011, F.S., reclassifying the penalty for an assault committed in furtherance of a riot or aggravated riot; amending s. 784.021, F.S., increasing the offense severity ranking of an aggravated assault for the purposes of the Criminal Punishment Code if

committed in furtherance of a riot or aggravated riot; amending s. 784.03, F.S., reclassifying the penalty for a battery committed in furtherance of a riot or aggravated riot; amending s. 784.045, F.S., increasing the offense severity ranking of an aggravated battery for the purposes of the Criminal Punishment Code if committed in furtherance of a riot or aggravated riot; creating s. 784.0495, F.S., prohibiting specified assemblies from using or threatening the use of force against another person to do any act or assume or abandon a particular viewpoint; providing a penalty; requiring a person arrested for a violation to be held in jail until first appearance; amending s. 784.07, F.S., requiring a minimum term of imprisonment for a person convicted of battery on a law enforcement officer committed in furtherance of a riot or aggravated riot; increasing the offense severity ranking of an assault or battery against specified first responders for the purposes of the Criminal Punishment Code if committed in furtherance of a riot or aggravated riot; amending s. 806.13, F.S., prohibiting defacing, injuring, or damaging a memorial; providing a penalty; requiring a court to order restitution for such a violation; creating s. 806.135, F.S., providing a definition; prohibiting a

person from destroying or demolishing a memorial; providing a penalty; requiring a court to order restitution for such a violation; amending s. 810.02, F.S., reclassifying specified burglary offenses committed during a riot or aggravated riot and facilitated by conditions arising from the riot; providing a definition; requiring a person arrested for such a violation to be held in jail until first appearance; amending s. 812.014, F.S., reclassifying specified theft offenses committed during a riot or aggravated riot and facilitated by conditions arising from the riot; providing a definition; requiring a person arrested for such a violation to be held in jail until first appearance; amending s. 870.01, F.S., prohibiting a person from fighting in a public place; prohibiting specified assemblies from engaging in disorderly and violent conduct resulting in specified damage or injury; increasing the penalty for rioting under specified circumstances; prohibiting a person from inciting or encouraging a riot; increasing the penalty for inciting or encouraging a riot under specified circumstances; providing definitions; requiring a person arrested for such a violation to be held in jail until first appearance; providing an exception; amending s. 870.02, F.S., requiring a

person arrested for an unlawful assembly to be held in jail until first appearance; amending s. 870.03, F.S., requiring a person arrested for a riot or rout to be held in jail until first appearance; creating s. 870.07, F.S., creating an affirmative defense to a civil action where the plaintiff participated in a riot or unlawful assembly; amending s. 872.02, F.S., increasing the offense severity ranking of specified offenses involving graves and tombs for the purposes of the Criminal Punishment Code if committed in furtherance of a riot or aggravated riot; amending s. 921.0022, F.S., conforming provisions to changes made by the act; ranking offenses created by the act on the offense severity ranking chart; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (4) through (6) of section 166.241, Florida Statutes, are renumbered as subsections (6) through (8), respectively, and new subsections (4) and (5) are added to that section, to read:

166.241 Fiscal years, budgets, appeal of municipal law enforcement agency budget, and budget amendments.—

(4)(a) Within 30 days of a municipality posting its

tentative budget to a public website, as required under s. 166.241, a resident of the municipality may file an appeal by petition to the Administration Commission if the tentative budget contains a funding reduction to the operating budget of the municipal law enforcement agency. The petition must set forth the tentative budget proposed by the municipality, in the form and manner prescribed by the Executive Office of the Governor and approved by the Administration Commission, the operating budget of the municipal law enforcement agency as approved by the municipality for the previous year, and state the reasons or grounds for the appeal. Such petition shall be filed with the Executive Office of the Governor, and a copy served upon the governing body of the municipality or to the clerk of the circuit court within the county in which the municipality lies.

(b) The governing body of the municipality shall have 5 days, not including Saturdays, Sundays, or legal holidays, following delivery of a copy of such petition to file a reply with the Executive Office of the Governor, and shall deliver a copy of such reply to the petitioner.

(5) Upon receipt of the petition, the Executive Office of the Governor shall provide for a budget hearing at which the matters presented in the petition and the reply shall be considered. A report of the findings and recommendations of the Executive Office of the Governor thereon shall be promptly

submitted to the Administration Commission, which, within 30 days, shall either approve the action of the governing body of the municipality or amend or modify the budget as to each separate item within the operating budget of the municipal law enforcement agency. The budget as approved, amended, or modified by the Administration Commission shall be final.

Section 2. Section 316.2045, Florida Statutes, is amended to read:

316.2045 Obstruction of public streets, highways, and roads.—

(1) A ~~It is unlawful for any~~ person ~~or persons willfully to~~ may not intentionally obstruct the free, convenient, and normal use of any public street, highway, or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, by standing or remaining on the street, highway, or road ~~or approaching motor vehicles thereon~~, or by endangering the safe movement of vehicles or pedestrians traveling thereon. A ~~; and any~~ person ~~or persons~~ who violates the provisions of this subsection~~, upon conviction,~~ shall be cited for a pedestrian violation, punishable as provided in chapter 318.

~~(2) It is unlawful, without proper authorization or a lawful permit, for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by any of the means specified in subsection (1)~~

~~in order to solicit. Any person who violates the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

~~Organizations qualified under s. 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, or persons or organizations acting on their behalf are exempted from the provisions of this subsection for activities on streets or roads not maintained by the state. Permits for the use of any portion of a state-maintained road or right-of-way shall be required only for those purposes and in the manner set out in s. 337.406.~~

~~(3) Permits for the use of any street, road, or right-of-way not maintained by the state may be issued by the appropriate local government. An organization that is qualified under s. 501(c)(3) of the Internal Revenue Code and registered under chapter 496, or a person or organization acting on behalf of that organization, is exempt from local requirements for a permit issued under this subsection for charitable solicitation activities on or along streets or roads that are not maintained by the state under the following conditions:~~

~~(a) The organization, or the person or organization acting on behalf of the organization, must provide all of the following to the local government:~~

~~1. No fewer than 14 calendar days prior to the proposed solicitation, the name and address of the person or organization that will perform the solicitation and the name and address of~~

~~the organization that will receive funds from the solicitation.~~

~~2. For review and comment, a plan for the safety of all persons participating in the solicitation, as well as the motoring public, at the locations where the solicitation will take place.~~

~~3. Specific details of the location or locations of the proposed solicitation and the hours during which the solicitation activities will occur.~~

~~4. Proof of commercial general liability insurance against claims for bodily injury and property damage occurring on streets, roads, or rights-of-way or arising from the solicitor's activities or use of the streets, roads, or rights-of-way by the solicitor or the solicitor's agents, contractors, or employees. The insurance shall have a limit of not less than $1 million per occurrence for the general aggregate. The certificate of insurance shall name the local government as an additional insured and shall be filed with the local government no later than 72 hours before the date of the solicitation.~~

~~5. Proof of registration with the Department of Agriculture and Consumer Services pursuant to s. 496.405 or proof that the soliciting organization is exempt from the registration requirement.~~

~~(b) Organizations or persons meeting the requirements of subparagraphs (a)1.-5. may solicit for a period not to exceed 10 cumulative days within 1 calendar year.~~

~~(c) All solicitation shall occur during daylight hours only.~~

~~(d) Solicitation activities shall not interfere with the safe and efficient movement of traffic and shall not cause danger to the participants or the public.~~

~~(e) No person engaging in solicitation activities shall persist after solicitation has been denied, act in a demanding or harassing manner, or use any sound or voice-amplifying apparatus or device.~~

~~(f) All persons participating in the solicitation shall be at least 18 years of age and shall possess picture identification.~~

~~(g) Signage providing notice of the solicitation shall be posted at least 500 feet before the site of the solicitation.~~

~~(h) The local government may stop solicitation activities if any conditions or requirements of this subsection are not met.~~

~~(4) Nothing in this section shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity.~~

(2) ~~(5)~~ Notwithstanding the provisions of subsection (1), any commercial vehicle used solely for the purpose of collecting solid waste or recyclable or recovered materials may stop or stand on any public street, highway, or road for the sole purpose of collecting solid waste or recyclable or recovered

materials. However, such solid waste or recyclable or recovered materials collection vehicle shall show or display amber flashing hazard lights at all times that it is engaged in stopping or standing for the purpose of collecting solid waste or recyclable or recovered materials. Local governments may establish reasonable regulations governing the standing and stopping of such commercial vehicles, provided that such regulations are applied uniformly and without regard to the ownership of the vehicles.

Section 3. Subsection (5) of section 768.28, Florida Statutes, is amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; civil liability for damages caused during a riot; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(5)(a) The state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period before judgment. Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of $200,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence,

exceeds the sum of $300,000. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this act up to $200,000 or $300,000, as the case may be; and that portion of the judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature. Notwithstanding the limited waiver of sovereign immunity provided herein, the state or an agency or subdivision thereof may agree, within the limits of insurance coverage provided, to settle a claim made or a judgment rendered against it without further action by the Legislature, but the state or agency or subdivision thereof shall not be deemed to have waived any defense of sovereign immunity or to have increased the limits of its liability as a result of its obtaining insurance coverage for tortious acts in excess of the $200,000 or $300,000 waiver provided above. The limitations of liability set forth in this subsection shall apply to the state and its agencies and subdivisions whether or not the state or its agencies or subdivisions possessed sovereign immunity before July 1, 1974.

(b) Any governing body of a municipality that intentionally obstructs or interferes with the ability of a municipal law enforcement agency to provide reasonable law enforcement protection during a riot or unlawful assembly is civilly liable for any damages, including damages arising from personal injury, wrongful death, or property damage, proximately

caused by such agency's failure to provide reasonable law enforcement protection during a riot or unlawful assembly. The sovereign immunity recovery limits in paragraph (a) do not apply to an action under this paragraph.

Section 4. Subsection (2) of section 784.011, Florida Statutes, is amended and a new subsection (3) is added to that section, to read:

784.011 Assault.—

(2) Except as provided in subsection (3), a person who ~~Whoever~~ commits ~~an~~ assault commits ~~shall be guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person who commits an assault in furtherance of a riot or aggravated riot, as defined in s. 870.01, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 5. Subsection (2) of section 784.021, Florida Statutes, is amended and a new subsection (3) is added to that section, to read:

784.021 Aggravated assault.—

(2) A person who ~~Whoever~~ commits ~~an~~ aggravated assault commits ~~shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) For the purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a

violation of this section committed by a person acting in furtherance of a riot or aggravated riot, as defined in s. 870.01, is ranked one level above the ranking under s. 921.0022 for the offense committed.

Section 6. Section 784.03, Florida Statutes, is amended to read:

784.03 Battery; felony battery.—

(1)(a) The offense of battery occurs when a person:

1. Actually and intentionally touches or strikes another person against the will of the other; or

2. Intentionally causes bodily harm to another person.

(b) Except as provided in subsection (2) or subsection (3), a person who commits battery commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A person who has one prior conviction for battery, aggravated battery, or felony battery and who commits any second or subsequent battery commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this subsection, "conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

(3) A person who commits a battery in furtherance of a riot or aggravated riot, as defined in s. 870.01, commits a

felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or 775.084.

Section 7. Subsection (3) is added to section 784.045, Florida Statutes, to read:

784.045 Aggravated battery.—

(3) For the purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a violation of this section committed by a person acting in furtherance of a riot or aggravated riot, as defined in s. 870.01, is ranked one level above the ranking under s. 921.0022 for the offense committed.

Section 8. Section 784.0495, Florida Statutes, is created to read:

784.0495 Mob intimidation.—

(1) It is unlawful for any person, assembled with two or more other persons and acting with a common intent, to compel or induce, or attempt to compel or induce, another person by force, or threat of force, to do any act or to assume or abandon a particular viewpoint.

(2) A person who violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person arrested for a violation of this section shall be held in custody until brought before the court for admittance to bail in accordance with chapter 903.

Section 9. Subsection (2) of section 784.07, Florida Statutes, is amended and a new subsection (4) is added to that section, to read:

784.07 Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.—

(2) Whenever any person is charged with knowingly committing an assault or battery upon a law enforcement officer, a firefighter, an emergency medical care provider, a railroad special officer, a traffic accident investigation officer as described in s. 316.640, a nonsworn law enforcement agency employee who is certified as an agency inspector, a blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI, a law enforcement explorer, a traffic infraction enforcement officer as described in s. 316.640, a parking enforcement specialist as defined in s. 316.640, a person licensed as a security officer as defined in s. 493.6101 and wearing a uniform that bears at least one patch or emblem that is visible at all times that clearly identifies the employing agency and that clearly identifies the person as a licensed security officer, or a security officer employed by the board of trustees of a community college, while the officer, firefighter,

emergency medical care provider, railroad special officer, traffic accident investigation officer, traffic infraction enforcement officer, inspector, analyst, operator, law enforcement explorer, parking enforcement specialist, public transit employee or agent, or security officer is engaged in the lawful performance of his or her duties, the offense for which the person is charged shall be reclassified as follows:

(a) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.

(b) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree. Notwithstanding any other provision of law, any person convicted of battery upon a law enforcement officer committed in furtherance of a riot or aggravated riot, as defined in s. 870.01, shall be sentenced to a minimum term of imprisonment of 6 months.

(c) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree. Notwithstanding any other provision of law, any person convicted of aggravated assault upon a law enforcement officer shall be sentenced to a minimum term of imprisonment of 3 years.

(d) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree. Notwithstanding any other provision of law, any person convicted of aggravated battery of a law enforcement officer shall be sentenced to a minimum term of imprisonment of 5 years.

(4) For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony violation of this section committed by a person acting in furtherance of a riot or aggravated riot, as defined in s. 870.01, is ranked one level above the ranking under s. 921.0022 for the offense committed.

Section 10. Subsections (3) through (9) of section 806.13, Florida Statutes, are renumbered as subsections (4) through (10), respectively, and a new subsection (3) is added to that section, to read:

806.13 Criminal mischief; penalties; penalty for minor.—

(3) Any person who, without the consent of the owner thereof, willfully and maliciously defaces, injures, or otherwise damages by any means a memorial, as defined in s. 806.135, and the value of the damage to the memorial is greater than $200, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A court shall order any person convicted of violating this subsection to pay restitution, which shall include the full cost of repair or replacement of such memorial.

Section 11. Section 806.135, Florida Statutes, is created to read:

806.135 Destroying or demolishing a memorial.—

(1) As used in this section, the term "memorial" means a plaque, statue, marker, flag, banner, cenotaph, religious

symbol, painting, seal, tombstone, structure name, or display that is constructed and located with the intent of being permanently displayed or perpetually maintained; is dedicated to a historical person, an entity, an event, or a series of events; and honors or recounts the military service of any past or present United States Armed Forces military personnel, or the past or present public service of a resident of the geographical area comprising the state or the United States. The term includes, but is not limited to, the following memorials established under chapter 265:

(a) Florida Women's Hall of Fame.

(b) Florida Medal of Honor Wall.

(c) Florida Veterans' Hall of Fame.

(d) POW-MIA Chair of Honor Memorial.

(e) Florida Veterans' Walk of Honor and Florida Veterans' Memorial Garden.

(f) Florida Law Enforcement Officers' Hall of Fame.

(g) Florida Holocaust Memorial.

(h) Florida Slavery Memorial.

(i) Any other memorial located within the Capitol Complex, including, but not limited to, Waller Park.

(2) It is unlawful for any person to willfully and maliciously destroy or demolish any memorial, or pull down a memorial, unless authorized by the owner of the memorial. A violation of this section is a felony of the second degree,

punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A court shall order any person convicted of violating this section to pay restitution, which shall include the full cost of repair or replacement of such memorial.

Section 12. Subsections (3) and (4) of section 810.02, Florida Statutes, are amended to read:

810.02 Burglary.—

(3) Burglary is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the course of committing the offense, the offender does not make an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the offender enters or remains in a:

(a) Dwelling, and there is another person in the dwelling at the time the offender enters or remains;

(b) Dwelling, and there is not another person in the dwelling at the time the offender enters or remains;

(c) Structure, and there is another person in the structure at the time the offender enters or remains;

(d) Conveyance, and there is another person in the conveyance at the time the offender enters or remains;

(e) Authorized emergency vehicle, as defined in s. 316.003; or

(f) Structure or conveyance when the offense intended to be committed therein is theft of a controlled substance as

defined in s. 893.02. Notwithstanding any other law, separate judgments and sentences for burglary with the intent to commit theft of a controlled substance under this paragraph and for any applicable possession of controlled substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

However, if the burglary is committed during a riot or aggravated riot, as defined in s. 870.01, and the perpetration of the burglary is facilitated by conditions arising from the riot; or within a county that is subject to a state of emergency declared by the Governor under chapter 252 after the declaration of emergency is made and the perpetration of the burglary is facilitated by conditions arising from the emergency, the burglary is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this subsection, the term "conditions arising from a riot" means civil unrest, power outages, curfews, or a reduction in the presence of or response time for first responders or homeland security personnel and "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel. A person arrested for committing a burglary during a

riot or aggravated riot or within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this subsection is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

(4) Burglary is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the course of committing the offense, the offender does not make an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the offender enters or remains in a:

(a) Structure, and there is not another person in the structure at the time the offender enters or remains; or

(b) Conveyance, and there is not another person in the conveyance at the time the offender enters or remains.

However, if the burglary is committed during a riot or aggravated riot, as defined in s. 870.01, and the perpetration of the burglary is facilitated by conditions arising from the riot; or within a county that is subject to a state of emergency declared by the Governor under chapter 252 after the declaration of emergency is made and the perpetration of the burglary is facilitated by conditions arising from the emergency, the

burglary is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this subsection, the term "conditions arising from a riot" means civil unrest, power outages, curfews, or a reduction in the presence of or response time for first responders or homeland security personnel and "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel. A person arrested for committing a burglary during a riot or aggravated riot or within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this subsection is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 13. Paragraphs (b) and (c) of subsection (2) of section 812.014, Florida Statutes, are amended to read:

812.014 Theft.—

(2)

(b)1. If the property stolen is valued at $20,000 or more, but less than $100,000;

2. The property stolen is cargo valued at less than $50,000 that has entered the stream of interstate or intrastate

commerce from the shipper's loading platform to the consignee's receiving dock;

3. The property stolen is emergency medical equipment, valued at $300 or more, that is taken from a facility licensed under chapter 395 or from an aircraft or vehicle permitted under chapter 401; or

4. The property stolen is law enforcement equipment, valued at $300 or more, that is taken from an authorized emergency vehicle, as defined in s. 316.003,

the offender commits grand theft in the second degree, punishable as a felony of the second degree, as provided in s. 775.082, s. 775.083, or s. 775.084. Emergency medical equipment means mechanical or electronic apparatus used to provide emergency services and care as defined in s. 395.002(9) or to treat medical emergencies. Law enforcement equipment means any property, device, or apparatus used by any law enforcement officer as defined in s. 943.10 in the officer's official business. However, if the property is stolen during a riot or aggravated riot, as defined in s. 870.01, and the perpetration of the theft is facilitated by conditions arising from the riot; or within a county that is subject to a state of emergency declared by the Governor under chapter 252, the theft is committed after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising

from the emergency, the theft is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this paragraph, the term "conditions arising from a riot" means civil unrest, power outages, curfews, or a reduction in the presence of or response time for first responders or homeland security personnel and "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel. A person arrested for committing a theft during a riot or aggravated riot or within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

1. Valued at $750 or more, but less than $5,000.

2. Valued at $5,000 or more, but less than $10,000.

3. Valued at $10,000 or more, but less than $20,000.

4. A will, codicil, or other testamentary instrument.

5. A firearm.

6. A motor vehicle, except as provided in paragraph (a).

7. Any commercially farmed animal, including any animal of the equine, avian, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; and aquaculture species raised at a certified aquaculture facility. If the property stolen is a commercially farmed animal, including an animal of the equine, avian, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; or an aquaculture species raised at a certified aquaculture facility, a $10,000 fine shall be imposed.

8. Any fire extinguisher that, at the time of the taking, was installed in any building for the purpose of fire prevention and control. This subparagraph does not apply to a fire extinguisher taken from the inventory at a point-of-sale business.

9. Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.

10. Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d).

11. Any stop sign.

12. Anhydrous ammonia.

13. Any amount of a controlled substance as defined in s. 893.02. Notwithstanding any other law, separate judgments and sentences for theft of a controlled substance under this subparagraph and for any applicable possession of controlled

substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

However, if the property is stolen during a riot or aggravated riot, as defined in s. 870.01, and the perpetration of the theft is facilitated by conditions arising from the riot; or within a county that is subject to a state of emergency declared by the Governor under chapter 252, the property is stolen after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property is valued at $5,000 or more, but less than $10,000, as provided under subparagraph 2., or if the property is valued at $10,000 or more, but less than $20,000, as provided under subparagraph 3. As used in this paragraph, the term "conditions arising from a riot" means civil unrest, power outages, curfews, or a reduction in the presence of or response time for first responders or homeland security personnel and "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel. A person arrested for committing a

theft during a riot or aggravated riot or within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 14. Section 836.115, Florida Statutes, is created to read:

836.115 Cyber intimidation by publication.—

(1) As used in this section, the term:

(a) "Electronically publish" means to disseminate, post, or otherwise disclose information to an Internet site or forum.

(b) "Personal identification information" has the same meaning as provided in s. 817.568.

(c) "Harass" has the same meaning as provided in s. 817.568.

(2) Any person who electronically publishes another's personal identification information with the intent to, or with the intent the information will be used by another to, threaten, intimidate, harass, incite violence or the commission of a crime against a person, or place a person in reasonable fear of death or great bodily harm commits a misdemeanor of a first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 15. Section 870.01, Florida Statutes, is amended

to read:

870.01 Affrays and riots.—

(1) A ~~All~~ person~~s~~ who, by mutual consent, engages in fighting with another in a public place to the terror of the people commits ~~guilty of~~ an affray, ~~shall be guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A ~~All~~ person~~s~~ who participates in a public disturbance involving an assembly of three or more persons acting with a common intent to mutually assist each other in disorderly and violent conduct resulting in injury or damage to another person or property, or creating a clear and present danger of injury or damage to another person or property, commits ~~guilty of~~ a riot, ~~or of inciting or encouraging a riot, shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person commits aggravated rioting, if in the course of committing a riot, he or she:

(a) Participates with nine or more other persons;

(b) Causes great bodily harm to another person not participating in the riot;

(c) Causes damage to property exceeding $5,000;

(d) Displays, uses, threatens to use, or attempts to use a deadly weapon; or

(e) By force, or threat of force, endangers the safe

movement of any vehicle traveling on any public street, highway, or road.

A violation of this subsection is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Any person who willfully incites or encourages another to participate in a riot, so that as a result of such inciting or encouraging, a riot occurs or a clear and present danger of a riot is created, commits inciting or encouraging a riot, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) A person commits aggravated inciting or encouraging a riot, if in the course of committing inciting or encouraging a riot, he or she:

(a) Incites or encourages a riot resulting in great bodily harm to another person not participating in the riot;

(b) Incites or encourages a riot resulting in damage to property exceeding $5,000; or

(c) Supplies a deadly weapon to another person or teaches another person to prepare a deadly weapon with intent that such deadly weapon be used in a riot.

A violation of this subsection is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) Except for a violation of subsection (1), a person arrested for a violation of this section shall be held in

custody until brought before the court for admittance to bail in accordance with chapter 903.

Section 16. Section 870.02, Florida Statutes, is amended to read:

870.02 Unlawful assemblies.—

(1) If three or more persons meet together to commit a breach of the peace, or to do any other unlawful act, each of them commits ~~shall be guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A person arrested for a violation of this section shall be held in custody until brought before the court for admittance to bail in accordance with chapter 903.

Section 17. Section 870.03, Florida Statutes, is amended to read:

870.03 Riots and routs.—

(1) If any persons unlawfully assembled demolish, pull down or destroy, or begin to demolish, pull down or destroy, any dwelling house or other building, or any ship or vessel, each of them commits ~~shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person arrested for a violation of this section shall be held in custody until brought before the court for admittance to bail in accordance with chapter 903.

Section 18. Section 870.07, Florida Statutes, is created to read:

870.07 Affirmative defense in civil action; party convicted of riot or unlawful assembly.—

(1) In any action for damages for personal injury, wrongful death, or property damage, it is an affirmative defense that such action arose from injury or damage sustained by a participant acting in furtherance of a riot or unlawful assembly. The affirmative defense authorized by this section shall be established by evidence that the participant has been convicted of riot, aggravated riot, or unlawful assembly, or by proof of the commission of such crime by a preponderance of the evidence.

(2) In any civil action where a defendant raises an affirmative defense under this section, the court must, on motion by the defendant, stay the action during the pendency of any criminal action which forms the basis for the defense, unless the court finds that a conviction in the criminal action would not form a valid defense under this section.

Section 19. Subsections (3) through (6) of section 872.02, F.S., are renumbered as subsections (4) through (7), respectively, and a new subsection (3) is added to that section, to read:

872.02 Injuring or removing tomb or monument; disturbing contents of grave or tomb; penalties.—

(3) For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a

violation of this section, committed by a person in furtherance of a riot or aggravated riot, as defined in s. 870.01, is ranked one level above the ranking under s. 921.0022 or s. 921.0023 for the offense committed.

Section 20. Paragraphs (b), (c), and (d) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(b) LEVEL 2

Florida Statute	Felony Degree	Description
379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or

hazardous waste.

517.07(2) 3rd Failure to furnish a prospectus meeting requirements.

590.28(1) 3rd Intentional burning of lands.

784.03(3) 3rd Battery during a riot or aggravated riot.

784.05(3) 3rd Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.

787.04(1) 3rd In violation of court order, take, entice, etc., minor beyond state limits.

806.13(1)(b)3. 3rd Criminal mischief; damage $1,000 or more to public communication or any other public service.

806.13(3) 3rd Criminal mischief; damage $200 or more to a memorial.

810.061(2) 3rd Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.

810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
812.014(2)(c)1.	3rd	Grand theft, 3rd degree; $750 or more but less than $5,000.
812.014(2)(d)	3rd	Grand theft, 3rd degree; $100 or more but less than $750, taken from unenclosed curtilage of dwelling.
812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
817.234(1)(a)2.	3rd	False statement in support of insurance claim.
817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over $300.
817.52(3)	3rd	Failure to redeliver hired vehicle.
817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.

817.60(5) 3rd Dealing in credit cards of another.

817.60(6)(a) 3rd Forgery; purchase goods, services with false card.

817.61 3rd Fraudulent use of credit cards over $100 or more within 6 months.

826.04 3rd Knowingly marries or has sexual intercourse with person to whom related.

831.01 3rd Forgery.

831.02 3rd Uttering forged instrument; utters or publishes alteration with intent to defraud.

831.07 3rd Forging bank bills, checks, drafts, or promissory notes.

831.08 3rd Possessing 10 or more forged notes, bills, checks, or drafts.

831.09 3rd Uttering forged notes, bills, checks, drafts, or promissory notes.

831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
843.08	3rd	False personation.
893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs other than cannabis.
893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066	3rd	Unlawfully obtaining or using confidential

(3)(b)- crash reports.
(d)

316.193(2)(b) 3rd Felony DUI, 3rd conviction.

316.1935(2) 3rd Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.

319.30(4) 3rd Possession by junkyard of motor vehicle with identification number plate removed.

319.33(1)(a) 3rd Alter or forge any certificate of title to a motor vehicle or mobile home.

319.33(1)(c) 3rd Procure or pass title on stolen vehicle.

319.33(4) 3rd With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.

327.35(2)(b) 3rd Felony BUI.

328.05(2) 3rd Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of

			vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.	
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.	
379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.	
379.2431 (1)(e)6.	3rd	Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in the Marine Turtle Protection Act.	
379.2431 (1)(e)7.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.	

400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.

790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
812.015(8)(b)	3rd	Retail theft with intent to sell; conspires with others.
815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.

817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.	
817.233	3rd	Burning to defraud insurer.	
817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.	
817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.	
817.236	3rd	Filing a false motor vehicle insurance application.	
817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.	
817.413(2)	3rd	Sale of used goods of $1,000 or more as new.	
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument with intent to defraud.	

831.29 2nd Possession of instruments for counterfeiting driver licenses or identification cards.

838.021(3)(b) 3rd Threatens unlawful harm to public servant.

843.19 2nd Injure, disable, or kill police, fire, or SAR canine or police horse.

860.15(3) 3rd Overcharging for repairs and parts.

870.01(2) 3rd Riot~~; inciting or encouraging~~.

870.01(4) 3rd Inciting or encouraging a riot.

893.13(1)(a)2. 3rd Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs).

893.13(1)(d)2. 2nd Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of university.

893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of public housing facility.
893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material

			information on any document or record required by chapter 893.
877			
	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
878			
	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
879			
	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
880			
	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
881			
	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation

		evidence.
944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or

		transaction statements.
499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
517.07(1)	3rd	Failure to register securities.
517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
784.075	3rd	Battery on detention or commitment facility staff.
784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
784.081(3)	3rd	Battery on specified official or employee.

784.082(3) 3rd Battery by detained person on visitor or other detainee.

784.083(3) 3rd Battery on code inspector.

784.085 3rd Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.

787.03(1) 3rd Interference with custody; wrongly takes minor from appointed guardian.

787.04(2) 3rd Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.

787.04(3) 3rd Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.

787.07 3rd Human smuggling.

790.115(1) 3rd Exhibiting firearm or weapon within 1,000 feet of a school.

790.115(2)(b) 3rd Possessing electric weapon or device,

destructive device, or other weapon on school property.

790.115(2)(c) 3rd Possessing firearm on school property.

800.04(7)(c) 3rd Lewd or lascivious exhibition; offender less than 18 years.

806.135 2nd Destroying or demolishing a memorial.

810.02(4)(a) 3rd Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.

810.02(4)(b) 3rd Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.

810.06 3rd Burglary; possession of tools.

810.08(2)(c) 3rd Trespass on property, armed with firearm or dangerous weapon.

812.014(2)(c)3. 3rd Grand theft, 3rd degree $10,000 or more but less than $20,000.

812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree; specified items.
812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen $300 or more.
817.505(4)(a)	3rd	Patient brokering.
817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
817.568(2)(a)	3rd	Fraudulent use of personal identification information.
817.625(2)(a)	3rd	Fraudulent use of scanning device, skimming device, or reencoder.
817.625(2)(c)	3rd	Possess, sell, or deliver skimming device.
828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.

837.02(1) 3rd Perjury in official proceedings.

837.021(1) 3rd Make contradictory statements in official proceedings.

838.022 3rd Official misconduct.

839.13(2)(a) 3rd Falsifying records of an individual in the care and custody of a state agency.

839.13(2)(c) 3rd Falsifying records of the Department of Children and Families.

843.021 3rd Possession of a concealed handcuff key by a person in custody.

843.025 3rd Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.

843.15(1)(a) 3rd Failure to appear while on bail for felony (bond estreature or bond jumping).

847.0135(5)(c) 3rd Lewd or lascivious exhibition using computer; offender less than 18 years.

933	870.01(3)	3rd	Aggravated rioting.
934	870.01(5)	3rd	Aggravated inciting or encouraging a riot.
935	874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
936	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)5. drugs).
937	914.14(2)	3rd	Witnesses accepting bribes.
938	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
939	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
940	916.1085 (2)(c)1.	3rd	Introduction of specified contraband into certain DCF facilities.
941	918.12	3rd	Tampering with jurors.

934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
944.47(1)(a)6.	3rd	Introduction of contraband (cellular telephone or other portable communication device) into correctional institution.
951.22(1)(h), (j) & (k)	3rd	Intoxicating drug, instrumentality or other device to aid escape, or cellular telephone or other portable communication device introduced into county detention facility.

Section 21. This act shall take effect October 1, 2021.

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: The Florida Channel Interview
Date: Tuesday, January 12, 2021 11:30:33 AM
Attachments: image001.png
OutlookEmoji-1568727030772c18586d8-2a43-49df-b277-76f667c0cca8.png

---

Juan,

Would you like me to set up a meeting for you to talk to this reporter about HB1?

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

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(850) 717-5119

From: Javonni Hampton
Sent: Monday, January 11, 2021 10:50 PM
To: Barquin, JuanF
Subject: The Florida Channel Interview

Hello,
My name is Javonni Hampton, I am a reporter with the Florida Channel. Was wondering if it was possible to set up an interview with the Representative sometime tomorrow morning before committees to discuss his new proposed legislation HB1. Tuesday before 9am, does that work?
Best,
Javonni

Javonni Hampton
Reporter/Producer- Florida Channel Programming

The FLORIDA Channel | Office: 850-488-1281
Direct: 407-680-7606 | FAX: 850-488-4876
jhampton@fsu.edu www.TheFloridaChannel.org

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From: Barquin, JuanF
To: Munero, Armando
Subject: HB 1
Date: Friday, January 08, 2021 1:02:28 PM
Attachments: OutlookEmoji-1568727030772906667ca-2c90-42ec-82b8-375db044e6e5.png

Please approve the people asking to co-sponsor HB 1. There is a difference between Prime Co-Sponsor and Co-Sponsor. Do NOT approve Prime Co-Sponsors.

JFB

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From: Jeff Kottkamp
To: Barquin, JuanF
Subject: HB 1
Date: Thursday, January 14, 2021 5:03:38 PM

Representative---thank you for taking the time to discuss HB 1. I fully support the bill and have some ideas to make it stronger. Below are some initial thoughts:

-After the bill becomes law it will almost certainly get challenged in Court. For that reason--you should add a **severability clause**.

-Would love to see a **citizen standing** provision---for citizens of the state and members of historical preservation organizations.
Here's some language to consider:
A public entity owning a monument, any resident of this state, or an entity whose purpose is historic preservation, shall have standing to seek enforcement of this Act through civil action in the circuit court in the county in which a memorial which has been damaged, defaced, destroyed or removed is located.
If the State of Florida or a political subdivision of the state accepts, or has accepted,
the donation of a memorial the donor of the monument, and any organization of the state
organized for the purpose of historic preservation, shall have a continuing interest in
the monument and shall have standing to bring a cause of action to protect and preserve
the donated monument.
Waiver of Sovereign Immunity-Notwithstanding the provisions of s.768.28 sovereign immunity is waived by the state and its subdivisions for purposes of
permitting a victim of a crime resulting from a violent or disorderly assembly
to file an action for damages against any subdivision of the state when that subdivision was grossly negligent in failing to protect persons and property from
harm.

-It would be great if the **Secretary of State had the ability to pull back funding or remove a historic district designation** if a local government removes historic monuments. Here's some possible language:
Florida Statute 265.705 is amended to read:
Section 7. A. State policy relative to historical properties.—The rich and

unique heritage of historical properties in this state, representing more than 10,000 years of human presence, is an important legacy to be valued and conserved for present and future generations. The destruction of these nonrenewable historical resources will engender a significant loss to the state's quality of life, economy, and cultural environment. It is therefore declared to be state policy to provide leadership in the preservation of the state's historical resources and to administer state-owned or state-controlled historical resources in a spirit of stewardship and trusteeship, and accordingly the Secretary of State is hereby authorized to take such action necessary or appropriate to protect
and preserve the historical resources of the state, including but not limited to criminal referrals to
the Attorney General of Florida
B. The Secretary of State shall have authority to de-certifiy a Historic District in the State of Florida when a historic resource is removed from a Historic District and make reduce or eliminate funding to any historic district in the state that has removed any historic resource that served as the basis for the creation of the Historic District.
C. The Secretary of State shall have standing to pursue any legal action necessary to protect and preserve historic property or historic resources in this state as defined in s. 265.7025 (4).

-How about appointing a **Domestic Terrorism Task Force**. It would provide an opportunity to really dive into the tactics being used by Anitifa and others to intimidate local elected officials and coerce them into removing historical monuments.

-On line 442 you may want to consider removing the phrase "without consent of the owner thereof"....it is often difficult to determine who actually owns some of the historical monuments.

-You may want to look at Chapter 876 "Criminal Anarchy, Treason, and Other Crimes Against Public Order"....there are a number of provisions that could easily be amended to add some teeth to the bill.

Thank you again for taking the time to discuss the bill. Please consider me a resource and sounding board. This is an important piece of legislation and I would like to help you get it across the finish line.

Jeff Kottkamp
17th Lt. Governor of Florida
Jeff Kottkamp, PA
(239)297-9741-cell
JeffKottkamp@Gmail.com

From: Kramer, Trina
To: Barquin, JuanF
Cc: Hall, Whitney
Subject: materials for today"s meeting
Date: Monday, December 21, 2020 9:10:31 AM
Attachments: Combatting Public Disorder - Leadership Team.docx
HB Draft- Rioting Draft 3.docx

Good morning, Attached is a draft copy of the bill and a one page summary for today's meeting at 1pm. Thanks!

Combatting Public Disorder Draft Talking Points

The bill will align with the themes and goals presented in the Governor's bill and create strong protections for our communities that will make Florida a leader in this effort. It will do this by building on current law whenever possible rather than creating new offenses that will not be familiar to law enforcement and prosecutors. This approach will:

- Codify current offense of rioting and create new offenses of aggravated rioting and aggravated inciting or encouraging a riot.

- Enhance penalties for defacing a memorial, create offense of destroying a memorial and require mandatory restitution for the full cost of repair or replacement of the memorial.

- Create offense of mob intimidation for an assembly of three or more persons to act together to compel another person by force, or threat of force, to do any act or assume or abandon a particular viewpoint. This is broader than the language in the Governor's draft which applied to actions taken in public accommodations like restaurants and movie theaters.

- Create offense of doxing which was not included in Governor's draft that will make it a 1st degree misdemeanor to electronically publish another's personal identification information with the intent the information will be used to threaten, intimidate, harass, or place a person in fear of death or great bodily harm.

- Create a minimum mandatory sentence of six months in jail for a person convicted of battery of a law enforcement officer in furtherance of a riot or aggravated riot.

- Instead of creating minimum mandatory sentences which were sometimes overbroad, the bill will reclassify the misdemeanor or felony degree of the offenses of assault, battery, theft and burglary offenses when committed in furtherance of a riot or aggravated riot.

- Increase the ranking in the offense severity ranking chart for specified crimes committed in furtherance of a riot including: aggravated assault or battery, assault or battery on a law enforcement officer, removing a tomb or monument or disturbing a grave, and specified thefts or burglaries.

- Rather than prohibiting a particular percentage of reduction in police funding, the bill will provide a process for objecting to a reduction in a police budget and will allow the Governor and Cabinet to overturn a reduction upon a finding that public safety would be compromised.

- Create a cause of action and waives sovereign immunity to allow a victim of a crime resulting from a riot to sue a municipality for damages, if the municipality obstructed or interfered with law enforcement's ability to provide police protection during a riot or unlawful assembly.

- Correct constitutional infirmities in current law to permit law enforcement to prohibit obstructing streets, highways, and roads and create a defense to civil liability for personal injury, wrongful death, or property damage arising from injury or damage sustained by a person participating in a riot or unlawful assembly.

- Require a person to be held in jail until appearing before a court for first appearance when he or she is arrested for certain rioting offenses.

- Termination of reemployment benefits upon rioting conviction not included because this would violate Federal law. Termination of state or local government employment not included because it would create a scenario where a violent protester would be completely barred from government employment but a sexual predator would not be.

RICO provision not included because not a tool frequently used or easily accessed by state prosecutors. Stand your ground is not included because current law is sufficient.

A bill to be entitled

An act relating to combating public disorder; amending s. 166.241, F.S., authorizing a citizen of a municipality to file an appeal to the Administration Commission if the governing body of a municipality makes a specified reduction to the operating budget of a municipal law enforcement agency; requiring the petition to contain specified information; requiring the Executive Office of the Governor to conduct a budget hearing considering the matter and make findings and recommendations to the Administration Commission; requiring the Administration to approve, amend, or modify the municipality's budget; amending s. 316.2045, F.S., prohibiting obstructing traffic by standing on the street, highway, or road; amending s. 768.28, F.S., creating a cause of action against a municipality for failing to provide reasonable law enforcement protection during a riot or unlawful assembly; waiving sovereign immunity for a municipality in specified circumstances; amending s. 784.011, F.S., reclassifying the penalty for an assault committed in furtherance of a riot or aggravated riot; amending s. 784.021, F.S., increasing the offense severity ranking of an aggravated assault for the purposes of the Criminal Punishment Code if

committed in furtherance of a riot or aggravated riot; amending s. 784.03, F.S., reclassifying the penalty for a battery committed in furtherance of a riot or aggravated riot; amending s. 784.045, F.S., increasing the offense severity ranking of an aggravated battery for the purposes of the Criminal Punishment Code if committed in furtherance of a riot or aggravated riot; creating s. 784.0495, F.S., prohibiting specified assemblies from using or threatening the use of force against another person to do any act or assume or abandon a particular viewpoint; providing a penalty; requiring a person arrested for a violation to be held in jail until first appearance; amending s. 784.07, F.S., requiring a minimum term of imprisonment for a person convicted of battery on a law enforcement officer committed in furtherance of a riot or aggravated riot; increasing the offense severity ranking of an assault or battery against specified first responders for the purposes of the Criminal Punishment Code if committed in furtherance of a riot or aggravated riot; amending s. 806.13, F.S., prohibiting defacing, injuring, or damaging a memorial; providing a penalty; requiring a court to order restitution for such a violation; creating s. 806.135, F.S., providing a definition; prohibiting a

person from destroying or demolishing a memorial; providing a penalty; requiring a court to order restitution for such a violation; amending s. 810.02, F.S., reclassifying specified burglary offenses committed during a riot or aggravated riot and facilitated by conditions arising from the riot; providing a definition; requiring a person arrested for such a violation to be held in jail until first appearance; amending s. 812.014, F.S., reclassifying specified theft offenses committed during a riot or aggravated riot and facilitated by conditions arising from the riot; providing a definition; requiring a person arrested for such a violation to be held in jail until first appearance; amending s. 870.01, F.S., prohibiting a person from fighting in a public place; prohibiting specified assemblies from engaging in disorderly and violent conduct resulting in specified damage or injury; increasing the penalty for rioting under specified circumstances; prohibiting a person from inciting or encouraging a riot; increasing the penalty for inciting or encouraging a riot under specified circumstances; providing definitions; requiring a person arrested for such a violation to be held in jail until first appearance; providing an exception; amending s. 870.02, F.S., requiring a

person arrested for an unlawful assembly to be held in jail until first appearance; amending s. 870.03, F.S., requiring a person arrested for a riot or rout to be held in jail until first appearance; creating s. 870.07, F.S., creating an affirmative defense to a civil action where the plaintiff participated in a riot or unlawful assembly; amending s. 872.02, F.S., increasing the offense severity ranking of specified offenses involving graves and tombs for the purposes of the Criminal Punishment Code if committed in furtherance of a riot or aggravated riot; amending s. 921.0022, F.S., conforming provisions to changes made by the act; ranking offenses created by the act on the offense severity ranking chart; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (4) through (6) of section 166.241, Florida Statutes, are renumbered as subsections (6) through (8), respectively, and new subsections (4) and (5) are added to that section, to read:

166.241 Fiscal years, budgets, appeal of municipal law enforcement agency budget, and budget amendments.—

(4)(a) Within 30 days of a municipality posting its

tentative budget to a public website, as required under s. 166.241, a resident of the municipality may file an appeal by petition to the Administration Commission if the tentative budget contains a funding reduction to the operating budget of the municipal law enforcement agency. The petition must set forth the tentative budget proposed by the municipality, in the form and manner prescribed by the Executive Office of the Governor and approved by the Administration Commission, the operating budget of the municipal law enforcement agency as approved by the municipality for the previous year, and state the reasons or grounds for the appeal. Such petition shall be filed with the Executive Office of the Governor, and a copy served upon the governing body of the municipality or to the clerk of the circuit court within the county in which the municipality lies.

(b) The governing body of the municipality shall have 5 days, not including Saturdays, Sundays, or legal holidays, following delivery of a copy of such petition to file a reply with the Executive Office of the Governor, and shall deliver a copy of such reply to the petitioner.

(5) Upon receipt of the petition, the Executive Office of the Governor shall provide for a budget hearing at which the matters presented in the petition and the reply shall be considered. A report of the findings and recommendations of the Executive Office of the Governor thereon shall be promptly

submitted to the Administration Commission, which, within 30 days, shall either approve the action of the governing body of the municipality or amend or modify the budget as to each separate item within the operating budget of the municipal law enforcement agency. The budget as approved, amended, or modified by the Administration Commission shall be final.

Section 2. Section 316.2045, Florida Statutes, is amended to read:

316.2045 Obstruction of public streets, highways, and roads.—

(1) A ~~It is unlawful for any~~ person ~~or persons willfully to~~ may not intentionally obstruct the free, convenient, and normal use of any public street, highway, or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, by standing or remaining on the street, highway, or road ~~or approaching motor vehicles thereon~~, or by endangering the safe movement of vehicles or pedestrians traveling thereon. A ~~; and any~~ person ~~or persons~~ who violates the provisions of this subsection~~, upon conviction,~~ shall be cited for a pedestrian violation, punishable as provided in chapter 318.

~~(2) It is unlawful, without proper authorization or a lawful permit, for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by any of the means specified in subsection (1)~~

~~in order to solicit. Any person who violates the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

~~Organizations qualified under s. 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, or persons or organizations acting on their behalf are exempted from the provisions of this subsection for activities on streets or roads not maintained by the state. Permits for the use of any portion of a state-maintained road or right-of-way shall be required only for those purposes and in the manner set out in s. 337.406.~~

~~(3) Permits for the use of any street, road, or right-of-way not maintained by the state may be issued by the appropriate local government. An organization that is qualified under s. 501(c)(3) of the Internal Revenue Code and registered under chapter 496, or a person or organization acting on behalf of that organization, is exempt from local requirements for a permit issued under this subsection for charitable solicitation activities on or along streets or roads that are not maintained by the state under the following conditions:~~

~~(a) The organization, or the person or organization acting on behalf of the organization, must provide all of the following to the local government:~~

~~1. No fewer than 14 calendar days prior to the proposed solicitation, the name and address of the person or organization that will perform the solicitation and the name and address of~~

~~the organization that will receive funds from the solicitation.~~

~~2. For review and comment, a plan for the safety of all persons participating in the solicitation, as well as the motoring public, at the locations where the solicitation will take place.~~

~~3. Specific details of the location or locations of the proposed solicitation and the hours during which the solicitation activities will occur.~~

~~4. Proof of commercial general liability insurance against claims for bodily injury and property damage occurring on streets, roads, or rights-of-way or arising from the solicitor's activities or use of the streets, roads, or rights-of-way by the solicitor or the solicitor's agents, contractors, or employees. The insurance shall have a limit of not less than $1 million per occurrence for the general aggregate. The certificate of insurance shall name the local government as an additional insured and shall be filed with the local government no later than 72 hours before the date of the solicitation.~~

~~5. Proof of registration with the Department of Agriculture and Consumer Services pursuant to s. 496.405 or proof that the soliciting organization is exempt from the registration requirement.~~

~~(b) Organizations or persons meeting the requirements of subparagraphs (a)1.-5. may solicit for a period not to exceed 10 cumulative days within 1 calendar year.~~

~~(c) All solicitation shall occur during daylight hours only.~~

~~(d) Solicitation activities shall not interfere with the safe and efficient movement of traffic and shall not cause danger to the participants or the public.~~

~~(e) No person engaging in solicitation activities shall persist after solicitation has been denied, act in a demanding or harassing manner, or use any sound or voice-amplifying apparatus or device.~~

~~(f) All persons participating in the solicitation shall be at least 18 years of age and shall possess picture identification.~~

~~(g) Signage providing notice of the solicitation shall be posted at least 500 feet before the site of the solicitation.~~

~~(h) The local government may stop solicitation activities if any conditions or requirements of this subsection are not met.~~

~~(4) Nothing in this section shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity.~~

(2) ~~(5)~~ Notwithstanding the provisions of subsection (1), any commercial vehicle used solely for the purpose of collecting solid waste or recyclable or recovered materials may stop or stand on any public street, highway, or road for the sole purpose of collecting solid waste or recyclable or recovered

materials. However, such solid waste or recyclable or recovered materials collection vehicle shall show or display amber flashing hazard lights at all times that it is engaged in stopping or standing for the purpose of collecting solid waste or recyclable or recovered materials. Local governments may establish reasonable regulations governing the standing and stopping of such commercial vehicles, provided that such regulations are applied uniformly and without regard to the ownership of the vehicles.

Section 3. Subsection (5) of section 768.28, Florida Statutes, is amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; civil liability for damages caused during a riot; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(5)(a) The state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period before judgment. Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of $200,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence,

exceeds the sum of $300,000. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this act up to $200,000 or $300,000, as the case may be; and that portion of the judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature. Notwithstanding the limited waiver of sovereign immunity provided herein, the state or an agency or subdivision thereof may agree, within the limits of insurance coverage provided, to settle a claim made or a judgment rendered against it without further action by the Legislature, but the state or agency or subdivision thereof shall not be deemed to have waived any defense of sovereign immunity or to have increased the limits of its liability as a result of its obtaining insurance coverage for tortious acts in excess of the $200,000 or $300,000 waiver provided above. The limitations of liability set forth in this subsection shall apply to the state and its agencies and subdivisions whether or not the state or its agencies or subdivisions possessed sovereign immunity before July 1, 1974.

(b) Any governing body of a municipality that intentionally obstructs or interferes with the ability of a municipal law enforcement agency to provide reasonable law enforcement protection during a riot or unlawful assembly is civilly liable for any damages, including damages arising from personal injury, wrongful death, or property damage, proximately

caused by such agency's failure to provide reasonable law enforcement protection during a riot or unlawful assembly. The sovereign immunity recovery limits in paragraph (a) do not apply to an action under this paragraph.

Section 4. Subsection (2) of section 784.011, Florida Statutes, is amended and a new subsection (3) is added to that section, to read:

784.011 Assault.—

(2) Except as provided in subsection (3), a person who ~~Whoever~~ commits ~~an~~ assault commits ~~shall be guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person who commits an assault in furtherance of a riot or aggravated riot, as defined in s. 870.01, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 5. Subsection (2) of section 784.021, Florida Statutes, is amended and a new subsection (3) is added to that section, to read:

784.021 Aggravated assault.—

(2) A person who ~~Whoever~~ commits ~~an~~ aggravated assault commits ~~shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) For the purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a

violation of this section committed by a person acting in furtherance of a riot or aggravated riot, as defined in s. 870.01, is ranked one level above the ranking under s. 921.0022 for the offense committed.

Section 6. Section 784.03, Florida Statutes, is amended to read:

784.03 Battery; felony battery.—

(1)(a) The offense of battery occurs when a person:

1. Actually and intentionally touches or strikes another person against the will of the other; or

2. Intentionally causes bodily harm to another person.

(b) Except as provided in subsection (2) or subsection (3), a person who commits battery commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A person who has one prior conviction for battery, aggravated battery, or felony battery and who commits any second or subsequent battery commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this subsection, "conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

(3) A person who commits a battery in furtherance of a riot or aggravated riot, as defined in s. 870.01, commits a

felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or 775.084.

Section 7. Subsection (3) is added to section 784.045, Florida Statutes, to read:

784.045 Aggravated battery.—

(3) For the purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a violation of this section committed by a person acting in furtherance of a riot or aggravated riot, as defined in s. 870.01, is ranked one level above the ranking under s. 921.0022 for the offense committed.

Section 8. Section 784.0495, Florida Statutes, is created to read:

784.0495 Mob intimidation.—

(1) It is unlawful for any person, assembled with two or more other persons and acting with a common intent, to compel or induce, or attempt to compel or induce, another person by force, or threat of force, to do any act or to assume or abandon a particular viewpoint.

(2) A person who violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person arrested for a violation of this section shall be held in custody until brought before the court for admittance to bail in accordance with chapter 903.

Section 9. Subsection (2) of section 784.07, Florida Statutes, is amended and a new subsection (4) is added to that section, to read:

784.07 Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.—

(2) Whenever any person is charged with knowingly committing an assault or battery upon a law enforcement officer, a firefighter, an emergency medical care provider, a railroad special officer, a traffic accident investigation officer as described in s. 316.640, a nonsworn law enforcement agency employee who is certified as an agency inspector, a blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI, a law enforcement explorer, a traffic infraction enforcement officer as described in s. 316.640, a parking enforcement specialist as defined in s. 316.640, a person licensed as a security officer as defined in s. 493.6101 and wearing a uniform that bears at least one patch or emblem that is visible at all times that clearly identifies the employing agency and that clearly identifies the person as a licensed security officer, or a security officer employed by the board of trustees of a community college, while the officer, firefighter,

emergency medical care provider, railroad special officer, traffic accident investigation officer, traffic infraction enforcement officer, inspector, analyst, operator, law enforcement explorer, parking enforcement specialist, public transit employee or agent, or security officer is engaged in the lawful performance of his or her duties, the offense for which the person is charged shall be reclassified as follows:

(a) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.

(b) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree. Notwithstanding any other provision of law, any person convicted of battery upon a law enforcement officer committed in furtherance of a riot or aggravated riot, as defined in s. 870.01, shall be sentenced to a minimum term of imprisonment of 6 months.

(c) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree. Notwithstanding any other provision of law, any person convicted of aggravated assault upon a law enforcement officer shall be sentenced to a minimum term of imprisonment of 3 years.

(d) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree. Notwithstanding any other provision of law, any person convicted of aggravated battery of a law enforcement officer shall be sentenced to a minimum term of imprisonment of 5 years.

(4) For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony violation of this section committed by a person acting in furtherance of a riot or aggravated riot, as defined in s. 870.01, is ranked one level above the ranking under s. 921.0022 for the offense committed.

Section 10. Subsections (3) through (9) of section 806.13, Florida Statutes, are renumbered as subsections (4) through (10), respectively, and a new subsection (3) is added to that section, to read:

806.13 Criminal mischief; penalties; penalty for minor.—

(3) Any person who, without the consent of the owner thereof, willfully and maliciously defaces, injures, or otherwise damages by any means a memorial, as defined in s. 806.135, and the value of the damage to the memorial is greater than $200, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A court shall order any person convicted of violating this subsection to pay restitution, which shall include the full cost of repair or replacement of such memorial.

Section 11. Section 806.135, Florida Statutes, is created to read:

806.135 Destroying or demolishing a memorial.—

(1) As used in this section, the term "memorial" means a plaque, statue, marker, flag, banner, cenotaph, religious

symbol, painting, seal, tombstone, structure name, or display that is constructed and located with the intent of being permanently displayed or perpetually maintained; is dedicated to a historical person, an entity, an event, or a series of events; and honors or recounts the military service of any past or present United States Armed Forces military personnel, or the past or present public service of a resident of the geographical area comprising the state or the United States. The term includes, but is not limited to, the following memorials established under chapter 265:

(a) Florida Women's Hall of Fame.

(b) Florida Medal of Honor Wall.

(c) Florida Veterans' Hall of Fame.

(d) POW-MIA Chair of Honor Memorial.

(e) Florida Veterans' Walk of Honor and Florida Veterans' Memorial Garden.

(f) Florida Law Enforcement Officers' Hall of Fame.

(g) Florida Holocaust Memorial.

(h) Florida Slavery Memorial.

(i) Any other memorial located within the Capitol Complex, including, but not limited to, Waller Park.

(2) It is unlawful for any person to willfully and maliciously destroy or demolish any memorial, or pull down a memorial, unless authorized by the owner of the memorial. A violation of this section is a felony of the second degree,

punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A court shall order any person convicted of violating this section to pay restitution, which shall include the full cost of repair or replacement of such memorial.

Section 12. Subsections (3) and (4) of section 810.02, Florida Statutes, are amended to read:

810.02 Burglary.—

(3) Burglary is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the course of committing the offense, the offender does not make an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the offender enters or remains in a:

(a) Dwelling, and there is another person in the dwelling at the time the offender enters or remains;

(b) Dwelling, and there is not another person in the dwelling at the time the offender enters or remains;

(c) Structure, and there is another person in the structure at the time the offender enters or remains;

(d) Conveyance, and there is another person in the conveyance at the time the offender enters or remains;

(e) Authorized emergency vehicle, as defined in s. 316.003; or

(f) Structure or conveyance when the offense intended to be committed therein is theft of a controlled substance as

defined in s. 893.02. Notwithstanding any other law, separate judgments and sentences for burglary with the intent to commit theft of a controlled substance under this paragraph and for any applicable possession of controlled substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

However, if the burglary is committed during a riot or aggravated riot, as defined in s. 870.01, and the perpetration of the burglary is facilitated by conditions arising from the riot; or within a county that is subject to a state of emergency declared by the Governor under chapter 252 after the declaration of emergency is made and the perpetration of the burglary is facilitated by conditions arising from the emergency, the burglary is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this subsection, the term "conditions arising from a riot" means civil unrest, power outages, curfews, or a reduction in the presence of or response time for first responders or homeland security personnel and "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel. A person arrested for committing a burglary during a

riot or aggravated riot or within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this subsection is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

(4) Burglary is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the course of committing the offense, the offender does not make an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the offender enters or remains in a:

(a) Structure, and there is not another person in the structure at the time the offender enters or remains; or

(b) Conveyance, and there is not another person in the conveyance at the time the offender enters or remains.

However, if the burglary is committed during a riot or aggravated riot, as defined in s. 870.01, and the perpetration of the burglary is facilitated by conditions arising from the riot; or within a county that is subject to a state of emergency declared by the Governor under chapter 252 after the declaration of emergency is made and the perpetration of the burglary is facilitated by conditions arising from the emergency, the

burglary is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this subsection, the term "conditions arising from a riot" means civil unrest, power outages, curfews, or a reduction in the presence of or response time for first responders or homeland security personnel and "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel. A person arrested for committing a burglary during a riot or aggravated riot or within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this subsection is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 13. Paragraphs (b) and (c) of subsection (2) of section 812.014, Florida Statutes, are amended to read:

812.014 Theft.—

(2)

(b)1. If the property stolen is valued at $20,000 or more, but less than $100,000;

2. The property stolen is cargo valued at less than $50,000 that has entered the stream of interstate or intrastate

commerce from the shipper's loading platform to the consignee's receiving dock;

3. The property stolen is emergency medical equipment, valued at $300 or more, that is taken from a facility licensed under chapter 395 or from an aircraft or vehicle permitted under chapter 401; or

4. The property stolen is law enforcement equipment, valued at $300 or more, that is taken from an authorized emergency vehicle, as defined in s. 316.003,

the offender commits grand theft in the second degree, punishable as a felony of the second degree, as provided in s. 775.082, s. 775.083, or s. 775.084. Emergency medical equipment means mechanical or electronic apparatus used to provide emergency services and care as defined in s. 395.002(9) or to treat medical emergencies. Law enforcement equipment means any property, device, or apparatus used by any law enforcement officer as defined in s. 943.10 in the officer's official business. However, if the property is stolen during a riot or aggravated riot, as defined in s. 870.01, and the perpetration of the theft is facilitated by conditions arising from the riot; or within a county that is subject to a state of emergency declared by the Governor under chapter 252, the theft is committed after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising

from the emergency, the theft is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this paragraph, the term "conditions arising from a riot" means civil unrest, power outages, curfews, or a reduction in the presence of or response time for first responders or homeland security personnel and "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel. A person arrested for committing a theft during a riot or aggravated riot or within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

1. Valued at $750 or more, but less than $5,000.

2. Valued at $5,000 or more, but less than $10,000.

3. Valued at $10,000 or more, but less than $20,000.

4. A will, codicil, or other testamentary instrument.

5. A firearm.

6. A motor vehicle, except as provided in paragraph (a).

7. Any commercially farmed animal, including any animal of the equine, avian, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; and aquaculture species raised at a certified aquaculture facility. If the property stolen is a commercially farmed animal, including an animal of the equine, avian, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; or an aquaculture species raised at a certified aquaculture facility, a $10,000 fine shall be imposed.

8. Any fire extinguisher that, at the time of the taking, was installed in any building for the purpose of fire prevention and control. This subparagraph does not apply to a fire extinguisher taken from the inventory at a point-of-sale business.

9. Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.

10. Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d).

11. Any stop sign.

12. Anhydrous ammonia.

13. Any amount of a controlled substance as defined in s. 893.02. Notwithstanding any other law, separate judgments and sentences for theft of a controlled substance under this subparagraph and for any applicable possession of controlled

substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

However, if the property is stolen during a riot or aggravated riot, as defined in s. 870.01, and the perpetration of the theft is facilitated by conditions arising from the riot; or within a county that is subject to a state of emergency declared by the Governor under chapter 252, the property is stolen after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property is valued at $5,000 or more, but less than $10,000, as provided under subparagraph 2., or if the property is valued at $10,000 or more, but less than $20,000, as provided under subparagraph 3. As used in this paragraph, the term "conditions arising from a riot" means civil unrest, power outages, curfews, or a reduction in the presence of or response time for first responders or homeland security personnel and "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel. A person arrested for committing a

theft during a riot or aggravated riot or within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 14. Section 836.115, Florida Statutes, is created to read:

836.115 Cyber intimidation by publication.—

(1) As used in this section, the term:

(a) "Electronically publish" means to disseminate, post, or otherwise disclose information to an Internet site or forum.

(b) "Personal identification information" has the same meaning as provided in s. 817.568.

(c) "Harass" has the same meaning as provided in s. 817.568.

(2) Any person who electronically publishes another's personal identification information with the intent to, or with the intent the information will be used by another to, threaten, intimidate, harass, incite violence or the commission of a crime against a person, or place a person in reasonable fear of death or great bodily harm commits a misdemeanor of a first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 15. Section 870.01, Florida Statutes, is amended

to read:

870.01 Affrays and riots.—

(1) A ~~All~~ person~~s~~ who, by mutual consent, engages in fighting with another in a public place to the terror of the people commits ~~guilty of~~ an affray, ~~shall be guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A ~~All~~ person~~s~~ who participates in a public disturbance involving an assembly of three or more persons acting with a common intent to mutually assist each other in disorderly and violent conduct resulting in injury or damage to another person or property, or creating a clear and present danger of injury or damage to another person or property, commits ~~guilty of~~ a riot, ~~or of inciting or encouraging a riot, shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person commits aggravated rioting, if in the course of committing a riot, he or she:

(a) Participates with nine or more other persons;

(b) Causes great bodily harm to another person not participating in the riot;

(c) Causes damage to property exceeding $5,000;

(d) Displays, uses, threatens to use, or attempts to use a deadly weapon; or

(e) By force, or threat of force, endangers the safe

movement of any vehicle traveling on any public street, highway, or road.

A violation of this subsection is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Any person who willfully incites or encourages another to participate in a riot, so that as a result of such inciting or encouraging, a riot occurs or a clear and present danger of a riot is created, commits inciting or encouraging a riot, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) A person commits aggravated inciting or encouraging a riot, if in the course of committing inciting or encouraging a riot, he or she:

(a) Incites or encourages a riot resulting in great bodily harm to another person not participating in the riot;

(b) Incites or encourages a riot resulting in damage to property exceeding $5,000; or

(c) Supplies a deadly weapon to another person or teaches another person to prepare a deadly weapon with intent that such deadly weapon be used in a riot.

A violation of this subsection is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) Except for a violation of subsection (1), a person arrested for a violation of this section shall be held in

custody until brought before the court for admittance to bail in accordance with chapter 903.

Section 16. Section 870.02, Florida Statutes, is amended to read:

870.02 Unlawful assemblies.—

(1) If three or more persons meet together to commit a breach of the peace, or to do any other unlawful act, each of them commits ~~shall be guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A person arrested for a violation of this section shall be held in custody until brought before the court for admittance to bail in accordance with chapter 903.

Section 17. Section 870.03, Florida Statutes, is amended to read:

870.03 Riots and routs.—

(1) If any persons unlawfully assembled demolish, pull down or destroy, or begin to demolish, pull down or destroy, any dwelling house or other building, or any ship or vessel, each of them commits ~~shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person arrested for a violation of this section shall be held in custody until brought before the court for admittance to bail in accordance with chapter 903.

Section 18. Section 870.07, Florida Statutes, is created to read:

870.07 Affirmative defense in civil action; party convicted of riot or unlawful assembly.—

(1) In any action for damages for personal injury, wrongful death, or property damage, it is an affirmative defense that such action arose from injury or damage sustained by a participant acting in furtherance of a riot or unlawful assembly. The affirmative defense authorized by this section shall be established by evidence that the participant has been convicted of riot, aggravated riot, or unlawful assembly, or by proof of the commission of such crime by a preponderance of the evidence.

(2) In any civil action where a defendant raises an affirmative defense under this section, the court must, on motion by the defendant, stay the action during the pendency of any criminal action which forms the basis for the defense, unless the court finds that a conviction in the criminal action would not form a valid defense under this section.

Section 19. Subsections (3) through (6) of section 872.02, F.S., are renumbered as subsections (4) through (7), respectively, and a new subsection (3) is added to that section, to read:

872.02 Injuring or removing tomb or monument; disturbing contents of grave or tomb; penalties.—

(3) For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a

violation of this section, committed by a person in furtherance of a riot or aggravated riot, as defined in s. 870.01, is ranked one level above the ranking under s. 921.0022 or s. 921.0023 for the offense committed.

Section 20. Paragraphs (b), (c), and (d) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(b) LEVEL 2

Florida Statute	Felony Degree	Description
379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or

		hazardous waste.
517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
590.28(1)	3rd	Intentional burning of lands.
784.03(3)	3rd	Battery during a riot or aggravated riot.
784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
806.13(1)(b)3.	3rd	Criminal mischief; damage $1,000 or more to public communication or any other public service.
806.13(3)	3rd	Criminal mischief; damage $200 or more to a memorial.
810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.

810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
812.014(2)(c)1.	3rd	Grand theft, 3rd degree; $750 or more but less than $5,000.
812.014(2)(d)	3rd	Grand theft, 3rd degree; $100 or more but less than $750, taken from unenclosed curtilage of dwelling.
812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
817.234(1)(a)2.	3rd	False statement in support of insurance claim.
817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over $300.
817.52(3)	3rd	Failure to redeliver hired vehicle.
817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.

817.60(5) 3rd Dealing in credit cards of another.

817.60(6)(a) 3rd Forgery; purchase goods, services with false card.

817.61 3rd Fraudulent use of credit cards over $100 or more within 6 months.

826.04 3rd Knowingly marries or has sexual intercourse with person to whom related.

831.01 3rd Forgery.

831.02 3rd Uttering forged instrument; utters or publishes alteration with intent to defraud.

831.07 3rd Forging bank bills, checks, drafts, or promissory notes.

831.08 3rd Possessing 10 or more forged notes, bills, checks, or drafts.

831.09 3rd Uttering forged notes, bills, checks, drafts, or promissory notes.

831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
843.08	3rd	False personation.
893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs other than cannabis.
893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066	3rd	Unlawfully obtaining or using confidential

(3)(b)- crash reports.
(d)

316.193(2)(b) 3rd Felony DUI, 3rd conviction.

316.1935(2) 3rd Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.

319.30(4) 3rd Possession by junkyard of motor vehicle with identification number plate removed.

319.33(1)(a) 3rd Alter or forge any certificate of title to a motor vehicle or mobile home.

319.33(1)(c) 3rd Procure or pass title on stolen vehicle.

319.33(4) 3rd With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.

327.35(2)(b) 3rd Felony BUI.

328.05(2) 3rd Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of

			vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.	
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.	
379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.	
379.2431 (1)(e)6.	3rd	Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in the Marine Turtle Protection Act.	
379.2431 (1)(e)7.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.	

400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.

790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
812.015(8)(b)	3rd	Retail theft with intent to sell; conspires with others.
815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.

817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.	
817.233	3rd	Burning to defraud insurer.	
817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.	
817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.	
817.236	3rd	Filing a false motor vehicle insurance application.	
817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.	
817.413(2)	3rd	Sale of used goods of $1,000 or more as new.	
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument with intent to defraud.	

862

831.29 2nd Possession of instruments for counterfeiting driver licenses or identification cards.

863

838.021(3)(b) 3rd Threatens unlawful harm to public servant.

864

843.19 2nd Injure, disable, or kill police, fire, or SAR canine or police horse.

865

860.15(3) 3rd Overcharging for repairs and parts.

866

870.01(2) 3rd Riot~~; inciting or encouraging~~.

867

870.01(4) 3rd Inciting or encouraging a riot.

868

893.13(1)(a)2. 3rd Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs).

869

893.13(1)(d)2. 2nd Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of university.

893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of public housing facility.
893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material

			information on any document or record required by chapter 893.
877			
	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
878			
	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
879			
	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
880			
	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
881			
	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation

		evidence.
944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or

		transaction statements.
499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
517.07(1)	3rd	Failure to register securities.
517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
784.075	3rd	Battery on detention or commitment facility staff.
784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
784.081(3)	3rd	Battery on specified official or employee.

784.082(3) 3rd Battery by detained person on visitor or other detainee.

784.083(3) 3rd Battery on code inspector.

784.085 3rd Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.

787.03(1) 3rd Interference with custody; wrongly takes minor from appointed guardian.

787.04(2) 3rd Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.

787.04(3) 3rd Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.

787.07 3rd Human smuggling.

790.115(1) 3rd Exhibiting firearm or weapon within 1,000 feet of a school.

790.115(2)(b) 3rd Possessing electric weapon or device,

destructive device, or other weapon on school property.

790.115(2)(c) 3rd Possessing firearm on school property.

800.04(7)(c) 3rd Lewd or lascivious exhibition; offender less than 18 years.

806.135 2nd Destroying or demolishing a memorial.

810.02(4)(a) 3rd Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.

810.02(4)(b) 3rd Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.

810.06 3rd Burglary; possession of tools.

810.08(2)(c) 3rd Trespass on property, armed with firearm or dangerous weapon.

812.014(2)(c)3. 3rd Grand theft, 3rd degree $10,000 or more but less than $20,000.

812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree; specified items.
812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen $300 or more.
817.505(4)(a)	3rd	Patient brokering.
817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
817.568(2)(a)	3rd	Fraudulent use of personal identification information.
817.625(2)(a)	3rd	Fraudulent use of scanning device, skimming device, or reencoder.
817.625(2)(c)	3rd	Possess, sell, or deliver skimming device.
828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.

837.02(1) 3rd Perjury in official proceedings.

837.021(1) 3rd Make contradictory statements in official proceedings.

838.022 3rd Official misconduct.

839.13(2)(a) 3rd Falsifying records of an individual in the care and custody of a state agency.

839.13(2)(c) 3rd Falsifying records of the Department of Children and Families.

843.021 3rd Possession of a concealed handcuff key by a person in custody.

843.025 3rd Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.

843.15(1)(a) 3rd Failure to appear while on bail for felony (bond estreature or bond jumping).

847.0135(5)(c) 3rd Lewd or lascivious exhibition using computer; offender less than 18 years.

933

870.01(3) 3rd Aggravated rioting.

934

870.01(5) 3rd Aggravated inciting or encouraging a riot.

935

874.05(1)(a) 3rd Encouraging or recruiting another to join a criminal gang.

936

893.13(2)(a)1. 2nd Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)5. drugs).

937

914.14(2) 3rd Witnesses accepting bribes.

938

914.22(1) 3rd Force, threaten, etc., witness, victim, or informant.

939

914.23(2) 3rd Retaliation against a witness, victim, or informant, no bodily injury.

940

916.1085 (2)(c)1. 3rd Introduction of specified contraband into certain DCF facilities.

941

918.12 3rd Tampering with jurors.

934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
944.47(1)(a)6.	3rd	Introduction of contraband (cellular telephone or other portable communication device) into correctional institution.
951.22(1)(h), (j) & (k)	3rd	Intoxicating drug, instrumentality or other device to aid escape, or cellular telephone or other portable communication device introduced into county detention facility.

Section 21. This act shall take effect October 1, 2021.

From: Barquin, JuanF
To: Jake
Subject: Re: Cap News Interview Request
Date: Friday, January 08, 2021 1:07:02 PM
Attachments: OutlookEmoji-1568727030772729d464525-3e1e-45c9-aa3c-e8c2391a8906.png
OutlookEmoji-1568727030772bbcc8cc6-aefe-4fe2-aa64-16088dabdbaa.png
OutlookEmoji-1568727030772854996f-f9e9-481c-b048-9677653e194c.png
OutlookEmoji-1568727030772b03df2e1-6b93-48b1-af72-3c5db17ef7eb.png
OutlookEmoji-1568727030772a7cd38bf-ddd0-41e3-b317-1aad6358b947.png

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Hi Jake,

I am not available this afternoon. I will be driving to Tallahassee Monday morning, we can do a phone conference Monday morning or we can meet or zoom Monday afternoon if you like.

Juan

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

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From: Jake
Sent: Friday, January 8, 2021 11:32:59 AM
To: Barquin, JuanF
Subject: Cap News Interview Request

Hey just following up on this. Is it looking like we may be able to set something up?

-Jake

On Jan 8, 2021, at 9:38 AM, Jake <jake@flanews.com> wrote:

Hello and good morning all,

This is Jake Stofan with Capitol News Service in Tallahassee. I'm doing a story today on Rep

Fernandez-Barquin's Combating Public Disorder bill and was curious if he might have a few minutes to do a zoom interview before 1 pm on it?

Feel free to call/text or email back to coordinate.

Thanks!

Jake Stofan
Capitol News Service
www.flanews.com
Jake@flanews.com
Cell Phone 904-207-4245

Where to See Us

WFLA, Tampa

WBBH, Ft. Myers

WZVN, Ft. Myers

WCJB, Gainesville

WCTV, Tallahassee

WJHG, Panama City

WEAR, Pensacola

WJXT, Jacksonville

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From: Stan.McClain@myfloridahouse.gov
To: Barquin, JuanF
Subject: Request to cosponsor bill: HB 1
Date: Friday, January 08, 2021 8:49:46 AM

Juan Fernandez-Barquin,

Stan McClain has requested to cosponsor HB 1.

Please review your "Cosponsor Requests" and either approve or deny this user's request.

From:	Brad.Drake@myfloridahouse.gov
To:	Barquin, JuanF
Subject:	Request to cosponsor bill: HB 1
Date:	Friday, January 08, 2021 12:00:33 PM

Juan Fernandez-Barquin,

Brad Drake has requested to cosponsor HB 1.

Please review your "Cosponsor Requests" and either approve or deny this user's request.

From: Mike.Giallombardo@myfloridahouse.gov
To: Barquin, JuanF
Subject: Request to cosponsor bill: HB 1
Date: Thursday, January 14, 2021 11:18:26 AM

Juan Fernandez-Barquin,

Mike Giallombardo has requested to cosponsor HB 1.

Please review your "Cosponsor Requests" and either approve or deny this user's request.

From:	Scott.Plakon@myfloridahouse.gov
To:	Barquin, JuanF
Subject:	Request to cosponsor bill: HB 1
Date:	Thursday, January 07, 2021 7:23:44 AM

Juan Fernandez-Barquin,

Scott Plakon has requested to cosponsor HB 1.

Please review your "Cosponsor Requests" and either approve or deny this user's request.

From:	Spencer.Roach@myfloridahouse.gov
To:	Barquin, JuanF
Subject:	Request to cosponsor bill: HB 1
Date:	Thursday, January 07, 2021 11:07:10 AM

Juan Fernandez-Barquin,

Spencer Roach has requested to cosponsor HB 1.

Please review your "Cosponsor Requests" and either approve or deny this user's request.

From: John O'Brien
To: Barquin, JuanF
Subject: Sinclair Broadcast Affiliate Interview
Date: Wednesday, January 13, 2021 11:25:38 PM

Hello Representative Fernandez-Barquin,

I'm Jay O'Brien with CBS 12 News in West Palm Beach and Sinclair Broadcast Group National Affiliates.

Would you be interested in a zoom interview tomorrow (Thursday) or Friday regarding the Combating Public Disorder bill? We're working on a special report for West Palm Beach, as well as our affiliates statewide.

Thanks so much!

Jay O'Brien
Reporter | CBS 12 News
561-356-6135
jjobrien@sbgtv.com
@jayobtv

From: Javonni Hampton
To: Barquin, JuanF
Subject: The Florida Channel Interview
Date: Monday, January 11, 2021 10:50:36 PM
Attachments: image001.png

Hello,

My name is Javonni Hampton, I am a reporter with the Florida Channel. Was wondering if it was possible to set up an interview with the Representative sometime tomorrow morning before committees to discuss his new proposed legislation HB1. Tuesday before 9am, does that work?

Best,

Javonni

Javonni Hampton
Reporter/Producer- Florida Channel Programming
The FLORIDA Channel | Office: 850-488-1281
Direct: 407-680-7606 | FAX: 850-488-4876
jhampton@fsu.edu www.TheFloridaChannel.org

From: Office of Open Government <opengovernment@myfloridahouse.gov>
Sent: Tuesday, February 23, 2021 12:21 PM EST
To: records@americanoversight.org <records@americanoversight.org>
Subject: PRR #28 Monahan (HB1)
Attachment(s): "FL-REP-21-0181.pdf","Black Lives Matter.pdf","Calendar Items.pdf","Combating Public Disorder.pdf","EXEMPT.pdf","HB 1_House Bill 1.pdf","Looting.pdf","Rioting.pdf","Vehicle.pdf"

EXTERNAL SENDER

This response to the attached request is provided on behalf of Representative Fernandez-Barquin and the Florida House of Representatives. In order to respond to the request, records maintained by the Representative and the House were searched for public records that meet the criteria of the request. Those searches yielded the attached public records. Section 11.0431, F.S., exempts from public disclosure certain bill drafts and request for bill drafts, both of which have been redacted.

The House and the Representative consider this matter closed.

Kind regards,

Office of Open Government
Florida House of Representatives

Please Note: The Florida Constitution requires disclosure of public records unless a Florida Statute exempts the records from the disclosure requirement. Therefore, the contents of your email and your email address are subject to public disclosure unless a specific statute exempts them from the Constitution's disclosure requirements. Most emails to and from House members and staff that were sent or received in connection with the transaction of legislative business are public records that will be made available to the public and media upon request.

From: Office of Open Government
Sent: Tuesday, February 09, 2021 11:02 AM
To: 'records@americanoversight.org' <records@americanoversight.org>
Subject: PRR #28 Monahan (HB1)

The Office of Open Government received the attached request. In accordance with Article 1, Section 24(c) of the Florida Constitution; section 11.0431, Florida Statutes; and House Rules 14.1 and 14.2, records maintained by the House will be searched for public records that meet the criteria of the request. Copies of any public records located during those searches will be provided to you electronically.

Kind regards,

Office of Open Government
Florida House of Representatives

Please Note: The Florida Constitution requires disclosure of public records unless a Florida Statute exempts the records from the disclosure requirement. Therefore, the contents of your email and your email address are subject to public disclosure unless a specific statute exempts them from the Constitution's disclosure requirements. Most emails to and from House members and staff that were sent or received in connection with the transaction of legislative business are public records that will be made available to the public and media upon request.

From: AO Records
Sent: Monday, February 08, 2021 4:01 PM
To: Office of Open Government ; Barquin, JuanF
Subject: Public Records Request (FL-REP-21-0181)

EXTERNAL EMAIL: This email originated from outside of the Legislature. USE CAUTION when clicking links or opening attachments unless you recognize the sender and know the content is safe.

Dear Public Records Officer:

Please find attached a request for records under Florida's public records laws.

Sincerely,

Mariuxi Pintado
Paralegal
American Oversight
records@americanoversight.org
www.americanoversight.org | @weareoversight

Public Records Request: FL-REP-21-0181

From: Barquin, JuanF
To: Munero, Armando
Subject: Fw: Police violence in your district
Date: Monday, December 21, 2020 9:12:01 PM
Attachments: OutlookEmoji-1568727030772552423df-1b02-4682-85c9-a558b4141294.png

What's up with that request we sent the MDPD?

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

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(850) 717-5119

From: deshawn.dsj.jackson@gmail.com
Sent: Monday, December 21, 2020 2:58 PM
To: Barquin, JuanF
Subject: Police violence in your district

Dear Juan Fernandez-Barquin,

My name is Deshawn Jackson and I would like to remind you of my request that I sent you about six weeks ago.

I am still concerned about police violence in your district.

I support the Black Lives Matter movement and I believe that blacks are killed overproportionally in police encounters compared to white citizens in any given encounter.

To investigate this issue with data from your district I would like to know how many police encounters with black and white citizens were recorded, respectively, in your district in 2019 and how many black and white citizens were killed in these encounters?

Thank you and kind regards,

Deshawn Jackson

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: Time-sensitive interview request from USA Today Florida network
Date: Monday, November 30, 2020 2:49:47 PM
Attachments: OutlookEmoji-1568727030772Oa2f339e-2065-4570-886c-978488c91d67.png

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Florida House of Representatives

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From: Rhodes, Wendy
Sent: Monday, November 30, 2020 11:21 AM
To: Barquin, JuanF
Subject: Time-sensitive interview request from USA Today Florida network

Good morning,
I watched the speeches given in the Nov. 17 organizational meeting of the Legislature.
I noticed that while Chirs Sprowls' call for teaching patriotism in the schools was met with a standing ovation, Bobby B. DuBose's assertion that "Black Lives Matter" was met with relative silence.
I am requesting that the representative respond to a few questions no later than Wed. Dec. 2 as part of a survey of all members of the Florida House of Representatives.
My questions are:

1. What does patriotism mean to you?
2. What does the term "Black Lives Matter" mean to you?
3. Are the ideas of patriotism and BLM congruent or at odds with one another? Why or why not?
4. Is it possible to be a patriot who "loves America" and still support efforts aimed at social justice?

Thank you in advance for your responses.

Wendy Rhodes

561-820-3864 - direct

@WendyRhodesFL

WendyRhodes

wrhodes@pbpost.com

From: Munero, Armando
To: Barquin, JuanF
Subject: RE: Police violence in your district
Date: Tuesday, December 22, 2020 3:07:34 PM
Attachments: image001.png

Juan,
They never got back to me, but I never got in contact with them again either, since you had told me not to check up on the matter until they get in contact with me. Would you like me to get in contact with them again?
Best,
Armando

From: Barquin, JuanF
Sent: Monday, December 21, 2020 9:12 PM
To: Munero, Armando
Subject: Fw: Police violence in your district
What's up with that request we sent the MDPD?

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State Representative Juan Fernandez-Barquin
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From: deshawn.dsj.jackson@gmail.com <deshawn.dsj.jackson@gmail.com>
Sent: Monday, December 21, 2020 2:58 PM
To: Barquin, JuanF
Subject: Police violence in your district
EXTERNAL EMAIL: This email originated from outside of the Legislature. USE CAUTION when clicking links or opening attachments unless you recognize the sender and know the content is safe.

Dear Juan Fernandez-Barquin,

My name is Deshawn Jackson and I would like to remind you of my request that I sent you about six weeks ago.

I am still concerned about police violence in your district.

I support the Black Lives Matter movement and I believe that blacks are killed overproportionally in police encounters compared to white citizens in any given encounter.

To investigate this issue with data from your district I would like to know how many police encounters with black and white citizens were recorded, respectively, in your district in 2019 and how many black and white citizens were killed in these encounters?

Thank you and kind regards,

Deshawn Jackson

From: Barquin, JuanF
To: Munero, Armando
Subject: Fw: Police violence in your district
Date: Monday, December 21, 2020 9:12:01 PM
Attachments: OutlookEmoji-1568727030772552423df-1b02-4682-85c9-a558b4141294.png

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To: Barquin, JuanF
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Deshawn Jackson

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From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: Time-sensitive interview request from USA Today Florida network
Date: Monday, November 30, 2020 2:49:47 PM
Attachments: OutlookEmoji-15687270307720a2f339e-2065-4570-886c-978488c91d67.png

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From: Rhodes, Wendy
Sent: Monday, November 30, 2020 11:21 AM
To: Barquin, JuanF
Subject: Time-sensitive interview request from USA Today Florida network

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My questions are:

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2. What does the term "Black Lives Matter" mean to you?
3. Are the ideas of patriotism and BLM congruent or at odds with one another? Why or why not?
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Thank you in advance for your responses.

Wendy Rhodes

561-820-3864 - direct

 @WendyRhodesFL

 WendyRhodes

 wrhodes@pbpost.com

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From: Munero, Armando
To: Barquin, JuanF
Subject: RE: Police violence in your district
Date: Tuesday, December 22, 2020 3:07:34 PM
Attachments: image001.png

Juan,
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Best,
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Sent: Monday, December 21, 2020 9:12 PM
To: Munero, Armando
Subject: Fw: Police violence in your district
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(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: deshawn.dsj.jackson@gmail.com <deshawn.dsj.jackson@gmail.com>
Sent: Monday, December 21, 2020 2:58 PM
To: Barquin, JuanF
Subject: Police violence in your district
EXTERNAL EMAIL: This email originated from outside of the Legislature. USE CAUTION when clicking links or opening attachments unless you recognize the sender and know the content is safe.

Dear Juan Fernandez-Barquin,

My name is Deshawn Jackson and I would like to remind you of my request that I sent you about six weeks ago.

I am still concerned about police violence in your district.

I support the Black Lives Matter movement and I believe that blacks are killed overproportionally in police encounters compared to white citizens in any given encounter.

To investigate this issue with data from your district I would like to know how many police encounters with black and white citizens were recorded, respectively, in your district in 2019 and how many black and white citizens were killed in these encounters?

Thank you and kind regards,

Deshawn Jackson

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

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Tallahassee, FL 32399
(850) 717-5119

From: Barquin, JuanF
To: Hall, Whitney
Subject: Accepted: HB 1 Meeting
Start: Friday, January 22, 2021 9:30:00 AM
End: Friday, January 22, 2021 10:30:00 AM

From: Barquin, JuanF
To: Hall, Whitney
Subject: Accepted: HB 1 Meeting
Start: Friday, January 22, 2021 9:30:00 AM
End: Friday, January 22, 2021 10:30:00 AM

Subject: Meeting with Senator Burgess
Location: 308 SOB

Start: Wed 2/10/2021 1:00 PM
End: Wed 2/10/2021 1:30 PM

Recurrence: (none)

Organizer: Barquin, JuanF

- **Meeting to discuss HB 1 and SB 484.**

Subject: Zoom with the League of Women Voters

Start: Tue 2/2/2021 10:00 AM
End: Tue 2/2/2021 10:30 AM

Recurrence: (none)

Organizer: Barquin, JuanF

- Meeting will be to discuss HB 1

Topic: HB 1
Time: Feb 2, 2021 10:00 AM Eastern Time (US and Canada)

Join Zoom Meeting
https://us05web.zoom.us/j/89549136880?pwd=UDNSajA1VnppTFNPUDBzQlVPbXIwUT09

Meeting ID: 895 4913 6880
Passcode: j82e3U

Subject: Criminal Justice & Public Safety Subcommittee - Jan 27, 2021 - Webster Hall (212 Knott)
Location: Webster Hall (212 Knott)

Start: Wed 1/27/2021 4:00 PM
End: Wed 1/27/2021 6:00 PM

Recurrence: (none)

Organizer: Munero, Armando

Meeting Overview/Summary:

The Chair requests that all amendments should be filed by 6 p.m. on Tuesday, January 26, 2021, including amendments filed by Members of the Subcommittee.

This meeting will be live-streamed on https://thefloridachannel.org/. Audience seating will be socially distanced and limited to the press and those persons wishing to provide substantive testimony on the filed bills or draft legislation. Seating will be available on a first-come, first-served basis. Persons who wish to attend must register at www.myfloridahouse.gov, and pick up a pass at the Legislative Welcome Center on the 4th Floor of the Capitol beginning two hours before the start of the meeting. Registration closes three hours before the meeting starts.

Consideration of the following bill(s):

HB 1 -- Combating Public Disorder

NOTICE: Event date and time is subject to change. For the latest event changes please check http://www.myfloridahouse.gov .

Subject:	Presenting HB 1 at the Criminal Justice Subcommittee
Location:	Webster Hall (212 Knott)
Start:	Wed 1/27/2021 4:00 PM
End:	Wed 1/27/2021 6:00 PM
Recurrence:	(none)
Organizer:	Barquin, JuanF

Subject: HB 1 Meeting

Start: Fri 1/22/2021 9:30 AM
End: Fri 1/22/2021 10:30 AM

Recurrence: (none)

Meeting Status: Accepted

Organizer: Hall, Whitney
Required Attendees: Barquin, JuanF; Kramer, Trina

-- Do not delete or change any of the following text. --

When it's time, join your Webex meeting here.

Join meeting

More ways to join:

Join from the meeting link
https://myfloridahouse.webex.com/myfloridahouse/j.php?MTID=m909483e0445a92445c5827b6e3f0e1b5

Join by meeting number
Meeting number (access code): 179 214 7227
Meeting password: 3JFnFViwQ93

Tap to join from a mobile device (attendees only)
+1-415-655-0002,,1792147227## United States Toll

Join by phone
+1-415-655-0002 United States Toll
Global call-in numbers

Join from a video system or application
Dial 1792147227@myfloridahouse.webex.com
You can also dial 173.243.2.68 and enter your meeting number.

Join using Microsoft Lync or Microsoft Skype for Business

Dial 1792147227.myfloridahouse@lync.webex.com

If you are a host, click here to view host information.

Need help? Go to https://help.webex.com

Subject: Zoom with Sun City Strategies
Location: https://us02web.zoom.us/j/85495198157?pwd=ZFNTaFJQSDJDMVJKTTV3M2xDU3BCUT09

Start: Tue 1/26/2021 11:00 AM
End: Tue 1/26/2021 11:30 AM

Recurrence: (none)

Meeting Status: Accepted

Organizer: Will McRea

(Meeting will be with Casey Cook and Amber Hughes from the Florida League of Cities, Along with Eddy Gonzalez and Will McRea from Sun City Strategies)

- Meeting will be to briefly discuss HB 1.

Will McRea is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting
https://us02web.zoom.us/j/85495198157?pwd=ZFNTaFJQSDJDMVJKTTV3M2xDU3BCUT09

Meeting ID: 854 9519 8157
Passcode: 137511
One tap mobile
+13126266799,,85495198157#,,,,*137511# US (Chicago)
+19292056099,,85495198157#,,,,*137511# US (New York)

Dial by your location
+1 312 626 6799 US (Chicago)
+1 929 205 6099 US (New York)
+1 301 715 8592 US (Washington D.C)
+1 346 248 7799 US (Houston)
+1 669 900 6833 US (San Jose)
+1 253 215 8782 US (Tacoma)
Meeting ID: 854 9519 8157
Passcode: 137511
Find your local number: https://us02web.zoom.us/u/kGi4HFC2V

From: Hall, Whitney
To: Barquin, JuanF; Kramer, Trina
Subject: HB 1 Meeting
Start: Friday, January 22, 2021 9:30:00 AM
End: Friday, January 22, 2021 10:30:00 AM

-- Do not delete or change any of the following text. --

When it's time, join your Webex meeting here.

Join meeting <https://myfloridahouse.webex.com/myfloridahouse/j.php?MTID=m909483e0445a92445c5827b6e3f0e1b5>

More ways to join:

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https://myfloridahouse.webex.com/myfloridahouse/j.php?MTID=m909483e0445a92445c5827b6e3f0e1b5
<https://myfloridahouse.webex com/myfloridahouse/j.php?MTID=m909483e0445a92445c5827b6e3f0e1b5>

Join by meeting number

Meeting number (access code): 179 214 7227

Meeting password: 3JFnFViwQ93

Tap to join from a mobile device (attendees only)
+1-415-655-0002,,1792147227## <tel:%2B1-415-655-0002,,*01*1792147227%23%23*01*> United States Toll

Join by phone
+1-415-655-0002 United States Toll
Global call-in numbers <https://myfloridahouse.webex.com/myfloridahouse/globalcallin.php?MTID=m325215b385b3fd14f335225525515e03>

Join from a video system or application
Dial 1792147227@myfloridahouse.webex.com <sip:1792147227@myfloridahouse.webex.com>
You can also dial 173.243 2.68 and enter your meeting number.

Join using Microsoft Lync or Microsoft Skype for Business

Dial 1792147227.myfloridahouse@lync.webex com <sip:1792147227.myfloridahouse@lync.webex.com>

If you are a host, click here <https://myfloridahouse.webex.com/myfloridahouse/j.php?MTID=mf17484eb3fa578ce7bc4412423f28860> to view host information.

Need help? Go to https://help.webex.com <https://help.webex.com>

From: Barquin, JuanF
Sent: Wednesday, January 20, 2021 8:43 PM
To: Munero, Armando
Subject: Fw: Bill 0001 (2021) -- Added to House Meeting Agenda : Criminal Justice & Public Safety Subcommittee
Attachments: CRM January_27_2021_04_00.ics

Florida House of Representatives

State Representative Juan Fernandez-Barquin
District 119

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Tallahassee, FL 32399
(850) 717-5119

From: Leagis.notify@myfloridahouse.gov
Sent: Wednesday, January 20, 2021 4:16 PM
To: Barquin, JuanF
Subject: Bill 0001 (2021) -- Added to House Meeting Agenda : Criminal Justice & Public Safety Subcommittee

The following Leagis event(s) have occurred:

HB 1 (2021) -- Combating Public Disorder

Added to House Meeting Agenda:

01/20/2021 4:16 PM H Added to **Criminal Justice & Public Safety Subcommittee** agenda, for meeting on 01/27/2021 4:00 PM, at Webster Hall (212 Knott)

Additional bill information ...

To add to your Outlook or Apple calendar open the calendar attachment named CRM January_27_2021_04_00.
Add to Google Calendar
Add to Yahoo Calendar

From:	Zegarra, Christopher
To:	Munero, Armando
Subject:	FW: Cap News Interview Request
Date:	Friday, January 08, 2021 1:36:00 PM

From: Jake

Sent: Friday, January 8, 2021 9:35 AM

To: Barquin, JuanF

Subject: Cap News Interview Request

Hello and good morning all,
This is Jake Stofan with Capitol News Service in Tallahassee. I'm doing a story today on Rep Fernandez-Barquin's Combating Public Disorder bill and was curious if he might have a few minutes to do a zoom interview before 1 pm on it?
Feel free to call/text or email back to coordinate.
Thanks!

Jake Stofan
Capitol News Service
www.flanews.com
Jake@flanews.com
Cell Phone 904-207-4245

Where to See Us

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WBBH, Ft. Myers
WZVN, Ft. Myers
WCJB, Gainesville
WCTV, Tallahassee
WJHG, Panama City
WEAR, Pensacola
WJXT, Jacksonville

From: Munero, Armando
To: "Jake"
Subject: RE: Cap News Interview Request
Date: Sunday, January 10, 2021 7:49:06 PM

Good afternoon Jake,
My apologies for the delayed response, I was traveling up to Tallahassee. The Representative will be traveling up tomorrow as well. Would you be interested in setting up a meeting for another time?
Thank you!
Armando

From: Jake
Sent: Friday, January 8, 2021 11:33 AM
To: Barquin, JuanF
Subject: Cap News Interview Request

Hey just following up on this. Is it looking like we may be able to set something up?
-Jake
On Jan 8, 2021, at 9:38 AM, Jake <jake@flanews.com> wrote:
Hello and good morning all,
This is Jake Stofan with Capitol News Service in Tallahassee. I'm doing a story today on Rep Fernandez-Barquin's Combating Public Disorder bill and was curious if he might have a few minutes to do a zoom interview before 1 pm on it?
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WEAR, Pensacola
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From: Barquin, JuanF
To: Jake
Subject: Re: Cap News Interview Request
Date: Friday, January 08, 2021 1:07:02 PM
Attachments: OutlookEmoji-1568727030772729d464525-3e1e-45c9-aa3c-e8c2391a8906.png
OutlookEmoji-1568727030772bbcc8cc6-aefe-4fe2-aa64-16088dabdbaa.png
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OutlookEmoji-1568727030772a7cd38bf-ddd0-41e3-b317-1aad6358b947.png

---

Hi Jake,

I am not available this afternoon. I will be driving to Tallahassee Monday morning, we can do a phone conference Monday morning or we can meet or zoom Monday afternoon if you like.

Juan

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

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Miami, FL 33175	Tallahassee, FL 32399
(305) 222-4119	(850) 717-5119

From: Jake
Sent: Friday, January 8, 2021 11:32:59 AM
To: Barquin, JuanF
Subject: Cap News Interview Request

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To:	Munero, Armando
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To: Jake
Subject: Re: Cap News Interview Request
Date: Friday, January 08, 2021 1:07:02 PM
Attachments: OutlookEmoji-1568727030772729d464525-3e1e-45c9-aa3c-e8c2391a8906.png
OutlookEmoji-1568727030772bbcc8cc6-aefe-4fe2-aa64-16088dabdbaa.png
OutlookEmoji-1568727030772854996f-f9e9-481c-b048-9677653e194c.png
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OutlookEmoji-1568727030772a7cd38bf-ddd0-41e3-b317-1aad6358b947.png

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From: Barquin, JuanF
To: Munero, Armando
Subject: Fw: Draft Request with Tracking Number 75370 submitted
Date: Monday, December 21, 2020 9:19:46 PM
Attachments: OutlookEmoji-1568727030772c00a8899-5e7c-4230-a21b-2102304f781e.png

[redacted]

Florida House of Representatives
State Representative Juan Fernandez-Barquin
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From: Leagis.notify@myfloridahouse.gov
Sent: Monday, December 21, 2020 2:11 PM
To: Barquin, JuanF
Subject: Draft Request with Tracking Number 75370 submitted

Draft Request Tracking #:75370
Draft Request Subject [redacted]
Draft Request Type :BILL

Made by user: FLHOUSE\Munero.Armando

Above referenced draft request was submitted.

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: materials for today"s meeting
Date: Monday, December 21, 2020 12:31:43 PM
Attachments: [redacted]
OutlookEmoji-1568727030772655576bde-0892-4859-a042-4726452b23b2.png

---

Florida House of Representatives

State Representative Juan Fernandez-Barquin
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From: Kramer, Trina
Sent: Monday, December 21, 2020 9:10 AM
To: Barquin, JuanF
Cc: Hall, Whitney
Subject: materials for today's meeting

Good morning, Attached is a draft copy of the bill and a one page summary for today's meeting at 1pm. Thanks!

From: Barquin, JuanF
To: Munero, Armando
Cc: Kramer, Trina
Subject: Fw: materials for today"s meeting
Date: Monday, December 21, 2020 2:04:45 PM
Attachments: [redacted]
OutlookEmoji-1568727030772265576bde-0892-4859-a042-4726452b23b2.png
OutlookEmoji-1568727030772b47e7d42-5a48-4ff2-9f06-5c184e016f95.png

---

Armando,

Please file in bill drafting.

Thank you,
Juan

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State Representative Juan Fernandez-Barquin
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Miami, FL 33175
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(850) 717-5119

From: Barquin, JuanF
Sent: Monday, December 21, 2020 12:31 PM
To: Juan Fernandez-Barquin
Subject: Fw: materials for today's meeting

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

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From: Kramer, Trina
Sent: Monday, December 21, 2020 9:10 AM
To: Barquin, JuanF
Cc: Hall, Whitney
Subject: materials for today's meeting

Good morning, Attached is a draft copy of the bill and a one page summary for today's meeting at 1pm. Thanks!

From: Juan Fernandez-Barquin
To: Munero, Armando
Subject: Fwd: PEACEFUL PROTEST PROTECTION ACT.docx
Date: Wednesday, February 03, 2021 2:07:21 PM
Attachments: [redacted]

please print

---------- Forwarded message ---------
From: **Barquin, Juan F.** <JFbarquin@gjb-law.com>
Date: Wed, Feb 3, 2021 at 1:08 PM
Subject: PEACEFUL PROTEST PROTECTION ACT.docx
To: Juan Fernandez-Barquin, Esq. <juan@jafblaw.com>

Juan Fernandez-Barquin

Please excuse any misspellings, this was sent from mobile.

--
Best regards,

Juan A. Fernandez-Barquin
Attorney-at-Law
3663 SW 8th Street Suite 200
Miami, Florida 33135
Office: (305) 446-4555 / Mobile: (305) 798-0550
Fax: (305) 446-4498
E-mail: juan@jafblaw.com

From: Juan Fernandez-Barquin
To: Munero, Armando
Subject: please print
Date: Wednesday, February 03, 2021 2:08:25 PM
Attachments: [redacted]

--
Best regards,

Juan A. Fernandez-Barquin
Attorney-at-Law
3663 SW 8th Street Suite 200
Miami, Florida 33135
Office: (305) 446-4555 / Mobile: (305) 798-0550
Fax: (305) 446-4498
E-mail: juan@jafblaw.com

From: Munero, Armando
To: Barquin, JuanF
Subject: RE: Draft Request with Tracking Number 75370 submitted
Date: Tuesday, December 22, 2020 3:14:28 PM
Attachments: image001.png

Juan,

[redacted]

Best,
Armando

From: Barquin, JuanF
Sent: Monday, December 21, 2020 9:20 PM
To: Munero, Armando
Subject: Fw: Draft Request with Tracking Number 75370 submitted

[redacted]

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

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From: Leagis.notify@myfloridahouse.gov <Leagis.notify@myfloridahouse.gov>
Sent: Monday, December 21, 2020 2:11 PM
To: Barquin, JuanF
Subject: Draft Request with Tracking Number 75370 submitted

Draft Request Tracking #:75370
Draft Request Subject :Rioting Bill
Draft Request Type :BILL

Made by user: FLHOUSE\Munero.Armando

Above referenced draft request was submitted.

From: Barquin, JuanF
To: Kramer, Trina; Hall, Whitney; Munero, Armando
Subject: Re: HB 1 Meeting
Date: Friday, January 22, 2021 9:45:32 AM
Attachments: image001.png
[redacted]
OutlookEmoji-1568727030772c9585d33-735e-4c87-93f8-d5d0239bacaf.png

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Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Kramer, Trina
Sent: Friday, January 22, 2021 9:38 AM
To: Barquin, JuanF; Hall, Whitney; Munero, Armando
Subject: RE: HB 1 Meeting

https://myfloridahouse.webex.com/myfloridahouse/j.php?MTID=m909483e0445a92445c5827b6e3f0e1b5

Does this work?

From: Barquin, JuanF
Sent: Friday, January 22, 2021 9:36 AM
To: Hall, Whitney ; Munero, Armando
Cc: Kramer, Trina
Subject: Re: HB 1 Meeting

Hi Whitney,

I can't seem to find the webex link, can you please resend it.

Thank you!

Florida House of Representatives
State Representative Juan Fernandez-Barquin
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Tallahassee, FL 32399
(850) 717-5119

From: Hall, Whitney
Sent: Thursday, January 21, 2021 1:36:53 PM
To: Barquin, JuanF; Munero, Armando
Cc: Kramer, Trina
Subject: RE: HB 1 Meeting

Great. I'll send a WebEx invite shortly. Talk to you in the morning.

Whitney Hall
Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

From: Barquin, JuanF <JuanF.Barquin@myfloridahouse.gov>
Sent: Thursday, January 21, 2021 1:07 PM
To: Hall, Whitney <Whitney.Hall@myfloridahouse.gov>; Munero, Armando <Armando.Munero@myfloridahouse.gov>
Cc: Kramer, Trina <Trina.Kramer@myfloridahouse.gov>
Subject: Re: HB 1 Meeting

Lets do 9:30 am tomorrow, that's fine with me.

JFB

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From: Hall, Whitney
Sent: Thursday, January 21, 2021 12:37:58 PM
To: Barquin, JuanF; Munero, Armando

Cc: Kramer, Trina
Subject: RE: HB 1 Meeting
Would either 9:30 am or after 2 pm sometime work for you? If not, just let me know what time does work for you and we'll make it work. The only time I am unavailable tomorrow that I can't move around is from 11 am- noon.
Thanks!

Whitney Hall
Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

From: Barquin, JuanF <JuanF.Barquin@myfloridahouse.gov>
Sent: Thursday, January 21, 2021 12:25 PM
To: Hall, Whitney <Whitney.Hall@myfloridahouse.gov>; Munero, Armando <Armando.Munero@myfloridahouse.gov>
Cc: Kramer, Trina <Trina.Kramer@myfloridahouse.gov>
Subject: Re: HB 1 Meeting
Hi Whitney,
Yes, can we schedule a meeting for tomorrow?

Florida House of Representatives
State Representative Juan Fernandez-Barquin
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(305) 222-4119	(850) 717-5119

From: Hall, Whitney
Sent: Thursday, January 21, 2021 10:04:57 AM
To: Barquin, JuanF; Munero, Armando
Cc: Munero, Armando; Kramer, Trina
Subject: HB 1 Meeting
Good morning, Representative,
I hope you're doing well. I wanted to reach out to see if there is anything the subcommittee can do to help you as you prepare to present HB 1 next week. We met last month via WebEx, but haven't had the chance to get back together to see if you had any questions on or spotted any issues with the bill. We are more than happy to schedule a time to meet via WebEx or in person anytime between now and early next week, whenever is convenient for you.
Please let us know how we can help!

Whitney Hall
Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives

(850) 717-4877

From: Munero, Armando
To: Barquin, JuanF; "Juan Fernandez-Barquin"
Subject: Riot Bill Draft 1
Date: Thursday, December 31, 2020 12:19:26 PM
Attachments: [redacted]

Juan,

The [redacted] was released for approval, and I have attached the draft above. Let me know if it is ready to file, or if you want any changes made.

Best,

Armando

AMERICAN OVERSIGHT

February 8, 2021

VIA EMAIL

Director of Open Government
Florida House of Representatives
402 South Monroe Street
Tallahassee, FL 32399
opengovernment@myfloridahouse.gov

Representative Juan Fernandez-Barquin
315 House Office Building
402 South Monroe Street
Tallahassee, FL 32399-1300
Juanf.barquin@myfloridahouse.gov

Re: Public Records Request

Dear Public Records Officer:

Pursuant to Article I, section 24(a), of the Florida Constitution, and Florida House Rule 14, Part One, American Oversight makes the following request for records.

In September 2020, Governor Ron DeSantis proposed the "Combating Violence, Disorder and Looting and Law Enforcement Protection Act."[1] In January, Florida Representative Juan Fernandez-Barquin introduced HB 1, "Combating Public Disorder," which would increase penalties for offenses committed during protests. Florida Senator Danny Burgess introduced an identical bill that same month.[2]

Requested Records

American Oversight, requests that Florida Representative Fernandez-Barquin promptly produce copies of the following records:

> All emails communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) sent by any of the Florida officials listed in Column A, and containing any of the key terms listed in Column B:

Column A: Officials	Column B: Key Terms
i. Representative Fernandez-Barquin	i. Motorist ii. Motorists iii. Vehicle iv. Flee

[1] Erwin Chemerinsky & Ngozi Nezianya, *Republican Lawmakers Want to Use Pro-Trump Rioters to Undermine Peaceful Protest*, NBC News (Feb. 1, 2021, 4:30 AM) https://www.nbcnews.com/think/opinion/republican-lawmakers-want-use-pro-trump-rioters-undermine-peaceful-protest-ncna1256232.

[2] *Florida House and Senate File Identical Bills to Combat Violence, Disorder, Looting*, WXTL Tallahassee (Jan. 6, 2021, 5:38 PM) https://www.wtxl.com/news/local-news/florida-house-and-senate-file-identical-bills-to-combat-violence-disorder-looting.

ii.	Anyone communicating on Representative Fernandez-Barquin's behalf (such as an assistant, scheduler, or secretary)	v.	Vandalizing
		vi.	Vandalize
		vii.	BLM
		viii.	"Black Lives Matter"
		ix.	Antifa
		x.	Protest
		xi.	Protester
		xii.	Protesters
		xiii.	Riots
		xiv.	Rioting
		xv.	Rioters
		xvi.	Riotous
		xvii.	Looting
		xviii.	Looters
		xix.	Thug
		xx.	Thugs
		xxi.	"unlawful assembly"
		xxii.	"Deadly force"
		xxiii.	Monuments
		xxiv.	Floyd
		xxv.	"Blue lives"
		xxvi.	"Combating Violence, Disorder and Looting and Protecting Law Enforcement Act"
		xvii.	"Combating Public Disorder"
		xviii.	Anarchist
		xxix.	"HB 1"
		xxx.	"H.B. 1"
		xxxi.	"House Bill 1"
		xxii.	"SB 484"
		xxiii.	"S.B. 484"
		xxiv.	"Senate Bill 484"

Please provide all responsive records from August 1, 2020, through date of search.

In an effort to accommodate your office and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited its request to emails sent by the officials listed in Column A. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both sent and received messages. This means, for example, that both Rep. Fernandez-Barquin's response to an email containing one of the key terms listed above and the initial received message are responsive to this request and should be produced.

Please notify American Oversight of any anticipated fees or costs in excess of $100 prior to incurring such fees or costs.

American Oversight insists that your agency use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; your office may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Please take appropriate steps to ensure that records responsive to this request are not deleted by your office before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

Conclusion

American Oversight is a 501(c)(3) nonprofit with the mission to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public

website and promotes their availability on social media platforms, such as Facebook and Twitter.[3]

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact me at records@americanoversight.org or (202) 869-5244.

Sincerely,

/s/Christine H. Monahan
Christine H. Monahan
on behalf of
American Oversight

[3] American Oversight currently has approximately 15,700 page likes on Facebook and 105,600 followers on Twitter. American Oversight, Facebook, https://www.facebook.com/weareoversight/ (last visited Feb. 4, 2021); American Oversight (@weareoversight), Twitter, https://twitter.com/weareoversight (last visited Feb. 4, 2021).

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: 2/24/21 Zoom Event
Date: Monday, February 01, 2021 1:52:50 PM
Attachments: OutlookEmoji-1568727030772f0e648a0-8507-46ff-9a30-c4fb2d749d79.png

---

Juan,

Would you be interested in speaking during this?

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

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(850) 717-5119

From: Brendalyn V.A. Edwards
Sent: Monday, February 1, 2021 11:10 AM
To: Barquin, JuanF
Subject: 2/24/21 Zoom Event

Good morning Rep. Fernandez-Barquin,

On February 24, 2021 at 12:00 PM, the Broward County Bar Association Young Lawyers Division will host its annual Black History Month event. The event is a collaboration with various voluntary bar organizations such as the TJ Reddick Bar Association, Caribbean Bar Association, Haitian Lawyers Association, and the Gwen S. Cherry Black Women Lawyers Association. It will take place via Zoom and will be livestreamed across several social media platforms.

We are composing a panel of diverse stakeholders to explore the after-effects of the worldwide Summer 2020 protests, from the community impact, to resulting legislation/policy changes, and ways to effect change beyond the protests. We are particularly interested in hearing more about SB 484/HB 1.

As one of the bill's co-sponsors, we would be honored if you would speak during this event. Please let me know if you would be interested in participating and feel free to

call or e-mail me with any questions.

Best,

Brendalyn Edwards
Director, Broward County Bar Association Young Lawyers Section
305.200.2603 (cell)

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: ACLU of Florida's Written Testimony in Opposition to HB 1/SB 484 (Anti-Protest Bill)
Date: Monday, January 25, 2021 8:59:18 AM
Attachments: image001.png
ACLU of Florida Written Testimony in Opposition to HB 1.pdf
OutlookEmoji-1568727030772dd6067ae-c488-45af-819e-7a36ad199c14.png

---

Juan,

Would you want to talk to the ACLU about HB 1?

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

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Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Kara Gross
Sent: Friday, January 22, 2021 2:20 PM
To: Barquin, JuanF
Cc: Munero, Armando; Zegarra, Christopher
Subject: FW: ACLU of Florida's Written Testimony in Opposition to HB 1/SB 484 (Anti-Protest Bill)

Dear Representative Barquin,
I hope this email finds you well. I wanted to reach out to you with regard to ACLU of Florida's opposition to HB 1 (attached) and to see if you might have some availability to discuss our concerns. I look forward to talking with you at your convenience.
Best regards,
Kara

Kara Gross | Legislative Director & Senior Policy Counsel
American Civil Liberties Union of Florida
Direct 786.363.4436 | kgross@aclufl.org **| www.aclufl.org**
Pronouns: she, her, hers

From: Kara Gross

Sent: Friday, January 22, 2021 2:09 PM
To: Michael.Grieco@myfloridahouse.gov; James.Bush@myfloridahouse.gov; Kevin.Chambliss@myfloridahouse.gov; Dianne.Hart@myfloridahouse.gov; Andrew.Learned@myfloridahouse.gov; Pat.Williams@myfloridahouse.gov; cord.byrd@myfloridahouse.gov; chuck.brannan@myfloridahouse.gov; Webster.Barnaby@myfloridahouse.gov; Demi.BusattaCabrera@myfloridahouse.gov; Elizabeth.Fetterhoff@myfloridahouse.gov; Tommy.Gregory@myfloridahouse.gov; Brett.Hage@myfloridahouse.gov; Patt.Maney@myfloridahouse.gov; Alex.Rizo@myfloridahouse.gov; Spencer.Roach@myfloridahouse.gov; John.Snyder@myfloridahouse.gov; Kaylee.Tuck@myfloridahouse.gov; Whitney.Hall@myfloridahouse.gov; Lindsey.Harrell@myfloridahouse.gov
Cc: JuanF.Barquin@myfloridahouse.gov; Armando.Munero@myfloridahouse.gov; Gabriela.Navarro@myfloridahouse.gov; Joyce.Randall@myfloridahouse.gov; LaVencia.Alls@myfloridahouse.gov; Malik.Moore@myfloridahouse.gov; Morgan.Rodgers@myfloridahouse.gov; Nadlie.Charles@myfloridahouse.gov; Christian.Harvey@myfloridahouse.gov; Alisa.Bergmann@myfloridahouse.gov; Hilda.Quintero@myfloridahouse.gov; Hunter.Wilkins@myfloridahouse.gov; Damian.Cuesta@myfloridahouse.gov; Francesca.Audino@myfloridahouse.gov; Carolyn.Kolenda@myfloridahouse.gov; David.Ballard@myfloridahouse.gov; Dawn.Faherty@myfloridahouse.gov; Diane.Meredith@myfloridahouse.gov; Carmenchu.Mingo@myfloridahouse.gov; Juan.Porras@myfloridahouse.gov; Anastasia.Tyson@myfloridahouse.gov; Sarah.Craven@myfloridahouse.gov; Dana.Orr@myfloridahouse.gov; Pamela Burch Fort ; Kirk Bailey
Subject: ACLU of Florida's Written Testimony in Opposition to HB 1/SB 484 (Anti-Protest Bill)
Importance: High

Dear Chair Byrd and members of the House Criminal Justice & Public Safety Subcommittee:

Please see attached ACLU of Florida's Written Testimony in Opposition to HB 1/SB 484 (Anti-Protest Bill). As we will be unable to testify in person at the Criminal Justice and Public Safety Subcommittee hearing, we respectfully request that ACLU of Florida's attached written testimony in opposition to HB 1 (and this transmittal email) be included in the meeting packet for the committee hearing scheduled for next Wednesday, January 27, 2021, at 4pm, and any additional committee hearings on this bill.

Please do not hesitate to contact me if you have any questions or would like any additional information. I look forward to speaking with you at your convenience.

Best regards,

Kara Gross
Kara Gross | Legislative Director & Senior Policy Counsel
American Civil Liberties Union of Florida
Direct 786.363.4436 | kgross@aclufl.org **| www.aclufl.org**
Prounouns: she, her, hers

ACLU Florida

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From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: Amendment to HB 1
Date: Wednesday, January 27, 2021 9:32:34 AM
Attachments: HB1-line 379 (Rep. Chambliss).pdf
OutlookEmoji-1568727030772e4a81810-cc5f-451e-ae91-7a6d4090b688.png

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Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

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From: Hall, Whitney
Sent: Tuesday, January 26, 2021 8:43 PM
To: Barquin, JuanF
Subject: Amendment to HB 1

Hi Rep,

You're probably already aware, but Rep. Chambliss filed one amendment to HB 1 this evening. It is attached for your review. It only applies to the mob intimidation crime. Please feel free to give me a buzz if you have any questions.

Thanks!

Whitney Hall
Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

From:	Zegarra, Christopher
To:	christopher zegarra
Subject:	FW: FICTION/FACT: HB 1
Date:	Wednesday, January 27, 2021 4:50:00 PM
Attachments:	HB 1 Fiction Fact.pdf HB 1 Fiction Fact Graphic.jpg

---

From: House Majority Office
Sent: Wednesday, January 27, 2021 1:17 PM
To: House Majority Office
Subject: FICTION/FACT: HB 1

Members,

Earlier, you received a graphic with some of the fictitious claims made regarding HB 1, Combating Public disorder, along with the facts that highlight why the bill is so important for our state. Attached you will find a document with an extensive list of the "Fictions/Facts."

Please do not hesitate to contact my office with any questions.

Thank you,

Representative Michael Grant
Majority Leader

From:	Munero, Armando
To:	"Juan Fernandez-Barquin"
Subject:	FW: FICTION/FACT: HB 1
Date:	Wednesday, January 27, 2021 3:04:35 PM
Attachments:	HB 1 Fiction Fact.pdf HB 1 Fiction Fact Graphic.jpg

---

From: House Majority Office
Sent: Wednesday, January 27, 2021 1:17 PM
To: House Majority Office
Subject: FICTION/FACT: HB 1

Members,

Earlier, you received a graphic with some of the fictitious claims made regarding HB 1, Combating Public disorder, along with the facts that highlight why the bill is so important for our state. Attached you will find a document with an extensive list of the "Fictions/Facts."

Please do not hesitate to contact my office with any questions.

Thank you,

Representative Michael Grant
Majority Leader

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: HB 1 - SB 484 (Combating Public Disorder)
Date: Wednesday, January 27, 2021 10:45:48 AM
Attachments: 2021 FPCA Letter Supporting Public Disorder Bills HB 1 SB 484 FINAL.pdf
OutlookEmoji-1568727030772591054b0-75e2-4e34-83fb-f3c78945ce1a.png

---

Florida House of Representatives

State Representative Juan Fernandez-Barquin

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From: Pat Lange Faragasso
Sent: Wednesday, January 27, 2021 10:18 AM
To: Burgess, Danny; Barquin, JuanF
Cc: Amy Mercer; Tim Stanfield (stanfieldt@gtlaw.com)
Subject: HB 1 - SB 484 (Combating Public Disorder)

Good morning,

Attached is correspondence from the Florida Police Chiefs Association Executive Director Amy Mercer in support of your legislation.

Thank you,

Pat

Pat Lange Faragasso
Finance & Administration Manager
Florida Police Chiefs Association
Assistant Secretary/Treasurer
Florida Police Chiefs Education & Research Foundation
850.219.3631
pfaragasso@fpca.com

From:	Munero, Armando
To:	"Juan Fernandez-Barquin"
Subject:	FW: HB 1 Talking Points and Chart
Date:	Tuesday, January 26, 2021 4:29:25 PM
Attachments:	Rioting Bill-OSRC Chart.docx HB 1 CRM Talking Points.docx

---

From: Hall, Whitney
Sent: Tuesday, January 26, 2021 11:00 AM
To: Barquin, JuanF
Cc: Munero, Armando
Subject: HB 1 Talking Points and Chart

Hi Representative,

Attached are the talking points for the bill as well as a copy of the chart outlining the criminal penalties under the bill. Just let me know if there is anything else you need!

Thanks!

Whitney Hall
Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: HB 1; Caselaw regarding obstructing roadway
Date: Friday, February 05, 2021 11:12:15 AM
Attachments: OutlookEmoji-1568727030772f798f8d2-cf60-4d90-ba90-0d74becdcf12.png

Florida House of Representatives
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402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Karen Woodall
Sent: Thursday, February 4, 2021 3:19 PM
To: Barquin, JuanF
Subject: Re: HB 1; Caselaw regarding obstructing roadway

Thank you Representative for following up. Sorry for my delayed response.

Court cases clarify the need for striking the language pertaining to permitting, it's actually a good thing. My question is does the elimination of permitting mean that a rally or vigil or gathering can take place on a sidewalk, for example, as long as traffic not impeded? As far as you understand it?

Assuming that's a yes here is a major concern of ours.

We read the language of the bill to say that 3 people can appear at a peaceful assembly with the intent of causing a disturbance, making a part of the peaceful assembly "unruly". It seems that the bill language asserts that everyone involved in the peaceful assembly is then committing a riot or is part of a mob.

"Mob intimidation"- "It is unlawful for a person, assembled with two or more other persons and acting with a common intent, to compel or induce, or attempt to compel or induce, another person to assume or abandon a particular viewpoint." Section 784.0495 of the bill.
Would this unruly disruption of a peaceful rally mean that all participants in the rally will be charged with committing a riot?
According to the bill "a person who participates in a public disturbance involving an assembly of three or more persons acting with a common intent to mutually assist each other in disorderly and violent conduct resulting in injury or damage to another person or property, or creating a clear and present danger of injury or damage to another person or property, commits a riot".

Am I participating because I am in attendance and 3 people cause a disturbance that I have nothing to do with?

These are issues that are unclear. None of the folks I work with support violence, rioting, looting. But, as you know, where large groups of people are gathered you can't always control what a few do, especially these days.

Again, I appreciate you getting back to me. I am happy to discuss further during committee meetings next week if you would like.

Thank you.

Karen Woodall
850-321-9386

Sent from Yahoo Mail for iPhone

On Friday, January 29, 2021, 5:40 PM, Barquin, JuanF wrote:

> Ms. Woodall,
>
> Hope this email finds you well. This email is in response to your question in the committee on Wednesday regarding why HB 1 had lines 163 to 236 stricken. Attached is the caselaw finding said portion of the statute unconstitutional. If you have any other questions, please do not hesitate to contact me.
>
> Thank you,
> Juan Fernandez-Barquin

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

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Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Barquin, JuanF
To: Munero, Armando
Subject: Fw: MEETING NOTICE - Criminal Justice & Public Safety Subcommittee - Wednesday, January 27, 2021 - 4:00-6:00 pm - Webster Hall (212 Knott)
Date: Wednesday, January 20, 2021 8:42:27 PM
Attachments: CRM MEETING Notice 1.27.21.pdf
OutlookEmoji-1568727030772cbb56ae2-e910-48b9-80f6-f6e369014e4b.png

I am presenting this bill Wednesday January 27 at 4 pm at the Criminal Justice Subcommittee, please make sure it's on my calendar.

JFB

Florida House of Representatives
State Representative Juan Fernandez-Barquin
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402 South Monroe Street
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From: Collins, Lindsey
Sent: Wednesday, January 20, 2021 4:21 PM
To: #HDIST119 Rep & Staff; !HSE Democratic Office; !HSE Judiciary Committee; !HSE Republican Office; #HDIST004 Rep & Staff; #HDIST010 Rep & Staff; #HDIST011 Rep & Staff; #HDIST026 Rep & Staff; #HDIST027 Rep & Staff; #HDIST033 Rep & Staff; #HDIST055 Rep & Staff; #HDIST059 Rep & Staff; #HDIST061 Rep & Staff; #HDIST073 Rep & Staff; #HDIST079 Rep & Staff; #HDIST082 Rep & Staff; #HDIST092 Rep & Staff; #HDIST109 Rep & Staff; #HDIST110 Rep & Staff; #HDIST113 Rep & Staff; #HDIST114 Rep & Staff; #HDIST117 Rep & Staff; Barley, Debbie; Burkley, Wade; Canty, Amaura; Griffin, Dan; Krause, Jessica; Larson, Lisa; Medley, Lara; Randolph, Cheryl; Raschid, Omar; Sarkissian, Jenna; Scott, Nikki; Senate Committee - Criminal Justice; Senate Committee - Judiciary; Shockley, Ann; Switalski, Kim; Thomas, Janna; Turner, Kristi; Voran, Michelle
Subject: MEETING NOTICE - Criminal Justice & Public Safety Subcommittee - Wednesday, January 27, 2021 - 4:00-6:00 pm - Webster Hall (212 Knott)
Please see the attached notice for the Criminal Justice & Public Safety Subcommittee meeting on Wednesday, January 27, 2021.
You will be notified when the bill analysis for HB 1 becomes available.
Thank you,

Lindsey Collins

Administrative Assistant
Judiciary Committee
Florida House of Representatives
Suite 417, House Office Building
(850) 717-4850

From: Munero, Armando
To: "Juan Fernandez-Barquin"
Subject: FW: Meeting Request - HB 1/Criminal Justice Reform
Date: Tuesday, February 02, 2021 10:41:02 AM
Attachments: image001.png
ACLU of Florida Written Testimony in Opposition to HB 1-SB 484.pdf

---

Juan,
You wouldn't want to take this right?
Armando

From: Kara Gross
Sent: Monday, February 1, 2021 10:46 PM
To: Barquin, JuanF
Cc: Munero, Armando ; Zegarra, Christopher
Subject: Meeting Request - HB 1/Criminal Justice Reform

Hi Representative Fernandez-Barquin,

Hope you are doing well and staying Covid-safe. I was hoping to set up a time to virtually meet with you at your convenience regarding HB 1 and criminal justice reform efforts. Also, I wanted to be sure you have our opposition to HB 1/SB 484, as there is much in this bill that runs counter to criminal justice reform efforts by increasing sentence lengths for offenses that are already unlawful under current statutes and thus increasing costs to the state.

Please let me know if you have any availability to virtually meet and looking forward to connecting at your convenience.

Best regards,
Kara

Kara Gross | Legislative Director & Senior Policy Counsel
American Civil Liberties Union of Florida
Direct 786.363.4436 | kgross@aclufl.org | www.aclufl.org
Pronouns: she, her, hers

ACLU
Florida

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From: Munero, Armando
To: Barquin, JuanF; "Juan Fernandez-Barquin"
Subject: FW: Meeting Request
Date: Tuesday, January 19, 2021 11:57:56 AM
Attachments: image001.png
image002.png

Juan,
Would you be interested in taking this meeting about HB 1?
Best,
Armando

From: Will McRea
Sent: Tuesday, January 19, 2021 11:40 AM
To: Munero, Armando
Subject: RE: Meeting Request

We are pretty flexible and simply want to meet this week or next committee week. The discussion would be focused on HB 1.
Will
Sent from my T-Mobile 4G LTE Device
-------- Original message --------
From: "Munero, Armando" <Armando.Munero@myfloridahouse.gov>
Date: 1/19/21 11:28 AM (GMT-05:00)
To: Will McRea <will@suncitystrategies.com>
Subject: RE: Meeting Request
Good Morning Will,
Is there a specific date or time that would work for Casey Cook. In addition, what would the meeting be regarding?
Thank you!
Armando

From: Will McRea <will@suncitystrategies.com>
Sent: Monday, January 18, 2021 7:21 PM
To: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Cc: Barquin, JuanF <JuanF.Barquin@myfloridahouse.gov>
Subject: Meeting Request

Good evening Armando,
Hope you had a great weekend. Just wanted to reach out to request a (zoom) meeting with Representative Fernandez-Barquin. The meeting request is on behalf of Casey Cook with the Florida League of Cities.
Please advise if the Representative has any availability.
Thank you for your time.
Regards,

Will McRea

Sun City Strategies, Associate

786.651.7653
will@suncitystrategies.com
http://suncitystrategies.com

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: Obstructing a Roadway- Federal case law- Stricken parts of HB 1
Date: Friday, January 29, 2021 11:44:39 AM
Attachments: Bischoff v Florida.pdf
Vigue v Shoar.pdf
OutlookEmoji-15687270307722d8b114c-8283-4684-bdd6-256eaef86b20.png

---

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Hall, Whitney
Sent: Friday, January 29, 2021 11:05 AM
To: Barquin, JuanF
Subject: FW: Obstructing a Roadway- Federal case law- Stricken parts of HB 1

Hi Rep.,

Here are the cases in response to your email last night. Please let me know if there is anything else you need.

Thanks!

Whitney Hall
Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

From: Hall, Whitney
Sent: Monday, December 21, 2020 4:25 PM
To: Barquin, JuanF
Cc: Kramer, Trina
Subject: Obstructing a Roadway- Federal case law

Hi Representative,

Attached are the two federal cases discussing the constitutionality of s. 316.2045, F.S., (Obstructing a roadway) that we briefly discussed today. Please let us know if you have any

questions after you have the chance to review.
Happy Holidays!

Whitney Hall
Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: Sign Up Confirmation
Date: Monday, January 25, 2021 1:44:48 PM
Attachments: 443C06D4B7410611F9396E4332328E28.ics
OutlookEmoji-1568727030772e9825c4b-92d5-43cf-8ab7-64051984e489.png

---

Florida House of Representatives
State Representative Juan Fernandez-Barquin
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From: Ryan Larson
Sent: Monday, January 25, 2021 9:50 AM
To: Barquin, JuanF
Subject: Sign Up Confirmation

Group Organizing Made Easy

Thank you, Juan!

You're all signed up for "HB 1 Short Video."

Appointment

01/26/2021 (Tue.) 1:00pm - 1:15pm EST
Location: House Majority Office

View Sign Up

Edit My Sign Up Contact Ryan Larson

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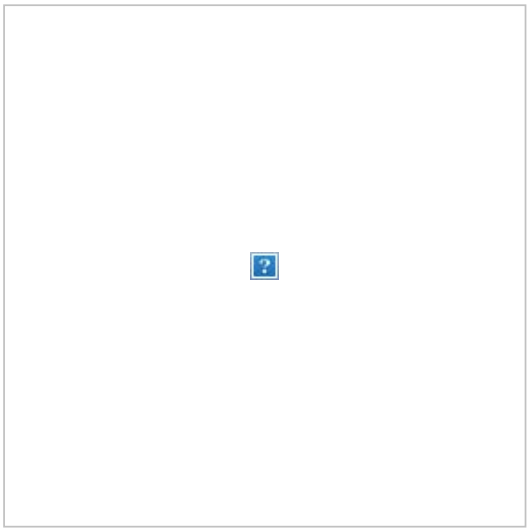

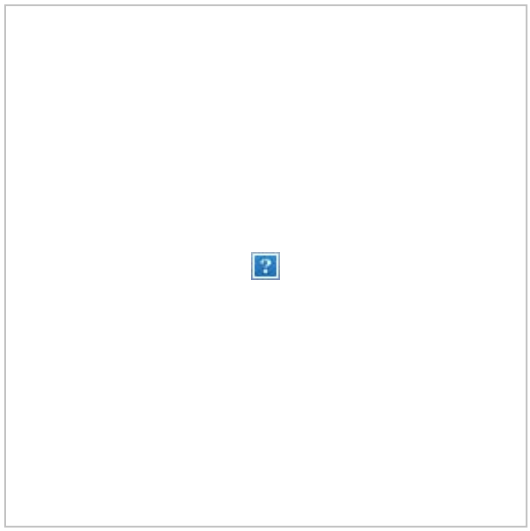

Share SignUpGenius with a friend or group! Share Now

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: The Florida Channel Interview
Date: Monday, January 25, 2021 3:55:23 PM
Attachments: image001.png
OutlookEmoji-1568727030772379e56b7-0efc-44ef-81cb-2c9c5abc86f2.png
OutlookEmoji-156872703077273c7ad1e-2dcf-4be3-a95a-84ed75e4799b.png

---

Juan,

Would you be interested in taking this interview with a reporter to discuss HB 1?

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

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402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Barquin, JuanF
Sent: Monday, January 25, 2021 1:45 PM
To: Munero, Armando
Subject: Fw: The Florida Channel Interview

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

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(850) 717-5119

From: Javonni Hampton
Sent: Monday, January 25, 2021 11:23 AM
To: Barquin, JuanF
Subject: The Florida Channel Interview

Hello,

My name is Javonni Hampton, I am a reporter with the Florida Channel. Was wondering if it was possible to set up an interview with the Representative sometime tomorrow morning before committees to discuss his new proposed legislation HB1. Tuesday before 9am, does that work?

Best,

Javonni

Javonni Hampton
Reporter/Producer- Florida Channel Programming
The FLORIDA Channel | Office: 850-488-1281
Direct: 407-680-7606 | FAX: 850-488-4876
jhampton@fsu.edu www.TheFloridaChannel.org

From: Barquin, JuanF
To: Munero, Armando
Subject: HB 1 presentation
Date: Wednesday, January 20, 2021 9:10:29 PM
Attachments: OutlookEmoji-15687270307721d0663fb-e352-4c7d-a031-8bda6922aef2.png

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Please send a letter on our letterhead addressed to Madame Chair Amber Mariano, get her address info on the house website, VIA E-Mail.

The following body:

Madame Chair Mariano:

Please be advised I am scheduled to present House Bill 1 at the Criminal Justice Subcommittee on January 27, 2021 at 4 pm, at the same time as our scheduled meeting for the Post-Secondary and Lifelong Learning Subcommittee. Please consider this a formal request to be excused from our subcommittee so I can present HB 1.

If you have any questions, please do not hesitate to contact me.

Signature block

Send me the draft when you are done.

Thank you!

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

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Tallahassee, FL 32399
(850) 717-5119

From: Barquin, JuanF
To: Hall, Whitney
Subject: HB 1 stricken parts re permits
Date: Thursday, January 28, 2021 8:34:03 PM
Attachments: OutlookEmoji-15687270307723a03eeed-4307-4d87-aa78-b384003c7cb8.png

---

Hi Whitney,

Can you please provide me with case law that held the stricken parts of HB 1 unconstitutional? I mean in reference to the part of the bill that was just clean up.

Thank you!

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

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(850) 717-5119

From: Barquin, JuanF
To: Bush, James
Subject: HB 1
Date: Friday, January 22, 2021 4:33:01 PM
Attachments: OutlookEmoji-1568727030772d4655364-22a6-4511-86a7-0f48cf43d2b4.png

---

Hi Rep,

How are you? I just called your mobile but went to voicemail. Please let me know when you are free to touch base re HB 1, would really like to talk to you about it.

Thank you,
Juan

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

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Tallahassee, FL 32399
(850) 717-5119

From: Barquin, JuanF
To: Munero, Armando
Subject: HB 1
Date: Friday, January 08, 2021 1:02:28 PM
Attachments: OutlookEmoji-1568727030772906667ca-2c90-42ec-82b8-375db044e6e5.png

Please approve the people asking to co-sponsor HB 1. There is a difference between Prime Co-Sponsor and Co-Sponsor. Do NOT approve Prime Co-Sponsors.

JFB

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

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Tallahassee Office:
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402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Barquin, JuanF
To: fcfep@yahoo.com
Subject: HB 1; Caselaw regarding obstructing roadway
Date: Friday, January 29, 2021 5:40:50 PM
Attachments: Vigue v Shoar.pdf
Bischoff v Florida.pdf
OutlookEmoji-156872703077231b29ee9-4e92-4bba-9806-0d9d654fae2e.png

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Ms. Woodall,

Hope this email finds you well. This email is in response to your question in the committee on Wednesday regarding why HB 1 had lines 163 to 236 stricken. Attached is the caselaw finding said portion of the statute unconstitutional. If you have any other questions, please do not hesitate to contact me.

Thank you,
Juan Fernandez-Barquin

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

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From: Munero, Armando
To: Miller, Brandon
Subject: RE: Co-Sponsor Approval
Date: Wednesday, January 13, 2021 10:22:59 AM

Good morning Brandon,
I just approved it!
Thank you!
Armando

From: Miller, Brandon
Sent: Wednesday, January 13, 2021 9:30 AM
To: Munero, Armando
Subject: Co-Sponsor Approval

Good morning Armando,
When you have a chance, can you approve our request to co-sponsor HB 1?
Thank you!
Best,
Brandon Miller, MPA
Legislative Assistant III – Rep. Spencer Roach (R-79)
District: 239-656-7790
Tallahassee: 850-717-5079

From: Munero, Armando
To: Schau, Eric
Subject: RE: Co-Sponsor Request HB 1
Date: Friday, January 15, 2021 11:56:33 AM
Attachments: image005.png
image007.png
image008.png

Good morning Eric,
Thank you for letting me know! I will approve the co-sponsor request right away.
Thank you!
Armando

From: Schau, Eric
Sent: Thursday, January 14, 2021 11:25 AM
To: Munero, Armando
Subject: Co-Sponsor Request HB 1
Good afternoon Armando,
I just wanted to let you know that I submitted a co-sponsor request in Leagis on behalf of Rep. Giallombardo for HB 1 (Combating Public Disorder).
Thanks!
Eric

Eric Schau
Legislative Assistant to
Rep. Mike Giallombardo
Florida House of Representatives, District 77
District
1039 SE 9th Place, Suite 310
Cape Coral, Florida 33990
239-772-1291
Capitol
402 South Monroe Street, Suite 1101
Tallahassee, Florida 32399
850-717-5077
myfloridahouse.gov
#FLHouse

From:	Barquin, JuanF
To:	Hall, Whitney; Munero, Armando
Cc:	Kramer, Trina
Subject:	Re: HB 1 Meeting
Date:	Thursday, January 21, 2021 1:06:53 PM
Attachments:	image001.png OutlookEmoji-1568727030772bce8c653-20ff-42ef-9224-06227468004a.png

Lets do 9:30 am tomorrow, that's fine with me.

JFB

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

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Miami, FL 33175
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(850) 717-5119

From: Hall, Whitney
Sent: Thursday, January 21, 2021 12:37:58 PM
To: Barquin, JuanF; Munero, Armando
Cc: Kramer, Trina
Subject: RE: HB 1 Meeting

Would either 9:30 am or after 2 pm sometime work for you? If not, just let me know what time does work for you and we'll make it work. The only time I am unavailable tomorrow that I can't move around is from 11 am- noon.
Thanks!

Whitney Hall
Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

From: Barquin, JuanF
Sent: Thursday, January 21, 2021 12:25 PM
To: Hall, Whitney ; Munero, Armando
Cc: Kramer, Trina
Subject: Re: HB 1 Meeting

Hi Whitney,
Yes, can we schedule a meeting for tomorrow?

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

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Miami, FL 33175
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402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Hall, Whitney
Sent: Thursday, January 21, 2021 10:04:57 AM
To: Barquin, JuanF; Munero, Armando
Cc: Munero, Armando; Kramer, Trina
Subject: HB 1 Meeting

Good morning, Representative,

I hope you're doing well. I wanted to reach out to see if there is anything the subcommittee can do to help you as you prepare to present HB 1 next week. We met last month via WebEx, but haven't had the chance to get back together to see if you had any questions on or spotted any issues with the bill. We are more than happy to schedule a time to meet via WebEx or in person anytime between now and early next week, whenever is convenient for you.

Please let us know how we can help!

Whitney Hall

Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

From: Barquin, JuanF
To: Hall, Whitney; Munero, Armando
Cc: Kramer, Trina
Subject: Re: HB 1 Meeting
Date: Friday, January 22, 2021 9:36:01 AM
Attachments: image001.png
OutlookEmoji-1568727030772677731e-0508-452a-98ff-cbd71735703e.png

---

Hi Whitney,

I can't seem to find the webex link, can you please resend it.

Thank you!

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

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Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Hall, Whitney
Sent: Thursday, January 21, 2021 1:36:53 PM
To: Barquin, JuanF; Munero, Armando
Cc: Kramer, Trina
Subject: RE: HB 1 Meeting

Great. I'll send a WebEx invite shortly. Talk to you in the morning.

Whitney Hall
Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

From: Barquin, JuanF
Sent: Thursday, January 21, 2021 1:07 PM
To: Hall, Whitney ; Munero, Armando
Cc: Kramer, Trina
Subject: Re: HB 1 Meeting

Lets do 9:30 am tomorrow, that's fine with me.
JFB

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

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Miami, FL 33175
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From: Hall, Whitney
Sent: Thursday, January 21, 2021 12:37:58 PM
To: Barquin, JuanF; Munero, Armando
Cc: Kramer, Trina
Subject: RE: HB 1 Meeting

Would either 9:30 am or after 2 pm sometime work for you? If not, just let me know what time does work for you and we'll make it work. The only time I am unavailable tomorrow that I can't move around is from 11 am- noon.

Thanks!

Whitney Hall

Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

From: Barquin, JuanF <JuanF.Barquin@myfloridahouse.gov>
Sent: Thursday, January 21, 2021 12:25 PM
To: Hall, Whitney <Whitney.Hall@myfloridahouse.gov>; Munero, Armando <Armando.Munero@myfloridahouse.gov>
Cc: Kramer, Trina <Trina.Kramer@myfloridahouse.gov>
Subject: Re: HB 1 Meeting

Hi Whitney,

Yes, can we schedule a meeting for tomorrow?

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

District Office:
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Tallahassee, FL 32399
(850) 717-5119

From: Hall, Whitney
Sent: Thursday, January 21, 2021 10:04:57 AM
To: Barquin, JuanF; Munero, Armando
Cc: Munero, Armando; Kramer, Trina

Subject: HB 1 Meeting

Good morning, Representative,

I hope you're doing well. I wanted to reach out to see if there is anything the subcommittee can do to help you as you prepare to present HB 1 next week. We met last month via WebEx, but haven't had the chance to get back together to see if you had any questions on or spotted any issues with the bill. We are more than happy to schedule a time to meet via WebEx or in person anytime between now and early next week, whenever is convenient for you.

Please let us know how we can help!

Whitney Hall

Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

From: Barquin, JuanF
To: Hall, Whitney; Munero, Armando
Cc: Kramer, Trina
Subject: Re: HB 1 Meeting
Date: Thursday, January 21, 2021 12:25:24 PM
Attachments: OutlookEmoji-1568727030772125262 9a-d30b-4e39-8f99-b2ecf5a3a41e.png

Hi Whitney,

Yes, can we schedule a meeting for tomorrow?

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

District Office:
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1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Hall, Whitney
Sent: Thursday, January 21, 2021 10:04:57 AM
To: Barquin, JuanF; Munero, Armando
Cc: Munero, Armando; Kramer, Trina
Subject: HB 1 Meeting

Good morning, Representative,

I hope you're doing well. I wanted to reach out to see if there is anything the subcommittee can do to help you as you prepare to present HB 1 next week. We met last month via WebEx, but haven't had the chance to get back together to see if you had any questions on or spotted any issues with the bill. We are more than happy to schedule a time to meet via WebEx or in person anytime between now and early next week, whenever is convenient for you.

Please let us know how we can help!

Whitney Hall

Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

From: Munero, Armando
To: Padgett, Ryan
Subject: RE: HB 67 Background
Date: Wednesday, January 27, 2021 3:35:40 PM

Ryan,
Would 11 am work?
Best,
Armando

From: Padgett, Ryan
Sent: Wednesday, January 27, 2021 2:39 PM
To: Munero, Armando
Subject: RE: HB 67 Background

Absolutely. Any time after 9 works.

RGP

Ryan G. Padgett
Attorney
Judiciary Committee
Florida House of Representatives
Suite 417, House Office Building
(850) 717-4850

From: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Sent: Wednesday, January 27, 2021 2:37 PM
To: Padgett, Ryan <Ryan.Padgett@myfloridahouse.gov>
Subject: RE: HB 67 Background

Ryan,
Would you be available for the zoom Friday, January 28 in the morning?
Best,
Armando

From: Padgett, Ryan <Ryan.Padgett@myfloridahouse.gov>
Sent: Wednesday, January 27, 2021 11:26 AM
To: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Subject: RE: HB 67 Background

That would be helpful. I know he is busy with HB 1 later today and there is no immediate rush on this. If later this week or next works better for him, that's great.

RGP

Ryan G. Padgett
Attorney
Judiciary Committee
Florida House of Representatives
Suite 417, House Office Building
(850) 717-4850

From: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Sent: Wednesday, January 27, 2021 11:23 AM
To: Padgett, Ryan <Ryan.Padgett@myfloridahouse.gov>
Subject: RE: HB 67 Background

Good morning Ryan,
Would you be interested in having a brief zoom meeting with the Representative? That way he could provide you with the background you need on HB 67.
Thank you!
Armando

From: Padgett, Ryan <Ryan.Padgett@myfloridahouse.gov>
Sent: Wednesday, January 27, 2021 9:39 AM
To: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Subject: HB 67 Background

Good morning,
I'm just starting to do some preliminary research into the filed bills and was hoping you could provide me with some background on HB 67 relating to public defenders. Please let me know if there is a good time to give you a call to discuss the bill.
Thanks in advance!

RGP
Ryan G. Padgett
Attorney
Judiciary Committee
Florida House of Representatives
Suite 417, House Office Building
(850) 717-4850

From: Munero, Armando
To: Padgett, Ryan
Subject: RE: HB 67 Background
Date: Wednesday, January 27, 2021 5:22:11 PM

Ryan,

That would be perfect! What number would you like the Representative to call you at?

Best,

Armando

From: Padgett, Ryan

Sent: Wednesday, January 27, 2021 3:38 PM

To: Munero, Armando

Subject: RE: HB 67 Background

11 is perfect. If it's easier for the Representative to call on the phone, that's fine as well.

RGP

Ryan G. Padgett
Attorney
Judiciary Committee
Florida House of Representatives
Suite 417, House Office Building
(850) 717-4850

From: Munero, Armando <Armando.Munero@myfloridahouse.gov>

Sent: Wednesday, January 27, 2021 3:36 PM

To: Padgett, Ryan <Ryan.Padgett@myfloridahouse.gov>

Subject: RE: HB 67 Background

Ryan,

Would 11 am work?

Best,

Armando

From: Padgett, Ryan <Ryan.Padgett@myfloridahouse.gov>

Sent: Wednesday, January 27, 2021 2:39 PM

To: Munero, Armando <Armando.Munero@myfloridahouse.gov>

Subject: RE: HB 67 Background

Absolutely. Any time after 9 works.

RGP

Ryan G. Padgett
Attorney
Judiciary Committee
Florida House of Representatives
Suite 417, House Office Building
(850) 717-4850

From: Munero, Armando <Armando.Munero@myfloridahouse.gov>

Sent: Wednesday, January 27, 2021 2:37 PM

To: Padgett, Ryan <Ryan.Padgett@myfloridahouse.gov>

Subject: RE: HB 67 Background

Ryan,

Would you be available for the zoom Friday, January 28 in the morning?
Best,
Armando

From: Padgett, Ryan <Ryan.Padgett@myfloridahouse.gov>
Sent: Wednesday, January 27, 2021 11:26 AM
To: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Subject: RE: HB 67 Background

That would be helpful. I know he is busy with HB 1 later today and there is no immediate rush on this. If later this week or next works better for him, that's great.

RGP
Ryan G. Padgett
Attorney
Judiciary Committee
Florida House of Representatives
Suite 417, House Office Building
(850) 717-4850

From: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Sent: Wednesday, January 27, 2021 11:23 AM
To: Padgett, Ryan <Ryan.Padgett@myfloridahouse.gov>
Subject: RE: HB 67 Background

Good morning Ryan,
Would you be interested in having a brief zoom meeting with the Representative? That way he could provide you with the background you need on HB 67.
Thank you!
Armando

From: Padgett, Ryan <Ryan.Padgett@myfloridahouse.gov>
Sent: Wednesday, January 27, 2021 9:39 AM
To: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Subject: HB 67 Background

Good morning,
I'm just starting to do some preliminary research into the filed bills and was hoping you could provide me with some background on HB 67 relating to public defenders. Please let me know if there is a good time to give you a call to discuss the bill.
Thanks in advance!

RGP
Ryan G. Padgett
Attorney
Judiciary Committee
Florida House of Representatives
Suite 417, House Office Building
(850) 717-4850

From: Munero, Armando
To: Padgett, Ryan
Subject: RE: HB 67 Background
Date: Wednesday, January 27, 2021 5:44:40 PM

Ryan,

Of course, not a problem! In addition, I will have the Representative call you Friday at 11.

Best,

Armando

From: Padgett, Ryan
Sent: Wednesday, January 27, 2021 5:24 PM
To: Munero, Armando
Subject: RE: HB 67 Background

Armando,
My direct line is 850-717-5457.
Thanks for your help setting this up.

RGP

Ryan G. Padgett
Attorney
Judiciary Committee
Florida House of Representatives
Suite 417, House Office Building
(850) 717-4850

From: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Sent: Wednesday, January 27, 2021 5:22 PM
To: Padgett, Ryan <Ryan.Padgett@myfloridahouse.gov>
Subject: RE: HB 67 Background

Ryan,

That would be perfect! What number would you like the Representative to call you at?

Best,

Armando

From: Padgett, Ryan <Ryan.Padgett@myfloridahouse.gov>
Sent: Wednesday, January 27, 2021 3:38 PM
To: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Subject: RE: HB 67 Background

11 is perfect. If it's easier for the Representative to call on the phone, that's fine as well.

RGP

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Attorney
Judiciary Committee
Florida House of Representatives
Suite 417, House Office Building
(850) 717-4850

From: Munero, Armando <Armando.Munero@myfloridahouse.gov>
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Best,

Armando

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To: Munero, Armando <Armando.Munero@myfloridahouse.gov>

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To: Padgett, Ryan
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To: Munero, Armando
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Thanks in advance!

RGP
Ryan G. Padgett
Attorney
Judiciary Committee
Florida House of Representatives
Suite 417, House Office Building
(850) 717-4850

From: Munero, Armando
To: "Kara Gross"
Subject: RE: Meeting Request - HB 1/Criminal Justice Reform
Date: Wednesday, February 03, 2021 4:45:20 PM
Attachments: image001.png

Kara,
This Thursday I will be taking the Representative to the airport for his flight at 1 pm. Would you be willing to have the meeting next week?
Best,
Armando

From: Kara Gross
Sent: Wednesday, February 3, 2021 2:47 PM
To: Munero, Armando
Cc: Zegarra, Christopher ; Barquin, JuanF
Subject: RE: Meeting Request - HB 1/Criminal Justice Reform

Hi Armando,
Thank you for your email and that would be great. Please let me know when is a convenient time for you. I am available Thursday between 1-3pm, if you have any time slots in there available. In the meantime, I wanted to be sure the Representative saw the following recent piece by constitutional law scholar, Erwin Chemerinsky, on the bill's impact on peaceful protesters https://www.nbcnews.com/think/opinion/republican-lawmakers-want-use-pro-trump-rioters-undermine-peaceful-protest-ncna1256232. I understand that it is not the Representative's intent to chill speech and nonviolent assembly, but unfortunately the bill that he has filed with have that impact.
Thank you so much and looking forward to talking with you.
Best regards,
Kara

Kara Gross | Legislative Director & Senior Policy Counsel
American Civil Liberties Union of Florida
Direct 786.363.4436 | kgross@aclufl.org | **www.aclufl.org**
Pronouns: she, her, hers

From: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Sent: Tuesday, February 2, 2021 3:47 PM
To: Kara Gross <KGross@aclufl.org>
Subject: RE: Meeting Request - HB 1/Criminal Justice Reform
Good afternoon Kara,
The Representative is extremely busy at the time, and doesn't have any openings for meetings. However, if you would like to have the meeting with me, we could figure out a date and time that works best for both of us.
Thank you!
Armando

From: Kara Gross <KGross@aclufl.org>
Sent: Monday, February 1, 2021 10:46 PM

To: Barquin, JuanF <JuanF.Barquin@myfloridahouse.gov>
Cc: Munero, Armando <Armando.Munero@myfloridahouse.gov>; Zegarra, Christopher <Christopher.Zegarra@myfloridahouse.gov>
Subject: Meeting Request - HB 1/Criminal Justice Reform

Hi Representative Fernandez-Barquin,

Hope you are doing well and staying Covid-safe. I was hoping to set up a time to virtually meet with you at your convenience regarding HB 1 and criminal justice reform efforts. Also, I wanted to be sure you have our opposition to HB 1/SB 484, as there is much in this bill that runs counter to criminal justice reform efforts by increasing sentence lengths for offenses that are already unlawful under current statutes and thus increasing costs to the state.

Please let me know if you have any availability to virtually meet and looking forward to connecting at your convenience.

Best regards,

Kara

Kara Gross | Legislative Director & Senior Policy Counsel
American Civil Liberties Union of Florida
Direct 786.363.4436 | kgross@aclufl.org | www.aclufl.org
Pronouns: she, her, hers

ACLU
Florida

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From: Munero, Armando
To: "Kara Gross"
Subject: RE: Meeting Request - HB 1/Criminal Justice Reform
Date: Friday, February 05, 2021 12:07:50 PM
Attachments: image001.png

Kara,
Would Wednesday at 11:30 am work? If not, I am free anytime on Thursday.
Best,
Armando

From: Kara Gross
Sent: Thursday, February 4, 2021 4:12 PM
To: Munero, Armando
Subject: RE: Meeting Request - HB 1/Criminal Justice Reform

Hi Armando,
Yes, that would be great. I have availability Wednesday at 11am if that works for you? If not, please suggest some other days/times that might work (I don't have availability on Monday or Tuesday, so Wednesday or thereafter is better).
Thank you so much and have a nice weekend.
Best regards,
Kara

Kara Gross | Legislative Director & Senior Policy Counsel
American Civil Liberties Union of Florida
Direct 786.363.4436 | kgross@aclufl.org | **www.aclufl.org**
Pronouns: she, her, hers

From: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Sent: Wednesday, February 3, 2021 4:45 PM
To: Kara Gross <KGross@aclufl.org>
Subject: RE: Meeting Request - HB 1/Criminal Justice Reform
Kara,
This Thursday I will be taking the Representative to the airport for his flight at 1 pm. Would you be willing to have the meeting next week?
Best,
Armando

From: Kara Gross <KGross@aclufl.org>
Sent: Wednesday, February 3, 2021 2:47 PM
To: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Cc: Zegarra, Christopher <Christopher.Zegarra@myfloridahouse.gov>; Barquin, JuanF <JuanF.Barquin@myfloridahouse.gov>
Subject: RE: Meeting Request - HB 1/Criminal Justice Reform

Hi Armando,

Thank you for your email and that would be great. Please let me know when is a convenient time for you. I am available Thursday between 1-3pm, if you have any time slots in there available. In the meantime, I wanted to be sure the Representative saw the following recent piece by constitutional law scholar, Erwin Chemerinsky, on the bill's impact on peaceful protesters https://www.nbcnews.com/think/opinion/republican-lawmakers-want-use-pro-trump-rioters-undermine-peaceful-protest-ncna1256232. I understand that it is not the Representative's intent to chill speech and nonviolent assembly, but unfortunately the bill that he has filed with have that impact.

Thank you so much and looking forward to talking with you.

Best regards,

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From: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Sent: Tuesday, February 2, 2021 3:47 PM
To: Kara Gross <KGross@aclufl.org>
Subject: RE: Meeting Request - HB 1/Criminal Justice Reform

Good afternoon Kara,

The Representative is extremely busy at the time, and doesn't have any openings for meetings. However, if you would like to have the meeting with me, we could figure out a date and time that works best for both of us.

Thank you!

Armando

From: Kara Gross <KGross@aclufl.org>
Sent: Monday, February 1, 2021 10:46 PM
To: Barquin, JuanF <JuanF.Barquin@myfloridahouse.gov>
Cc: Munero, Armando <Armando.Munero@myfloridahouse.gov>; Zegarra, Christopher <Christopher.Zegarra@myfloridahouse.gov>
Subject: Meeting Request - HB 1/Criminal Justice Reform

Hi Representative Fernandez-Barquin,

Hope you are doing well and staying Covid-safe. I was hoping to set up a time to virtually meet with you at your convenience regarding HB 1 and criminal justice reform efforts. Also, I wanted to be sure you have our opposition to HB 1/SB 484, as there is much in this bill that runs counter to criminal justice reform efforts by increasing sentence lengths for offenses that are already unlawful under current statutes and thus increasing costs to the state.

Please let me know if you have any availability to virtually meet and looking forward to connecting at your convenience.

Best regards,

Kara

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From: Munero, Armando
To: "Kara Gross"
Subject: RE: Meeting Request - HB 1/Criminal Justice Reform
Date: Tuesday, February 02, 2021 3:47:22 PM
Attachments: image001.png

Good afternoon Kara,
The Representative is extremely busy at the time, and doesn't have any openings for meetings. However, if you would like to have the meeting with me, we could figure out a date and time that works best for both of us.
Thank you!
Armando

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information for direct marketing purposes or for transfers of data to third parties.

From: Munero, Armando
To: "Lauren Gallo"
Subject: RE: Meeting Request
Date: Friday, January 29, 2021 12:08:05 PM

Lauren,
Can we schedule for Tuesday at 11 am? The Representative will be traveling up to Tallahassee on Monday, which makes it a little complicated for him.
Thank you!
Armando

From: Lauren Gallo
Sent: Friday, January 29, 2021 11:27 AM
To: Munero, Armando
Subject: Re: Meeting Request

Monday any time from 10am-1pm or after 2pm! If that doesn't work for the Representative we have time on Tuesday and Wednesday as well. Let me know what works best for you, I know he is busy so we will work around his schedule.
On Fri, Jan 29, 2021 at 10:50 AM Munero, Armando <Armando.Munero@myfloridahouse.gov> wrote:

> Good morning Lauren,
> Yes, a zoom would be perfect for the Representative. Is there any date or time in specific next week that would work for you guys?
> Best,
> Armando
>
> **From:** Lauren Gallo <lngallocag@gmail.com>
> **Sent:** Thursday, January 28, 2021 10:08 AM
> **To:** Munero, Armando <Armando.Munero@myfloridahouse.gov>
> **Subject:** Meeting Request
>
>
>
> Good Morning Armando,
> Last night I spoke with the Representative about scheduling a meeting with him and the League of Women Voters to discuss HB 1. He told me to reach out to you to get something on the calendar. If possible we are looking to do a zoom call due to COVID. Thank you in advance!
> --
> Best Wishes,
> Lauren Gallo
> Capitol Alliance Group, Inc
> 106 E. College Ave, Suite 1110
> Tallahassee, FL 32301
> Office: (850)224-1660
> Cell: (407)797-7796

--
Best Wishes,
Lauren Gallo
Capitol Alliance Group, Inc
106 E. College Ave, Suite 1110
Tallahassee, FL 32301
Office: (850)224-1660
Cell: (407)797-7796

From: Munero, Armando
To: "Lauren Gallo"
Subject: RE: Meeting Request
Date: Friday, January 29, 2021 12:38:22 PM

Lauren,
Yes, 10 am would work. Would you be able to send the zoom invitation, we have been having issues sending them out lately.
Best,
Armando

From: Lauren Gallo
Sent: Friday, January 29, 2021 12:20 PM
To: Munero, Armando
Subject: Re: Meeting Request

Would it be possible to do 10am instead? Thanks!

Lauren Gallo
Cell: (407)797-7796

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Subject: Re: Meeting Request

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Capitol Alliance Group, Inc
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Tallahassee, FL 32301
Office: (850)224-1660
Cell: (407)797-7796

From: Munero, Armando
To: "Lauren Gallo"
Subject: RE: Meeting Request
Date: Friday, January 29, 2021 3:32:18 PM

Lauren,
Thank you very much, I will let the Representative know.
Best,
Armando
From: Lauren Gallo
Sent: Friday, January 29, 2021 2:42 PM
To: Munero, Armando
Subject: Re: Meeting Request

Lauren Gallo is inviting you to a scheduled Zoom meeting.

Topic: HB 1
Time: Feb 2, 2021 10:00 AM Eastern Time (US and Canada)

Join Zoom Meeting
https://us05web.zoom.us/j/89549136880?pwd=UDNSajA1VnppTFNPUDBzQlVPbXIwUT09

Meeting ID: 895 4913 6880
Passcode: j82e3U

Here you go! I will be on the call as well as the President of the League of Women voters and one of their committee members. We are looking forward to it.
On Fri, Jan 29, 2021 at 12:56 PM Lauren Gallo <lngallocag@gmail.com> wrote:

> Yes, I will send one shortly.
>
> Lauren Gallo
> Cell: (407)797-7796
>
> On Jan 29, 2021, at 12:38 PM, Munero, Armando <Armando.Munero@myfloridahouse.gov> wrote:
>
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> Best,
> Armando
> **From:** Lauren Gallo <lngallocag@gmail.com>
> **Sent:** Thursday, January 28, 2021 10:08 AM
> **To:** Munero, Armando <Armando.Munero@myfloridahouse.gov>
> **Subject:** Meeting Request
>
>
>
> Good Morning Armando,
> Last night I spoke with the Representative about scheduling a

> meeting with him and the League of Women Voters to discuss HB 1. He told me to reach out to you to get something on the calendar. If possible we are looking to do a zoom call due to COVID. Thank you in advance!
> --
> Best Wishes,
> Lauren Gallo
> Capitol Alliance Group, Inc
> 106 E. College Ave, Suite 1110
> Tallahassee, FL 32301
> Office: (850)224-1660
> Cell: (407)797-7796

--
Best Wishes,
Lauren Gallo
Capitol Alliance Group, Inc
106 E. College Ave, Suite 1110
Tallahassee, FL 32301
Office: (850)224-1660
Cell: (407)797-7796

--
Best Wishes,
Lauren Gallo
Capitol Alliance Group, Inc
106 E. College Ave, Suite 1110
Tallahassee, FL 32301
Office: (850)224-1660
Cell: (407)797-7796

From: Munero, Armando
To: "Lauren Gallo"
Subject: RE: Meeting Request
Date: Friday, January 29, 2021 10:50:57 AM

Good morning Lauren,

Yes, a zoom would be perfect for the Representative. Is there any date or time in specific next week that would work for you guys?

Best,

Armando

From: Lauren Gallo

Sent: Thursday, January 28, 2021 10:08 AM

To: Munero, Armando

Subject: Meeting Request

Good Morning Armando,

Last night I spoke with the Representative about scheduling a meeting with him and the League of Women Voters to discuss HB 1. He told me to reach out to you to get something on the calendar. If possible we are looking to do a zoom call due to COVID. Thank you in advance!

--

Best Wishes,
Lauren Gallo
Capitol Alliance Group, Inc
106 E. College Ave, Suite 1110
Tallahassee, FL 32301
Office: (850)224-1660
Cell: (407)797-7796

From: Barquin, JuanF
To: Munero, Armando; "Juan Fernandez-Barquin"
Subject: Re: Meeting Request
Date: Tuesday, January 19, 2021 4:15:48 PM
Attachments: image001.png
image002.png
OutlookEmoji-1568727030772bae74683-b2f7-40e5-8a10-466c42a72c0a.png

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Yeah, I'll take that meeting.

JFB

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Munero, Armando
Sent: Tuesday, January 19, 2021 11:57:55 AM
To: Barquin, JuanF; 'Juan Fernandez-Barquin'
Subject: FW: Meeting Request

Juan,
Would you be interested in taking this meeting about HB 1?
Best,
Armando

From: Will McRea
Sent: Tuesday, January 19, 2021 11:40 AM
To: Munero, Armando
Subject: RE: Meeting Request

We are pretty flexible and simply want to meet this week or next committee week. The discussion would be focused on HB 1.
Will
Sent from my T-Mobile 4G LTE Device
-------- Original message --------
From: "Munero, Armando" <Armando.Munero@myfloridahouse.gov>
Date: 1/19/21 11:28 AM (GMT-05:00)

To: Will McRea <will@suncitystrategies.com>
Subject: RE: Meeting Request
Good Morning Will,
Is there a specific date or time that would work for Casey Cook. In addition, what would the meeting be regarding?
Thank you!
Armando

From: Will McRea <will@suncitystrategies.com>
Sent: Monday, January 18, 2021 7:21 PM
To: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Cc: Barquin, JuanF <JuanF.Barquin@myfloridahouse.gov>
Subject: Meeting Request

Good evening Armando,
Hope you had a great weekend. Just wanted to reach out to request a (zoom) meeting with Representative Fernandez-Barquin. The meeting request is on behalf of Casey Cook with the Florida League of Cities.
Please advise if the Representative has any availability.
Thank you for your time.
Regards,

Will McRea
Sun City Strategies, Associate

SUN CITY STRATEGIES

786.651.7653
will@suncitystrategies.com
http://suncitystrategies.com

From: Barquin, JuanF
To: Hall, Whitney
Subject: Sheriff Grady Judd suggested amendments
Date: Wednesday, February 03, 2021 1:14:04 PM
Attachments: Sheriff Grady Judd suggested amendments to HB 1.docx
OutlookEmoji-1568727030772d5a126e7-51f0-416e-8196-3836de817ef5.png

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Hi Whitney,

Here are the suggested amendments Sheriff Judd had. I am not crazy about the distance limitation since I don't think anything like that exists. But it should be a crime to possess those items during a riot or inciting a riot.

Juan

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Barquin, JuanF
To: Chambliss, Kevin
Subject: Touch base re HB 1
Date: Friday, January 22, 2021 4:35:56 PM
Attachments: OutlookEmoji-1568727030772e5d04023-e397-4dcb-b510-d77eacac619f.png

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Hi Rep,

Just called your confidential line, I hope you don't mind I got it from Rep Vance Aloupis. Wanted to touch base with you re HB 1, and get your input. My door is always open to talk. I left my personal mobile on your voicemail. Please advise when you are free to touch base.

Thank you,
Juan

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: Sheriff Grady Judd suggested amendments
Date: Monday, February 08, 2021 4:46:14 PM
Attachments: image001.png
OutlookEmoji-1568727030772cb25dd7f-658f-4f0a-b238-17f0ad586d47.png

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Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Hall, Whitney
Sent: Sunday, February 7, 2021 7:34 AM
To: Barquin, JuanF
Subject: RE: Sheriff Grady Judd suggested amendments

Hi Representative,

Sorry it's taken me a few days to get back to you on this. As to the prohibited items, I believe those items would be covered under HB 1 and punishable as aggravated rioting (for possessing a deadly weapon while committing a riot-Lines 741-742) if the person used or threatened to use the item in a dangerous way. See explanation below from case law:

When undefined in statute, Florida courts have defined a "deadly weapon" as an instrument that will likely cause death or great bodily harm when used in the ordinary and usual manner contemplated by its design or an object that is used or threatened to be used in a way likely to produce death or great bodily harm. See Brown v. State, 86 So.3d 569, 571 (Fla. 5th DCA 2012)

Under the bill, a person would not be punished simply for possessing an object that is not commonly recognized as a weapon, like a leaf blower or a rock, during a riot, but they would be punished if they used that leaf blower or a rock in a way that would likely hurt someone.

Please let me know if you want to discuss further.

Thanks!

Whitney Hall
Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives

(850) 717-4877

From: Barquin, JuanF
Sent: Wednesday, February 3, 2021 1:14 PM
To: Hall, Whitney
Subject: Sheriff Grady Judd suggested amendments

Hi Whitney,

Here are the suggested amendments Sheriff Judd had. I am not crazy about the distance limitation since I don't think anything like that exists. But it should be a crime to possess those items during a riot or inciting a riot.

Juan

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Barquin, JuanF
To: Munero, Armando
Subject: pls print
Date: Wednesday, January 27, 2021 3:39:53 PM
Attachments: 1-25-21 presentation for HB 1.docx
OutlookEmoji-1568727030772efbf5a1a-5e3e-4e8f-b100-c0d1967d3ac9.png

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[1568727030772]

Personal, then going out. Older couples harassed.
From the moment I decided to run for office, and my first day in the Florida House, my number one focus and responsibility has been to safeguard and protect our families and loved ones. That is what HB 1 aims to do. I ask you to join me in protecting our communities. This afternoon I will introduce this bill to my colleagues in the Florida House, and look forward to a constructive debate to bring this forward as law in the State of Florida. My hope is this policy will unite and protect our communities throughout Florida.

MLK quote for interview.

Specific incidence, to discussing about mob,

Mob mentality – in a mob distribution of responsibility because everyone is faceless. What keeps people sane is being held for their actions. In a mob you can be faceless, and in that the worst parts can manifest without being called for your actions. Allows people to hide. That's why you can't apologize to a mob. Can apologize to a person, but not to a mob. You cannot hold a mob responsible.

The Crowd, Gustave Le Bon – when part of crowd, individuals behave on instinct. Behave like that in a crowd but not as an individual.

- Anonymity they lose their fear of consequences, feeling invincibility, and lose moral responsibility
- Contagion - every act is contagious in a crowd, individual will sacrifice self interest, emotions contagious
- Demagogue – after being part of crowd, individual enters a state of hypnosis, leader can influence crowds to behave a certain way.

I think we can agree: violence committed by an individual is not acceptable.

Let's take it a step further - violence committed by a large group of people together, is even worse, and definitely not acceptable in a civilized society.

The large group of people – adds a special dangerous element.
An element that I think is over looked in this day in age.

When an individual is in a group, the individual loses their personal responsibility, and is more likely to lash out, and do things they wouldn't otherwise do if they were by themselves.

The majority of my bill takes crimes that are already illegal like the following:

- Assault
- Aggravated Assault
- Battery
- Aggravated Battery
- Battery of a Law Enforcement Officer
- Burglary
- Theft

And puts it in the context of a riot, and increases the penalties for these crimes, including a 6 month mandatory minimum for Battery on LEO during a riot or agg riot. (by increasing the level ranking on several of these crimes on the Criminal Punishment Code scoresheet.)

It takes criminal mischief of a memorial – already in law depending on the amount of damage to the property, and makes any damage greater than $200 + memorial = 3F.

This bill requires law enforcement to hold many of those arrested for:

- Mob Intimidation
- Burglary during a riot or aggravated riot
- Grand Theft during a riot or aggravated riot
- Riot
- Aggravated Riot
- Inciting a Riot / Aggravated Riot
- Aggravated Inciting Riot / Aggravated Riot

- Unlawful Assembly

first appearance – the idea behind that is make sure the individuals are booked, not immediately released, and go back to the riot.

Re-phrases non criminal violation

- **Obstruction of roads** – cannot intentionally block traffic, non pedestrian violation.
- July 2020 ambulance in St. Petersburg could not proceed because of protestors.
- Unlawful assembly – superficial change to the definition in statute.

Creates the crime:

- Aggravated Riot – larger riot,
- mob intimidation – the key here is the threat of violence.
- cyber intimidation – prevents someone from publishing your personal information for the purpose of people harassing you

We have to strengthen our laws when it comes to mob violence to make sure individuals are unequivocally dissuaded from committing violence in large groups.

We need to hold the individuals in groups to a higher sense of responsibility, hence the harsher sentences.

I do not condone violence, and I hope none of you condone violence either.

So lets condemn violence together, I ask for your support. Vote yes, and join me in combatting mob violence.

Florida Police Chiefs Association

Serving Florida's Law Enforcement Since 1952

January 27, 2021

The Honorable Juan Fernandez-Barquin
The Florida House of Representatives
315 House Office Building
402 South Monroe Street
Tallahassee, FL 32399-1300

The Honorable Danny Burgess
The Florida Senate
308 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Rep. Fernandez-Barquin and Sen. Burgess:

On behalf of the Florida Police Chiefs Association and over 900 of Florida's top law enforcement executives from across every region of the state, we applaud your sponsorship of HB 1 and SB 484, respectively, that are intended to maintain public order and keep the peace.

The Florida Police Chiefs Association believes that peaceful protest is a defining hallmark of our society. The member agencies of the Florida Police Chiefs Association are committed to defending every citizen's right to peacefully protest. At the same time, violent protests endanger lives and threaten the rights of every other citizen whom law enforcement officers swear an oath to protect. Violent and disorderly assembly, destroying property, harassing, and threatening citizens going about their business, and attacking law enforcement are all unacceptable behavior that your legislation aims to prevent.

Finally, while we've long called for additional funding for mental health and social service support, we staunchly oppose any disproportionate reduction in funding for law enforcement that would jeopardize public safety.

Thank you for your leadership on these issues and your unwavering support for Florida's law enforcement and the rule of law.

Sincerely,

Amy Mercer

Amy Mercer
Executive Director

cc: Senator Wilton Simpson, Senate President
Representative Chris Sprowls, Speaker of the House
Criminal Justice & Public Safety Committee Members and Committee Staff

P.O. Box 14038 • Tallahassee, FL 32317-4038 / 2636 Mitcham Drive • Tallahassee, FL 32308
Phone: (850) 219-3631 • Fax: (850) 219-3640 • Website: www.fpca.com

Unable to Process

OPPOSE HB 1/SB 484

Alicia Devine/Tallahassee Democrat

The ACLU of Florida opposes this bill because it is designed to further silence, punish, and criminalize those advocating for racial justice and an end to law enforcement's excessive use of force against Black and brown people.

Silencing Dissent and Punishing Protesters Seeking Racial Justice

The murders of George Floyd, Breonna Taylor, and so many others at the hands of police reinvigorated Floridians' calls for police reform and accountability. Millions took to the streets to exercise their First Amendment rights and demand justice.

Under existing law, these peaceful protests were met with tear gas, rubber bullets, and mass arrests. *Under existing law*, armed officers in full riot gear repeatedly used excessive force against peaceful unarmed protesters.

Florida's militaristic response against Black protesters and their allies demanding racial justice stands in stark contrast to the lackluster, and at times complicit, police response we saw to the failed coup by white supremacist terrorists in D.C.

This bill would further exacerbate the disparate police treatment of protesters and the injustices of our criminal legal system.

Floridians wishing to exercise their constitutional rights would have to weigh their ability to spend a night in jail if the protest is deemed an "unlawful assembly." Peaceful protesters could be arrested and charged with a third-degree felony for "committing a riot" even if they didn't engage in any disorderly and violent conduct.

Floridians need justice – real police accountability and criminal justice reform. Florida's law enforcement and criminal legal system have no shortage of tools to keep the peace and punish violent actors, and they've proven their tendency time and time again to misapply these tools to punish Black and brown peaceful protesters.

Vote NO on HB 1/SB 484.

ACLU Florida
786.363.2700
www.aclufl.org

Contents

The Bill is Overbroad and Vague and Will Chill Speech and Assembly

As we have seen over the last year, people's interpretation of where to draw a line between protest and riot depends heavily on their interpretation of dissenters' positions. Vague and overly broad key definitions in this bill will only further the discriminatory use of police tactics on protesters and unconstitutionally threaten our First Amendment rights of free speech and assembly. The bill will chill protected speech and result in widespread discretionary arrests and prosecutions disproportionately impacting Black Floridians.

Committing a "Riot"
HB 1/SB 484, Section 15

This bill creates a new statutory definition for "riot" that is so broad and unworkable that it allows for an individual to be arrested for "committing a riot" without any requirement that the individual's conduct be disorderly and violent or that they commit any actual damage or injury.

Under the bill, a person "commits a riot" if he or she "participates" in a public disturbance which involves an assembly of three or more people engaging in violent conduct resulting in injury or damage or creating a clear and present danger of personal injury or property damage.

It is important to note that the bill's definition is broader than under current case law. As outlined by the Florida Supreme Court, "the term "riot" at common law is defined as 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.*"[1] (emphasis added). Under current law, to be guilty of a riot the individual and at least three others need to intentionally execute a tumultuous disturbance of the peace by acting in a violent and turbulent manner to the terror of the people.

In contrast, under the bill, mere participation in an otherwise peaceful protest where there are three other people engaging in disorderly and violent conduct would subject all those present at the protest to a third-degree felony, punishable by up to five years in prison, a $5,000 fine, felony disenfranchisement, and all the lifelong collateral consequences of a felony conviction – including significant barriers to employment, education, and housing.

Under the bill, once an assembly is deemed a "riot" *anyone participating* in the assembly, regardless of the individual's intent or conduct, is captured by the bill's harsh consequences. It does not matter whether the assembly was mostly peaceful or peaceful at its inception, whether any property damage or personal injuries actually occurred, or the role – or lack thereof – the participant had in any disorderly and violent conduct. It is enough that a peaceful protest was infiltrated by a group of three people intent on creating disorder. This framework applies many of the injustices of the felony murder rule to the exercise of First Amendment rights to assemble and dissent, while going even further in not requiring any criminal intent at all.

The bill would result in the arrest of nonviolent individuals lawfully exercising their First Amendment rights for "committing a riot" based on the riotous conduct of some others in attendance at the event. The impact of this is to chill speech and discourage individuals from publicly speaking out against systemic racism, as we know too well who will be arrested under this broadly worded bill.

Instead of clearly requiring intentionally violent and destructive conduct, the bill's definitions leave it entirely discretionary for law enforcement to determine who is and who is not "participating" in a riot, and thus who is and who is not subject to the harsher penalties. As we know from what we witnessed in the violent attempted takeover of our nation's Capitol, the "rule of law" is enforced against some more readily than others.

"Aggravated Rioting"
HB 1/SB 484, Section 15

The bill creates a new second degree felony offense of "aggravated rioting,"[ii] so broadly and incoherently defined that an individual could be punished by up to 15 years in prison for participating in a public disturbance of ten or more people even though the individual did not engage in any violent acts or injure any person or property and no person or property was injured by anyone else.

Additionally, under the bill, an individual could be arrested for "aggravated rioting" by merely participating in a public disturbance of three or more people deemed a "riot" and blocking traffic by "threat of force." Threat of force is undefined in the bill. If a protester were to yell "if you drive into my fellow protesters, I'm going to kick your car?," could they be arrested for a second-degree felony? What if they stood firm in the street and refused to let a car pass? Is that preventing the safe movement of a vehicle? Under the bill, large groups of nonviolent protesters or ones that block traffic, even temporarily, could face up to 15 years in prison.

This means that a large group of people that block traffic, even momentarily, would be subject to the same criminal penalty as if they had committed a sexual assault. The potential of a peaceful protest turning violent or being deemed a riot and exposing someone to criminal sanctions, including up to 15 years in prison, would lead any reasonable person to reconsider marching for causes they are passionate about – an unacceptable chilling of constitutionally protected speech.

Encouraging a Riot
HB 1/SB 484, Section 15

The bill criminalizes mere encouragement of someone else's participation in a public assembly, rather than actual incitement of riotous conduct, and thus goes beyond what is constitutionally permissible.[iii]

Under the broadly worded bill, a person would be guilty of inciting a riot (a third-degree felony, punishable by up to 5 years in prison), if they "encourage" another person to "participate" in a public disturbance deemed a "riot," even if the individual did not intend for anyone to engage in any disorderly and violent acts. Encouraging an individual's participation in an event is not akin to directly inciting imminent lawless and violent action and should not be penalized as if they were the same.[iv]

"Mob Intimidation"
HB 1/SB 484, Section 8

Mob Intimidation, a newly created first-degree misdemeanor, is defined even more broadly, covering any group of three or more acting together to "compel or induce, or attempt to compel or induce, another person by force, or threat of force, to do any act or to assume or abandon a particular viewpoint."

"Force" is not defined by Florida statute. Black's Law Dictionary defines "force" as "power, violence, or pressure directed against a person or thing." The bill could be read to include physical force, verbal or physical threats, intimidation, or even peer pressure.

It is telling, and problematic, that the "force" required by this provision is open to interpretation. It is intended to silence otherwise constitutionally protected speech and to give police a highly discretionary "tool" for arrest. It is entirely within the words of this definition that the following could be deemed mob intimidation if done by a group of three or more: picketing that blocks a person's path to a health clinic or business, a threat to mount a legal - or political - challenge, a public relations pressure campaign, three students pressuring another person to join a fraternity, cheat on an exam, drink a beer, wear a mask, or break up with a girlfriend.

Allison Shelley/ACLU

The Bill Thwarts Criminal Justice Reform Efforts

This bill would result in more people, primarily Black and brown individuals, being incarcerated in jails and prisons for longer periods of time.

We are in the midst of a worldwide pandemic, wherein thousands of Floridians have lost loved ones and livelihoods. Nearly 200 people have died in Florida's prisons of COVID, and over 17,000 incarcerated individuals (approximately 1 in 5 individuals in prison) have been infected. Jails and prisons are petri-dishes for COVID infection as it is nearly impossible to prevent spread and maintain CDC social distance guidelines.

This has only complicated the dire situation in our prisons, jails and communities, as our outsized, overly crowded jails and prisons are already buckling under decades of unwillingness to correct the failed overincarceration policies of the 1980s and 1990s that disparately impacted marginalized communities. As a result, Black Floridians make up 47 percent of the prison population, yet comprise only 17 percent of Florida's overall population. Adding to this travesty of justice, the Governor wants to send more people to prison for longer periods of time – all to silence calls for racial justice and police accountability.

We know from experience of Florida law enforcement's militaristic tactics at BLM protests, these burdens will disproportionately fall on Black and brown people and their families. Police have, and will, respond to Black protesters with violence, then use these new statutory 'tools' when they are met with resistance or outrage.

Specifically, among other things, the bill would create higher level felonies and misdemeanors for the already existing offenses of simple assault (Section 1), battery (Section 3), theft (Section 13), and burglary (Section 11); it would increase sentencing points by ranking offenses one level higher on the criminal scoresheet[v] for aggravated assault and aggravated battery (Sections 2 and 4); and it would establish a new minimum mandatory sentence for battery on law enforcement or other officials (Section 6, 7) – if any of these offenses were committed during a protest that was labeled a "riot," regardless of whether the individual had engaged in any riotous conduct.

The supposed justification for these sentencing enhancements and increased criminal sanctions is that they occur during a "riot." However, as discussed above, the newly created definition of committing a riot is so broad and vague that it would appear to capture any person who participates in a peaceful protest that turns violent, even if the individual did not engage in any riotous or violent conduct.

Under the bill's overly broad definitions, even if the individual did not engage in any riotous conduct, prison sentences would be doubled or tripled, and fines would increase by thousands of dollars. Misdemeanor offenses would be reclassified as felonies and result in all of the life-long collateral consequences of a felony conviction – loss of voting rights, inability to serve on a jury or run for public office, significant barriers to employment, housing, education, and financial loans.

See page 12 for a section-by-section breakdown of the impacts of SB 484/HB 1. The below are just a few examples:

Creates Harsher Misdemeanors and Felonies for Existing Offenses

If committed during a gathering deemed a "riot" under the bill's broad definition:

- A simple assault, which is typically a second-degree misdemeanor (punishable by up to 60 days in jail), would be a first-degree misdemeanor (***punishable by up to an additional 300 days in jail***) (Section 4).
- A simple battery, which is typically a first-degree misdemeanor (punishable by up to 1 year in jail), would be a third-degree felony (***punishable by up to 5 years in prison, $5,000 fine***) (Section 6).

  Thus, an additional 4 years of incarceration, and up to approximately $80,000 ($20,000 per/year x 4 years) more in taxpayer spending on incarceration if a misdemeanor battery took place during a peaceful protest where violence erupted. Additionally, the individual would be saddled with a felony conviction for life, including loss of voting rights and all other collateral consequences of a felony conviction – housing, employment, educational opportunities, etc.
- Burglary that is a second-degree felony (up to 15 years) would be a first-degree felony (punishable by up 30 years, ***thus an additional 15 years in prison – at taxpayer expense of up to $300,000 ($20,000 x 15 years***) (Section 12).
- Burglary that is a third-degree felony (up to 5 years) would be a second-degree felony ***(punishable by up to an additional 10 years in prison) – at taxpayer expense of up to $200,000 ($20,000 x 10 years***) (Section 12).

- Theft that is a second-degree felony (up to 15 years) would be a first-degree felony (punishable by up to 30 years, ***an additional 15 years in prison – at taxpayer expense of up to $300,000 ($20,000 x 15***) (Section 13).
- Theft that is a third-degree felony (up to 5 years) would be a second-degree felony (punishable by up to 15 years in prison, ***an additional 10 years in prison***) – ***at taxpayer expense of up to $200,000 ($20,000 x 10 years***) (Section 13).

Creates Several Brand-New Offenses

Below are a few of the new offenses created:

- **Mob Intimidation** punished by up to one year in jail: A group of 3 or more that tries to compel others by force or threat of force to do any act or assume or abandon a viewpoint (Section 8).
- **Destroying a Memorial**, second-degree felony punished by up to 15 years in prison: Destroying or pulling down a confederate or other memorial, including a flag (Section 11).
- **Damaging a Memorial**, third-degree felony punished by up to 5 years in prison: Causing $200 in damage to a confederate or other memorial (Section 10).
- **Cyberintimidation**, punished by up to a year in jail: Publishing a person's identifying information, such as name, with the intent to intimidate or have others intimidate or harass (Section 14).
- **Aggravated Riot**, second-degree felony punished by up to 15 years in prison: a "riot" that includes one of the following: at least 10 people; displays deadly weapons; endangers traffic by force or threat of force; causes more than $5,000 in property damage; or causes great bodily harm to a nonparticipant (Section 15).
- **Inciting a Riot,** third-degree felony punished by up to 5 years in prison for "encouraging" another to "participate" in a riot.
- **Aggravated Inciting a Riot**, punished by up to 15 years in prison: encouraging a riot that results in more than $5,000 in property damage OR great bodily harm OR supplies a deadly weapon or teaches another person to prepare a deadly weapon with the intent that it be used in a riot (Section 15).

Raises the Felony Ranking Level and Increases Sentencing Points

Additionally, the bill raises the felony offense level thus increasing sentencing points for numerous offenses that Black individuals are disproportionately arrested for, if they are done during an assembly deemed a riot.

- Aggravated Assault: offense level raised from 6 to 7 on the sentencing scoresheet and mandates at least 21 months of prison. Under current law, there is no mandatory prison time and probation is permissible.
- Aggravated Battery: offense level raised from 7 to 8 on the sentencing scoresheet, resulting in an increase of more than 13 months in prison for the same offense.
- Theft & Burglary: offense level increased in addition to being reclassified as a higher degree felony.

By harshly increasing penalties and prison sentence lengths and creating new felonies and deeming misdemeanors to be felonies resulting in felony disenfranchisement and

all the collateral consequences of felony convictions, this heavy-handed bill will exacerbate our overly high incarceration rates and undermine our criminal justice reform efforts.

The Bill is Unnecessary: Florida Statutes Already Criminalize Violence and Destruction of Property

This bill is unnecessary. The vast majority of protests, including those in Florida, in the wake of George Floyd's murder were overwhelming peaceful, save for excessive force by law enforcement in dispersing peaceful protests and arresting individuals for curfew and traffic and permit violations.[vi]

Moreover, current Florida law already criminalizes unlawful assembly, violence, property damage, traffic violations, violence directed at law enforcement, riots and sedition. This bill increases penalties on these already illegal offenses when they occur in the context of a protest, making it easier for law enforcement and prosecutors to have unbridled discretion to charge harsher penalties during a protest where law enforcement disagrees with the protesters' message (e.g., police accountability in the wake of George Floyd's murder) and chilling vital First Amendment speech.

Police officers and prosecutors do not need more tools to impose harsher penalties. Current statutes already criminalize unlawful assembly (section 870.02, Fla. Stat.), riots (sections 870.01 and 870.03), assault (section 784.011), aggravated assault (section 784.021), battery (section 784.03), aggravated battery (section 784.045), assault or battery of law enforcement (section 784.07), criminal mischief/property damage (section 806.13), theft (section 812.014), burglary (section 810.02), and defacing a flag (section 876.52). Law enforcement has no shortage of tools at their disposal, as evidenced by the mass arrests this summer of peaceful BLM protesters.

While the state has a responsibility to maintain public safety, Florida has more than enough laws currently on the books that punish the behaviors described in SB 484/HB 1, highlighting how unnecessary this bill is for any legitimate public safety purpose.

To be clear, under current law, rioting is a third-degree felony, punishable by up to five years in prison. What this bill does is allows law enforcement to arrest you for "rioting," punishable by up to five years in prison, for merely being present at a protest that turns violent or destructive, even if you did not engage in any riotous, violent, or destructive conduct.

Additionally, under this bill a person can be arrested and imprisoned for "aggravated riot," punishable by up to 15 years in prison, even if they did not engage in any violent or riotous conduct.

As to the Governor's disingenuous rebranding of his priority bill to crack down on racial justice protesters as necessary in light of the attempted white supremacist coup on our nation's capital, in addition to the above, Chapter 876, Florida Statutes, "Criminal Anarchy, Treason, and Other Crimes Against Public Disorder" provide law enforcement with all the tools they need to punish those who seek to violently overthrow our government. Tellingly, this bill does not touch these statutes.

The Bill Protects Confederate Monuments

Further evidencing the bill's effect of punishing those calling for racial justice and sustaining white supremacy, the bill seeks to protect confederate monuments by creating a new second-degree felony offense, punished by up to 15 years imprisonment, for pulling down or destroying 'memorials' that honor or recount "the military service of any past or present United States Armed Forces military personnel," or public service of a resident of the United States. 'Memorial' is defined broadly to include everything from flags and religious symbols to tombstones and statues. (Sections 10 and 11).

Additionally, the bill provides that any person who defaces or otherwise damages a memorial resulting in over $200 or more damage would be subject to a third-degree felony, punishable by up to 5 years in prison. As "deface" is not defined in the bill, protesters who apply paint or graffiti to a monument at a protest could face up to five years in prison.

It is beyond ridiculous that while the rest of the country is acknowledging the harms caused by state displays of confederate monuments and many localities are actively removing such symbols of white supremacy, Florida's governor has made it his number one priority to protect monuments honoring those who were willing to die to defend the institution of slavery.

Current statutes already protect against damage to property; the purpose of this bill is to elevate the protection of confederate monuments and criminalize and disenfranchise those who seek their removal.

The Bill Prohibits Release Until First Appearance for Individuals Exercising Their First Amendment Rights

The bill divests local circuit courts of the authority to adopt a local bond schedule allowing county sheriffs to release people who've been arrested but pose no risk to the community. Typically, courts and law enforcement have discretion to decide which offenses are dangerous enough to require a "cooling off" period after a person is arrested. This bill eliminates that discretion and requires mandatory custody until first appearance. (Sections 8, 12-13, 15-17).

Most outrageously, under SB 484/HB 1, people arrested for the minor offense of unlawful assembly "shall be held in custody until brought before the court for admittance to bail." Thus, under this bill, anyone peacefully protesting should be prepared to spend the night in jail.

As a result, the bill would fill up our jails with people who do not need to be there, aggravating the spread of COVID-19 and unnecessarily disrupting families. It would also chill dissent by further intimidating individuals from exercising their First Amendment rights out of fear that they will end up in jail without the option to post bail.

The Bill Usurps Local Control of Policing Decisions and Waives Sovereign Immunity

This bill usurps local authority over public safety decisions. It allows the Governor, with the Cabinet, to essentially reject a city budget and amend it to their liking at the appeal of *any* city resident, regardless of whether the local police chief approves changes in the police budget (Section 1).

This provision will require municipalities to spend taxpayer and staff resources to defend any appeal that is brought by any resident for any reduction in funding, even if requested by law enforcement. With the current economic realities, municipalities need flexibility to address public health and safety. The local budget process should not be made into a platform for statewide political posturing.

The bill also waives sovereign immunity for municipalities deemed to interfere with law enforcement's ability to provide "reasonable" protection during a riot or unlawful assembly (Section 3). This would allow individuals to bring civil lawsuits against municipalities for any amount of damages for personal injury, wrongful death or property damage based on an after-the-fact determination of whether law enforcement's response to the unlawful assembly or riot was reasonable.

Rather than damages being capped at $200,000, as is typical, this bill would expose municipalities to unlimited amounts of damages. This is likely intended to pressure municipalities to adopt overly militaristic law enforcement responses to peaceful protests in order to avoid the prospect of civil liability for unlimited damages.

The Bill Will Increase Violence Against Protesters

The bill will embolden and encourage violence against protesters peacefully exercising their First Amendment rights. It allows a counter-protester to escape civil liability for injuring or killing a protester.

It specifically creates an affirmative defense for a counter-protester to raise in any civil action for damages against them for personal injury, wrongful death or property damage, if the injury arose from the protester's participation in an unlawful assembly or an assembly deemed a "riot" (Section 18).

Under this bill, an individual peacefully protesting who is injured or killed or whose property is damaged by a counter-protester would be unable to recover damages in a civil action. A white supremacist who maliciously drove his car into protesters, for example, like the one in Charlottesville that killed Heather Heyer, would be able to assert an affirmative defense under this bill.[vii]

We have seen time and time again that white supremacists are emboldened by law enforcement's complicity with their violent actions toward Black protesters. They know they will likely not be held criminally liable for their actions, either through lack of police action or Florida's broad stand your ground statute. However, under current law, they can still be held civilly liable, and thus there is an incentive to not act on their worse instincts. This bill would remove that incentive.

[i] See State v. Beasley, 317 So. 2d 750, 752 (Fl. Sup. Ct. 1975) ("The term "riot" at common law is defined as 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.* (emphasis added).

[ii] The bill deems a riot "aggravated" if an assembly deemed a riot meets *only one* of the following:

a. ten or more people assembled,
b. traffic endangered by force or threat of force,
c. deadly weapons, such as firearms, present,
d. property damage of more than $5,000, or
e. great bodily harm to a nonparticipant.

[iii] See United States v. Miselis, 972 F.3d 518, 537 (4th Cir. 2020); see also Dakota Rural Action v. Noem, 416 F. Supp. 3d 874, 885 (D.S.D. 2019) (providing that statutory provision criminalizing encouraging participation in a riot was unconstitutionally overbroad; "The many words or expressive activities that arise within these three terms, to advise, encourage or solicit, might in some instances be offensive to some or to many people, but they are protected by the First Amendment and cannot be the subject of felony prosecution or of tort liability and damages.").

[iv] See United States v. Miselis, 972 F.3d 518, 540 (4th Cir. 2020) ("Having found that the Anti-Riot Act is overbroad vis-à-vis *Brandenburg* insofar as it proscribes speech tending to "encourage" or "promote" a riot, as well as speech "urging" others to riot or "involving" mere advocacy of violence, we turn now to consider whether the amount of overbreadth is substantial, "not only in an absolute sense, but also relative to the statute's plainly legitimate sweep." *Williams*, 553 U.S. at 292, 128 S.Ct. 1830. We conclude that it is.")

[v] Section 921.0022, Florida Statutes (Criminal Punishment Code; offense severity ranking chart).

[vi] Armed Conflict Location & Event Data Project (ACLED), "Demonstrations & Political Violence in America: New Data for Summer 2020;" Sept. 9, 2020, https://acleddata.com/2020/09/03/demonstrations-political-violence-in-america-new-data-for-summer-2020/

[vii] See Asher Stockler, "Heather Heyer's Mom Files $12 Million Lawsuit to Ensure James Fields Doesn't "Profit" From Daughter's Killing," Newsweek (Sept. 5, 2019), https://www.newsweek.com/susan-bro-heather-heyer-james-fields-lawsuit-wrongful-death-1457922 (Heather Heyer's mom, saying she hopes to send "a strong message to others who would use murder as a hate crime, that there are ongoing financial consequences on top of criminal consequences," brought a civil lawsuit for $12 million damages against the white supremacist who drove into and killed her daughter who was peacefully protesting for racial justice).

Section-By-Section Breakdown

Section 1: Prevents Municipalities from Reallocating Funding from Law Enforcement

Summary: Allows any resident of a municipality to file an appeal with the Executive Office of the Governor if the proposed municipal budget contains a funding reduction to the municipal law enforcement agency. The Governor's Office reviews the budget, provides for a hearing, and issues a report and recommendation to the Administration Commission (Governor and Cabinet). The Administration Commission then can amend the budget, which is final.

Analysis/Impact: Bill will effectively prevent municipalities from reallocating any amount of funds from law enforcement agencies to other municipal agencies or community priorities and will embolden and empower a single resident to bring an appeal of the municipal budget to the Office of the Governor. Raises concerns over local law enforcement and municipality's ability to set their own budgets and allows any resident in the municipality to set in motion a budget appeal process to overturn the budget priorities set by the municipality, regardless of the position of local law enforcement.

This provision will require the municipality to spend taxpayer and staff resources to defend any appeal that is brought by any resident with regard to any amount of reduction in funding. The provision contains strict timelines requiring the municipality to file a reply within 5 days to the Governor, and thereafter the municipality will need to defend their budget at a hearing, whereby their originally proposed budget will ultimately be approved, amended, or modified by the Administration Commission.

Given the economic realities stemming from COVID, municipalities need flexibility within their budget to address public health and safety, and do not need to be spending additional resources at the bequest of any resident who is unhappy with the municipality's budgetary decisions.

Section 2: Makes it Easier for Law Enforcement to Issue Citations to Protesters

Summary: Current law requires that obstruction of traffic must be "willfully" done in order violate Florida's traffic obstruction statute, this bill lowers the threshold by deleting the willful requirement and replacing it with the lesser "may not intentionally" requirement.[1] Additionally, the language is so broad that it appears to allow for law enforcement to issue pedestrian citations to any and all individuals peacefully protesting by merely standing on a street and temporarily hindering traffic.

[1] See Thunderbird Drive-In Theatre, Inc. v. Reed By & Through Reed, 571 So. 2d 1341, 1344 (Fla. Dist. Ct. App. 1990) (providing that "Prosser and Keeton's definition of willfulness requires that three elements be established: (1) the actor do an intentional act of an unreasonable character (2) in disregard of a *known or obvious risk* that was great (3) as to make it *highly probable* that harm would follow.") (emphasis in original).

Also appears to repeal statutory authority for local governments to issue permits to allow pedestrian use of roads.

Analysis/Impact: These changes will make it much easier for officers to cite protesters for "pedestrian violations" by lowering the necessary threshold from willful obstruction to allowing the citation for merely intentionally standing in a street or road or highway as compared to willfully and purposely obstructing traffic. The provision is vulnerable to discretionary enforcement aimed at suppressing protesters whose views the local authorities disagree with and panhandlers.

Section 3: Waives Sovereign Immunity for Municipalities and Opens Door to Civil Liability

Summary: Creates a previously unavailable civil cause of action against a city for a person who is injured or suffers property damage during an unlawful assembly when the city interfered with the law enforcement's ability to respond. The bill waives any sovereign immunity that would otherwise protect the city and eliminates any cap on the amount of damages.

Analysis/Impact: Opens the door to civil lawsuits against the city for unlimited damage liability. Significantly increases costs to the city to defend against such lawsuits and allocate resources to satisfy judgments and settlements. For example, a city's decision to sell an armored vehicle or instructions to police about using less-lethal force may result in civil liability, including punitive damages.

Section 4: Increases Penalties for Assault

Summary: The bill increases the penalty for assault from a 2nd degree misdemeanor to a 1st degree misdemeanor if the assault is done in furtherance of a "riot" or "aggravated riot."

Analysis/Impact: Under current law, the maximum penalty for an assault (e.g., threat of violence) is 60 days in county jail. SB 484/HB 1 provides that the maximum penalty for an assault (threat of violence) is 365 days (1 year) if committed during a "riot." That's approximately 300 days more jail time for a threat of violence if committed during a "riot," which is defined broadly in SB 484/HB 1 to consist of three or more people engaging in disorderly and violent conduct that would likely result in property damage.

To be clear, current law already provides tools for law enforcement to arrest individuals for assault and hold them in jail for up to 60 days. This bill allows police to arrest and jail individuals for up to 365 days.

Section 5: Increases Penalties for Aggravated Assault

Summary: This bill increases the penalty for aggravated assault if done in furtherance of a riot or aggravated riot. Aggravated assault is a third-degree felony punishable by up to 5 years in prison and a $5,000 fine. Under SB 484/HB 1, for the purpose of sentencing and gain-time eligibility, aggravated assault would be ranked one level above the ranking for the offense committed.

Analysis/Impact: Under current law, the maximum penalty for aggravated assault is 5 years in prison and there is no minimum sentence. This bill would require at least 21 months in prison if the assault happened during a riot. While SB 484/HB 1 provides that the maximum penalty of five years in prison for an aggravated assault would remain the same, the felony level would go from a 6 to a 7 on the sentencing scoresheet. Practically, that means that a crime that would normally give someone 36 points (allowing, but not requiring prison) on their scoresheet would now give someone 56 points (requiring prison). As a level 7 crime worth 56 points, the lowest permissible prison sentence, if this were the only crime on the person's scoresheet, would be 21 months in prison. Whereas before someone could potentially get probation for the crime, now they would face at least 21 months in prison.[2]

Current law already provides tools for law enforcement to arrest individuals for aggravated assault and hold them in jail or prison, but it doesn't mandate prison. The change in law would now raise someone's scoresheet points to be so high that prison is required for at least 21 months.

Section 6: Makes Battery a Felony Instead of a Misdemeanor

Summary: Increases the penalty for a battery from a 1st degree misdemeanor to a 3rd degree felony if it is committed in furtherance of a "riot" or "aggravated riot," whereby "riot" is broadly defined in the bill to include 3 or more people engaging in disorderly or violent conduct.

Analysis/Impact: Under current law, a battery is a misdemeanor with the maximum penalty of 1 year in county jail. SB 484/HB 1 provides that the battery would be a felony with a maximum penalty of 5 years in prison if committed during a "riot." That's 4 more years of prison and a felony record for the same offense (battery) if committed during a "riot," which, as mentioned above, is defined broadly in SB 484/HB 1 to consist of three or more people engaging in disorderly and violent conduct that would likely result in property damage.

Current law already provides tools for law enforcement to arrest individuals for battery and incarcerate them in jail for 1 year. This bill would make it a felony, which has lifelong consequences in terms of voting rights, ability to get a job, get loans, housing, education, etc. Additionally, the individual may be sentenced to up to 5 years in prison, rather than 1 year in county jail. It costs the state approximately $20,000 for each year an individual is incarcerated. Thus, the costs to the state for this provision could be an additional $80,000-$90,000 for each individual arrested for simple battery during a "riot."

[2] See the Criminal Punishment Code, http://www.dc.state.fl.us/pub/sen_cpcm/cpc_manual.pdf.

Section 7: Increases Penalties for Aggravated Battery

Summary: This bill increases the penalty for aggravated battery if done in furtherance of a riot or aggravated riot. Aggravated battery is a second-degree felony punishable by up to 15 years in prison and a $10,000 fine. Under SB 484/HB 1, for the purpose of increasing the sentencing and limiting gain-time eligibility, aggravated battery would be ranked one level above the ranking under s. 921.0022 for the offense committed.

Analysis/Impact: Aggravated battery is currently a level 7 on the scoresheet, worth 56 points and requiring a minimum of 21 months in prison. This proposed bill would change it from a level 7 to a level 8 on the scoresheet, which is worth 74 points, or a minimum of 34.5 months in prison, for an increase of 13.5 months in prison for the same crime.

Section 8: Creates New Crime of "Mob Intimidation"

Summary: Creates a new crime of "mob intimidation," whereby it is a first-degree misdemeanor, punishable by up to one year in county jail, for a person, assembled with two or more people, to compel or attempt to compel another by force or threat of force to do any act or assume/abandon a particular viewpoint. Further provides that the individual must be held in custody and not released until brought before the court for a bail hearing.

Analysis/Impact: Unnecessary and overly broad and vague. There is no need to create a new crime called "mob intimidation" to criminalize threats of force. Threats of force are already criminalized under "assault," which is a second-degree misdemeanor punishable by up to 60 days in jail. SB 484/HB 1 could result in an individual serving an additional 300 days in jail, at taxpayer expense, for the same offense.

- Confusing application/discretionary enforcement: If one person threatens "give me your backpack or else" it's an "assault" and up to 60 days in jail, but if that person is with two others and they make the same threat: "give me your backpack or else," it's considered "mob intimidation" and up to 365 days in jail?

Section 9: Creates a New Mandatory Minimum

Summary: Creates a mandatory minimum sentence of 6 months in prison for individuals convicted of battery on a law enforcement officer if the battery is in furtherance of a riot.

Under SB 484/HB 1, for the purpose of increasing the sentence and limiting gain-time eligibility, battery on a law enforcement officer during a riot would be ranked one level above the ranking under s. 921.0022 for the offense committed.

Analysis/Impact: Under current law, assault and battery on law enforcement officers are prohibited under Section 784.07, Florida Statutes. Battery on a law enforcement officer is a felony in the third degree, punishable by up to 5 years in prison. Judges have discretion depending on the

specific individual circumstances to sentence the individual to five years in prison. This bill takes away the judge's ability to sentence the defendant according to the individual circumstances presented and requires the judge to incarcerate the individual for a minimum of six months.

Section 10: Creates a Third-Degree Felony for Damaging a Confederate Memorial

Summary: Expands criminal mischief statute to provide that any person who willfully and maliciously defaces, injures, or otherwise damages a "memorial," with damage in excess of $200, commits a third-degree felony, punishable by up to five years in prison. Additionally, requires restitution of the full cost of repair or replacement.

SB 484/HB 1 defines "memorial" broadly as a "plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that is constructed and located with the intent of being permanently displayed or perpetually maintained" that *"honors or recounts the military service of any past or present United States Armed Forces Military personnel"* or any past or present public service of a United States resident.

Analysis/Impact: Current statutes already provide that damage to property of over $200 is a misdemeanor in the first degree, punishable by up to one year in county jail. SB 484/HB 1 would make it a third-degree felony, punishable by up to five years in jail, if the property that was damaged is considered a "memorial," as broadly defined in the bill. Thus, under SB 484/HB 1, an individual could spend an additional four years in prison at taxpayer expense of up to $80,000 ($20,000/year x 4 years) if the property damaged was a confederate memorial. Additionally, because the offense would be a felony conviction (instead of a misdemeanor), the individual would be subject to the numerous life-long collateral consequences of voting disenfranchisement, difficulty securing loans, housing, education, and employment.

As "deface" is not defined in the bill, protesters who apply paint or graffiti to a monument during a peaceful protest could face up to 5 years in prison.

Section 11: Creates a Second-Degree Felony for Destroying a Confederate Memorial

Summary: Creates new crime of destroying or demolishing a "memorial" that *honors or recounts the military service of any past or present United States Armed Forces Military personnel"* or any past or present public service of a United States resident. Provides that such offense is a second-degree felony, punishable by up to 15 years in prison, and $10,000 fine. Requires restitution of the full cost of repair or replacement.

Analysis/Impact: Current Florida statutes already protect against destruction of property, and penalties are commensurate with the value of the damage to the property. SB 484/HB 1 would make it a second-degree felony, punishable up to 15 years and prison, and $10,000 fine, if the property that was damaged was a confederate memorial or other memorial honoring past military

personnel or service, regardless of the assessed value of the property damage. Additionally, because the offense would be a felony conviction, the individual would be subject to the numerous life-long collateral consequences of voting disenfranchisement, difficulty securing loans, housing, education, and employment.

Sections 12 & 13: Increases Penalties for Burglary and Theft

Summary:

Burglary - Enhances the criminal penalty for burglary if committed during a riot or aggravated riot from a second-degree felony to a first-degree felony, or from a third degree felony to a second degree felony, depending on the circumstances. Requires individual to be held in custody and cannot be released on bail until first appearance. (Treats burglary during a riot the same as enhanced penalty for burglary during a state of emergency).

Theft- Enhances penalty for theft during a riot or aggravated riot from a second degree to a first-degree felony, or from a third degree to a second-degree felony, depending on the circumstances. Requires individual to be held in custody and cannot be released on bail until first appearance. (Treats theft during a riot the same as enhanced penalty for theft during a state of emergency).

Analysis/Impact: Burglary is already punishable by up to 15 years in prison, and $10,000 fine. SB 484/HB 1 would double that sentence, forcing the individual to be imprisoned up to 30 years – an additional 15 years – at taxpayer expense of up to $300,000 ($20,000 x 15) just because it occurred while three or more people were engaged in disorderly and violent conduct. Same with theft.

Treats a "riot" of three or more people the same as a "state of emergency" for the purpose of imposing harsher penalties on protesters. There is no rational or legitimate basis to equate three or more people engaged in disorderly conduct to "a state of emergency declared by the Governor under chapter 252." The Governor declares a "state of emergency," whereas the determination of whether an assembly is deemed a riot is entirely up to the discretion of law enforcement and prosecutors.

Section 14: Creates a New Crime of "Cyberintimidation by Publication"

Summary: Creates a new first-degree misdemeanor for the electronic publication of a person's personal identification information with the intent to threaten, intimidate, incite violence, etc.

Analysis/Impact: This bill is unnecessary as current criminal statutes already protect against threats, harassment, and inciting violence. Additionally, "intimidate" is undefined, vague, overly broad, and thus likely to chill protected speech.

Section 15: Broadly Defines "Riot" and Creates New Felony "Aggravated Riot."

Summary: Provides that a person commits a riot if he or she "*participates* in a public disturbance involving an assembly of three of more people acting with a common intent to mutually assist each other in disorderly and violent conduct resulting in injury or damage to another person or property or creating a clear and present danger of injury to another person or property." (emphasis added). Provides that it's a third-degree felony, punishable by up to 5 years in prison.

Creates a new crime of "aggravated rioting," which includes rioting with any of the following: (a) 9 or more people, (b) causing great bodily harm to nonparticipant, (c) causing property damage >$5,000, (d) displaying deadly weapons, or (e) endangering traffic by force or threat of force. Provides that it's a second-degree felony, punishable by up to 15 years in prison.

Creates new crime of inciting or encouraging "another to participate" in a riot. Provides that it's a third-degree felony.

Creates new crime of aggravated inciting or encouraging a riot. (Second degree felony).

Individuals arrested under these sections are required to be held until a bail hearing.

Analysis/Impact: Overbroad and vague; already covered by existing Florida law. Current Florida statutes provide that those guilty of a riot or inciting a riot are guilty of a third-degree felony, but the statutes do not define "riot." Instead, riot is defined through case law. The definition in SB 484/HB 1 is unclear and confusing. It provides that someone commits a riot if they participate in a public disturbance involving three or more people engaging in violent and disorderly conduct, but it does not define what it means to participate. Is attending a protest that turns violent participating in a riot? Under this definition it is unclear and entirely discretionary for law enforcement to determine who is and who is not "participating" in a riot, and thus who is and who is not subject to the harsher penalties.

This same problematic language arises with regard to the new offense of inciting or "encouraging" "another to participate" in a riot. What does it mean to encourage another to participate?

Section 16 & Section 17: Requires First Appearance Before Release on Bail

Summary: Adds language to the existing unlawful assembly and riot statutes requiring that individuals arrested for unlawful assembly or riot be held in custody without bail until brought before a judge for a bail determination.

Analysis/Impact: Chills speech/requires individuals be held in custody for protesting. Unlawful assembly is a second-degree misdemeanor, the lowest level state criminal offense. There is no rationale or legitimate reason that a person should be held in custody and denied bail for this low-level offense. Being denied the right to post bail before going in front of a judge is usually reserved for more serious or violent crimes, not low-level offenses such as unlawful assembly.

Section 18: Allows Counter-Protester to Avoid Liability for Civil Damages for Injuring or Killing a Protester

Summary: Creates affirmative defense in a civil action for personal injury, wrongful death, or property damage if the action arose from injury sustained in furtherance of a riot or unlawful assembly. When a defendant raises the affirmative defense, the action is stayed pending the outcome of the criminal action.

Analysis/Impact: Endangers peaceful protesters and chills dissent by emboldening counter-protesters to injure or kill protesters by shielding them from civil damages liability. Under this bill, counter-protesters who drive their car into protesters injuring or killing them, or otherwise inflict violence or damage personal property will be able to escape liability from a civil lawsuit brought by protesters they injured.

Section 19: Increases Sentencing Offense Level

Increases sentencing points by increasing the sentence severity level ranking for offense of defacing or removing monuments if committed in furtherance of a "riot" or "aggravated riot."

Section 20: Adds the New Crimes Created in SB 484/HB 1 to the Criminal Punishment Code

Adds as a Level 2 offense: Third degree felony for battery during a riot or aggravated riot; third degree felony damage of $200 or more to a memorial in honor of United States Armed Forces.

Adds as a Level 3 offense: Third degree felony of encouraging or inciting a riot.

Adds as a Level 4 offense: Second degree felony destroying memorial; third degree felony aggravated riot; third degree felony aggravated encouraging or inciting a riot.

Resources:

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OPPOSE HB 1/SB 484

Alicia Devine/Tallahassee Democrat

The ACLU of Florida opposes this bill because it is designed to further silence, punish, and criminalize those advocating for racial justice and an end to law enforcement's excessive use of force against Black and brown people.

Silencing Dissent and Punishing Protesters Seeking Racial Justice

The murders of George Floyd, Breonna Taylor, and so many others at the hands of police reinvigorated Floridians' calls for police reform and accountability. Millions took to the streets to exercise their First Amendment rights and demand justice.

Under existing law, these peaceful protests were met with tear gas, rubber bullets, and mass arrests. *Under existing law*, armed officers in full riot gear repeatedly used excessive force against peaceful unarmed protesters.

Florida's militaristic response against Black protesters and their allies demanding racial justice stands in stark contrast to the lackluster, and at times complicit, police response we saw to the failed coup by white supremacist terrorists in D.C.

This bill would further exacerbate the disparate police treatment of protesters and the injustices of our criminal legal system.

Floridians wishing to exercise their constitutional rights would have to weigh their ability to spend a night in jail if the protest is deemed an "unlawful assembly." Peaceful protesters could be arrested and charged with a third-degree felony for "committing a riot" even if they didn't engage in any disorderly and violent conduct.

Floridians need justice – real police accountability and criminal justice reform. Florida's law enforcement and criminal legal system have no shortage of tools to keep the peace and punish violent actors, and they've proven their tendency time and time again to misapply these tools to punish Black and brown peaceful protesters.

Vote NO on HB 1/SB 484.

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The Bill is Overbroad and Vague and Will Chill Speech and Assembly

As we have seen over the last year, people's interpretation of where to draw a line between protest and riot depends heavily on their interpretation of dissenters' positions. Vague and overly broad key definitions in this bill will only further the discriminatory use of police tactics on protesters and unconstitutionally threaten our First Amendment rights of free speech and assembly. The bill will chill protected speech and result in widespread discretionary arrests and prosecutions disproportionately impacting Black Floridians.

Committing a "Riot"
HB 1/SB 484, Section 15

This bill creates a new statutory definition for "riot" that is so broad and unworkable that it allows for an individual to be arrested for "committing a riot" without any requirement that the individual's conduct be disorderly and violent or that they commit any actual damage or injury.

Under the bill, a person "commits a riot" if he or she "participates" in a public disturbance which involves an assembly of three or more people engaging in violent conduct resulting in injury or damage or creating a clear and present danger of personal injury or property damage.

It is important to note that the bill's definition is broader than under current case law. As outlined by the Florida Supreme Court, "the term "riot" at common law is defined as 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.*"[1] (emphasis added). Under current law, to be guilty of a riot the individual and at least three others need to intentionally execute a tumultuous disturbance of the peace by acting in a violent and turbulent manner to the terror of the people.

In contrast, under the bill, mere participation in an otherwise peaceful protest where there are three other people engaging in disorderly and violent conduct would subject all those present at the protest to a third-degree felony, punishable by up to five years in prison, a $5,000 fine, felony disenfranchisement, and all the lifelong collateral consequences of a felony conviction – including significant barriers to employment, education, and housing.

Under the bill, once an assembly is deemed a "riot" *anyone participating* in the assembly, regardless of the individual's intent or conduct, is captured by the bill's harsh consequences. It does not matter whether the assembly was mostly peaceful or peaceful at its inception, whether any property damage or personal injuries actually occurred, or the role – or lack thereof – the participant had in any disorderly and violent conduct. It is enough that a peaceful protest was infiltrated by a group of three people intent on creating disorder. This framework applies many of the injustices of the felony murder rule to the exercise of First Amendment rights to assemble and dissent, while going even further in not requiring any criminal intent at all.

The bill would result in the arrest of nonviolent individuals lawfully exercising their First Amendment rights for "committing a riot" based on the riotous conduct of some others in attendance at the event. The impact of this is to chill speech and discourage individuals from publicly speaking out against systemic racism, as we know too well who will be arrested under this broadly worded bill.

Instead of clearly requiring intentionally violent and destructive conduct, the bill's definitions leave it entirely discretionary for law enforcement to determine who is and who is not "participating" in a riot, and thus who is and who is not subject to the harsher penalties. As we know from what we witnessed in the violent attempted takeover of our nation's Capitol, the "rule of law" is enforced against some more readily than others.

"Aggravated Rioting"
HB 1/SB 484, Section 15

The bill creates a new second degree felony offense of "aggravated rioting,"[ii] so broadly and incoherently defined that an individual could be punished by up to 15 years in prison for participating in a public disturbance of ten or more people even though the individual did not engage in any violent acts or injure any person or property and no person or property was injured by anyone else.

Additionally, under the bill, an individual could be arrested for "aggravated rioting" by merely participating in a public disturbance of three or more people deemed a "riot" and blocking traffic by "threat of force." Threat of force is undefined in the bill. If a protester were to yell "if you drive into my fellow protesters, I'm going to kick your car?," could they be arrested for a second-degree felony? What if they stood firm in the street and refused to let a car pass? Is that preventing the safe movement of a vehicle? Under the bill, large groups of nonviolent protesters or ones that block traffic, even temporarily, could face up to 15 years in prison.

This means that a large group of people that block traffic, even momentarily, would be subject to the same criminal penalty as if they had committed a sexual assault. The potential of a peaceful protest turning violent or being deemed a riot and exposing someone to criminal sanctions, including up to 15 years in prison, would lead any reasonable person to reconsider marching for causes they are passionate about – an unacceptable chilling of constitutionally protected speech.

Encouraging a Riot
HB 1/SB 484, Section 15

The bill criminalizes mere encouragement of someone else's participation in a public assembly, rather than actual incitement of riotous conduct, and thus goes beyond what is constitutionally permissible.[iii]

Under the broadly worded bill, a person would be guilty of inciting a riot (a third-degree felony, punishable by up to 5 years in prison), if they "encourage" another person to "participate" in a public disturbance deemed a "riot," even if the individual did not intend for anyone to engage in any disorderly and violent acts. Encouraging an individual's participation in an event is not akin to directly inciting imminent lawless and violent action and should not be penalized as if they were the same.[iv]

"Mob Intimidation"
HB 1/SB 484, Section 8

Mob Intimidation, a newly created first-degree misdemeanor, is defined even more broadly, covering any group of three or more acting together to "compel or induce, or attempt to compel or induce, another person by force, or threat of force, to do any act or to assume or abandon a particular viewpoint."

"Force" is not defined by Florida statute. Black's Law Dictionary defines "force" as "power, violence, or pressure directed against a person or thing." The bill could be read to include physical force, verbal or physical threats, intimidation, or even peer pressure.

It is telling, and problematic, that the "force" required by this provision is open to interpretation. It is intended to silence otherwise constitutionally protected speech and to give police a highly discretionary "tool" for arrest. It is entirely within the words of this definition that the following could be deemed mob intimidation if done by a group of three or more: picketing that blocks a person's path to a health clinic or business, a threat to mount a legal - or political - challenge, a public relations pressure campaign, three students pressuring another person to join a fraternity, cheat on an exam, drink a beer, wear a mask, or break up with a girlfriend.

Allison Shelley/ACLU

The Bill Thwarts Criminal Justice Reform Efforts

This bill would result in more people, primarily Black and brown individuals, being incarcerated in jails and prisons for longer periods of time.

We are in the midst of a worldwide pandemic, wherein thousands of Floridians have lost loved ones and livelihoods. Nearly 200 people have died in Florida's prisons of COVID, and over 17,000 incarcerated individuals (approximately 1 in 5 individuals in prison) have been infected. Jails and prisons are petri-dishes for COVID infection as it is nearly impossible to prevent spread and maintain CDC social distance guidelines.

This has only complicated the dire situation in our prisons, jails and communities, as our outsized, overly crowded jails and prisons are already buckling under decades of unwillingness to correct the failed overincarceration policies of the 1980s and 1990s that disparately impacted marginalized communities. As a result, Black Floridians make up 47 percent of the prison population, yet comprise only 17 percent of Florida's overall population. Adding to this travesty of justice, the Governor wants to send more people to prison for longer periods of time – all to silence calls for racial justice and police accountability.

We know from experience of Florida law enforcement's militaristic tactics at BLM protests, these burdens will disproportionately fall on Black and brown people and their families. Police have, and will, respond to Black protesters with violence, then use these new statutory 'tools' when they are met with resistance or outrage.

Specifically, among other things, the bill would create higher level felonies and misdemeanors for the already existing offenses of simple assault (Section 1), battery (Section 3), theft (Section 13), and burglary (Section 11); it would increase sentencing points by ranking offenses one level higher on the criminal scoresheet[v] for aggravated assault and aggravated battery (Sections 2 and 4); and it would establish a new minimum mandatory sentence for battery on law enforcement or other officials (Section 6, 7) – if any of these offenses were committed during a protest that was labeled a "riot," regardless of whether the individual had engaged in any riotous conduct.

The supposed justification for these sentencing enhancements and increased criminal sanctions is that they occur during a "riot." However, as discussed above, the newly created definition of committing a riot is so broad and vague that it would appear to capture any person who participates in a peaceful protest that turns violent, even if the individual did not engage in any riotous or violent conduct.

Under the bill's overly broad definitions, even if the individual did not engage in any riotous conduct, prison sentences would be doubled or tripled, and fines would increase by thousands of dollars. Misdemeanor offenses would be reclassified as felonies and result in all of the life-long collateral consequences of a felony conviction – loss of voting rights, inability to serve on a jury or run for public office, significant barriers to employment, housing, education, and financial loans.

See page 12 for a section-by-section breakdown of the impacts of SB 484/HB 1.
The below are just a few examples:

Creates Harsher Misdemeanors and Felonies for Existing Offenses

If committed during a gathering deemed a "riot" under the bill's broad definition:

- A simple assault, which is typically a second-degree misdemeanor (punishable by up to 60 days in jail), would be a first-degree misdemeanor (***punishable by up to an additional 300 days in jail***) (Section 4).
- A simple battery, which is typically a first-degree misdemeanor (punishable by up to 1 year in jail), would be a third-degree felony (***punishable by up to 5 years in prison, $5,000 fine***) (Section 6).

  Thus, an additional 4 years of incarceration, and up to approximately $80,000 ($20,000 per/year x 4 years) more in taxpayer spending on incarceration if a misdemeanor battery took place during a peaceful protest where violence erupted. Additionally, the individual would be saddled with a felony conviction for life, including loss of voting rights and all other collateral consequences of a felony conviction – housing, employment, educational opportunities, etc.
- Burglary that is a second-degree felony (up to 15 years) would be a first-degree felony (punishable by up 30 years, ***thus an additional 15 years in prison – at taxpayer expense of up to $300,000 ($20,000 x 15 years***) (Section 12).
- Burglary that is a third-degree felony (up to 5 years) would be a second-degree felony ***(punishable by up to an additional 10 years in prison) – at taxpayer expense of up to $200,000 ($20,000 x 10 years***) (Section 12).

- Theft that is a second-degree felony (up to 15 years) would be a first-degree felony (punishable by up to 30 years, ***an additional 15 years in prison – at taxpayer expense of up to $300,000 ($20,000 x 15***) (Section 13).
- Theft that is a third-degree felony (up to 5 years) would be a second-degree felony (punishable by up to 15 years in prison, ***an additional 10 years in prison***) – ***at taxpayer expense of up to $200,000 ($20,000 x 10 years***) (Section 13).

Creates Several Brand-New Offenses

Below are a few of the new offenses created:

- **Mob Intimidation** punished by up to one year in jail: A group of 3 or more that tries to compel others by force or threat of force to do any act or assume or abandon a viewpoint (Section 8).
- **Destroying a Memorial**, second-degree felony punished by up to 15 years in prison: Destroying or pulling down a confederate or other memorial, including a flag (Section 11).
- **Damaging a Memorial**, third-degree felony punished by up to 5 years in prison: Causing $200 in damage to a confederate or other memorial (Section 10).
- **Cyberintimidation**, punished by up to a year in jail: Publishing a person's identifying information, such as name, with the intent to intimidate or have others intimidate or harass (Section 14).
- **Aggravated Riot**, second-degree felony punished by up to 15 years in prison: a "riot" that includes one of the following: at least 10 people; displays deadly weapons; endangers traffic by force or threat of force; causes more than $5,000 in property damage; or causes great bodily harm to a nonparticipant (Section 15).
- **Inciting a Riot,** third-degree felony punished by up to 5 years in prison for "encouraging" another to "participate" in a riot.
- **Aggravated Inciting a Riot**, punished by up to 15 years in prison: encouraging a riot that results in more than $5,000 in property damage OR great bodily harm OR supplies a deadly weapon or teaches another person to prepare a deadly weapon with the intent that it be used in a riot (Section 15).

Raises the Felony Ranking Level and Increases Sentencing Points

Additionally, the bill raises the felony offense level thus increasing sentencing points for numerous offenses that Black individuals are disproportionately arrested for, if they are done during an assembly deemed a riot.

- Aggravated Assault: offense level raised from 6 to 7 on the sentencing scoresheet and mandates at least 21 months of prison. Under current law, there is no mandatory prison time and probation is permissible.
- Aggravated Battery: offense level raised from 7 to 8 on the sentencing scoresheet, resulting in an increase of more than 13 months in prison for the same offense.
- Theft & Burglary: offense level increased in addition to being reclassified as a higher degree felony.

By harshly increasing penalties and prison sentence lengths and creating new felonies and deeming misdemeanors to be felonies resulting in felony disenfranchisement and

all the collateral consequences of felony convictions, this heavy-handed bill will exacerbate our overly high incarceration rates and undermine our criminal justice reform efforts.

The Bill is Unnecessary: Florida Statutes Already Criminalize Violence and Destruction of Property

This bill is unnecessary. The vast majority of protests, including those in Florida, in the wake of George Floyd's murder were overwhelming peaceful, save for excessive force by law enforcement in dispersing peaceful protests and arresting individuals for curfew and traffic and permit violations.[vi]

Moreover, current Florida law already criminalizes unlawful assembly, violence, property damage, traffic violations, violence directed at law enforcement, riots and sedition. This bill increases penalties on these already illegal offenses when they occur in the context of a protest, making it easier for law enforcement and prosecutors to have unbridled discretion to charge harsher penalties during a protest where law enforcement disagrees with the protesters' message (e.g., police accountability in the wake of George Floyd's murder) and chilling vital First Amendment speech.

Police officers and prosecutors do not need more tools to impose harsher penalties. Current statutes already criminalize unlawful assembly (section 870.02, Fla. Stat.), riots (sections 870.01 and 870.03), assault (section 784.011), aggravated assault (section 784.021), battery (section 784.03), aggravated battery (section 784.045), assault or battery of law enforcement (section 784.07), criminal mischief/property damage (section 806.13), theft (section 812.014), burglary (section 810.02), and defacing a flag (section 876.52). Law enforcement has no shortage of tools at their disposal, as evidenced by the mass arrests this summer of peaceful BLM protesters.

While the state has a responsibility to maintain public safety, Florida has more than enough laws currently on the books that punish the behaviors described in SB 484/HB 1, highlighting how unnecessary this bill is for any legitimate public safety purpose.

To be clear, under current law, rioting is a third-degree felony, punishable by up to five years in prison. What this bill does is allows law enforcement to arrest you for "rioting," punishable by up to five years in prison, for merely being present at a protest that turns violent or destructive, even if you did not engage in any riotous, violent, or destructive conduct.

Additionally, under this bill a person can be arrested and imprisoned for "aggravated riot," punishable by up to 15 years in prison, even if they did not engage in any violent or riotous conduct.

As to the Governor's disingenuous rebranding of his priority bill to crack down on racial justice protesters as necessary in light of the attempted white supremacist coup on our nation's capital, in addition to the above, Chapter 876, Florida Statutes, "Criminal Anarchy, Treason, and Other Crimes Against Public Disorder" provide law enforcement with all the tools they need to punish those who seek to violently overthrow our government. Tellingly, this bill does not touch these statutes.

The Bill Protects Confederate Monuments

Further evidencing the bill's effect of punishing those calling for racial justice and sustaining white supremacy, the bill seeks to protect confederate monuments by creating a new second-degree felony offense, punished by up to 15 years imprisonment, for pulling down or destroying 'memorials' that honor or recount "the military service of any past or present United States Armed Forces military personnel," or public service of a resident of the United States. 'Memorial' is defined broadly to include everything from flags and religious symbols to tombstones and statues. (Sections 10 and 11).

Additionally, the bill provides that any person who defaces or otherwise damages a memorial resulting in over $200 or more damage would be subject to a third-degree felony, punishable by up to 5 years in prison. As "deface" is not defined in the bill, protesters who apply paint or graffiti to a monument at a protest could face up to five years in prison.

It is beyond ridiculous that while the rest of the country is acknowledging the harms caused by state displays of confederate monuments and many localities are actively removing such symbols of white supremacy, Florida's governor has made it his number one priority to protect monuments honoring those who were willing to die to defend the institution of slavery.

Current statutes already protect against damage to property; the purpose of this bill is to elevate the protection of confederate monuments and criminalize and disenfranchise those who seek their removal.

The Bill Prohibits Release Until First Appearance for Individuals Exercising Their First Amendment Rights

The bill divests local circuit courts of the authority to adopt a local bond schedule allowing county sheriffs to release people who've been arrested but pose no risk to the community. Typically, courts and law enforcement have discretion to decide which offenses are dangerous enough to require a "cooling off" period after a person is arrested. This bill eliminates that discretion and requires mandatory custody until first appearance. (Sections 8, 12-13, 15-17).

Most outrageously, under SB 484/HB 1, people arrested for the minor offense of unlawful assembly "shall be held in custody until brought before the court for admittance to bail." Thus, under this bill, anyone peacefully protesting should be prepared to spend the night in jail.

As a result, the bill would fill up our jails with people who do not need to be there, aggravating the spread of COVID-19 and unnecessarily disrupting families. It would also chill dissent by further intimidating individuals from exercising their First Amendment rights out of fear that they will end up in jail without the option to post bail.

The Bill Usurps Local Control of Policing Decisions and Waives Sovereign Immunity

This bill usurps local authority over public safety decisions. It allows the Governor, with the Cabinet, to essentially reject a city budget and amend it to their liking at the appeal of *any* city resident, regardless of whether the local police chief approves changes in the police budget (Section 1).

This provision will require municipalities to spend taxpayer and staff resources to defend any appeal that is brought by any resident for any reduction in funding, even if requested by law enforcement. With the current economic realities, municipalities need flexibility to address public health and safety. The local budget process should not be made into a platform for statewide political posturing.

The bill also waives sovereign immunity for municipalities deemed to interfere with law enforcement's ability to provide "reasonable" protection during a riot or unlawful assembly (Section 3). This would allow individuals to bring civil lawsuits against municipalities for any amount of damages for personal injury, wrongful death or property damage based on an after-the-fact determination of whether law enforcement's response to the unlawful assembly or riot was reasonable.

Rather than damages being capped at $200,000, as is typical, this bill would expose municipalities to unlimited amounts of damages. This is likely intended to pressure municipalities to adopt overly militaristic law enforcement responses to peaceful protests in order to avoid the prospect of civil liability for unlimited damages.

The Bill Will Increase Violence Against Protesters

The bill will embolden and encourage violence against protesters peacefully exercising their First Amendment rights. It allows a counter-protester to escape civil liability for injuring or killing a protester.

It specifically creates an affirmative defense for a counter-protester to raise in any civil action for damages against them for personal injury, wrongful death or property damage, if the injury arose from the protester's participation in an unlawful assembly or an assembly deemed a "riot" (Section 18).

Under this bill, an individual peacefully protesting who is injured or killed or whose property is damaged by a counter-protester would be unable to recover damages in a civil action. A white supremacist who maliciously drove his car into protesters, for example, like the one in Charlottesville that killed Heather Heyer, would be able to assert an affirmative defense under this bill.[vii]

We have seen time and time again that white supremacists are emboldened by law enforcement's complicity with their violent actions toward Black protesters. They know they will likely not be held criminally liable for their actions, either through lack of police action or Florida's broad stand your ground statute. However, under current law, they can still be held civilly liable, and thus there is an incentive to not act on their worse instincts. This bill would remove that incentive.

[i] See State v. Beasley, 317 So. 2d 750, 752 (Fl. Sup. Ct. 1975) ("The term "riot" at common law is defined as 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.* (emphasis added).

[ii] The bill deems a riot "aggravated" if an assembly deemed a riot meets *only one* of the following:

a. ten or more people assembled,
b. traffic endangered by force or threat of force,
c. deadly weapons, such as firearms, present,
d. property damage of more than $5,000, or
e. great bodily harm to a nonparticipant.

[iii] See United States v. Miselis, 972 F.3d 518, 537 (4th Cir. 2020); see also Dakota Rural Action v. Noem, 416 F. Supp. 3d 874, 885 (D.S.D. 2019) (providing that statutory provision criminalizing encouraging participation in a riot was unconstitutionally overbroad; "The many words or expressive activities that arise within these three terms, to advise, encourage or solicit, might in some instances be offensive to some or to many people, but they are protected by the First Amendment and cannot be the subject of felony prosecution or of tort liability and damages.").

[iv] See United States v. Miselis, 972 F.3d 518, 540 (4th Cir. 2020) ("Having found that the Anti-Riot Act is overbroad vis-à-vis *Brandenburg* insofar as it proscribes speech tending to "encourage" or "promote" a riot, as well as speech "urging" others to riot or "involving" mere advocacy of violence, we turn now to consider whether the amount of overbreadth is substantial, "not only in an absolute sense, but also relative to the statute's plainly legitimate sweep." *Williams*, 553 U.S. at 292, 128 S.Ct. 1830. We conclude that it is.")

[v] Section 921.0022, Florida Statutes (Criminal Punishment Code; offense severity ranking chart).

[vi] Armed Conflict Location & Event Data Project (ACLED), "Demonstrations & Political Violence in America: New Data for Summer 2020;" Sept. 9, 2020, https://acleddata.com/2020/09/03/demonstrations-political-violence-in-america-new-data-for-summer-2020/

[vii] See Asher Stockler, "Heather Heyer's Mom Files $12 Million Lawsuit to Ensure James Fields Doesn't "Profit" From Daughter's Killing," Newsweek (Sept. 5, 2019), https://www.newsweek.com/susan-bro-heather-heyer-james-fields-lawsuit-wrongful-death-1457922 (Heather Heyer's mom, saying she hopes to send "a strong message to others who would use murder as a hate crime, that there are ongoing financial consequences on top of criminal consequences," brought a civil lawsuit for $12 million damages against the white supremacist who drove into and killed her daughter who was peacefully protesting for racial justice).

Section-By-Section Breakdown

Section 1: Prevents Municipalities from Reallocating Funding from Law Enforcement

Summary: Allows any resident of a municipality to file an appeal with the Executive Office of the Governor if the proposed municipal budget contains a funding reduction to the municipal law enforcement agency. The Governor's Office reviews the budget, provides for a hearing, and issues a report and recommendation to the Administration Commission (Governor and Cabinet). The Administration Commission then can amend the budget, which is final.

Analysis/Impact: Bill will effectively prevent municipalities from reallocating any amount of funds from law enforcement agencies to other municipal agencies or community priorities and will embolden and empower a single resident to bring an appeal of the municipal budget to the Office of the Governor. Raises concerns over local law enforcement and municipality's ability to set their own budgets and allows any resident in the municipality to set in motion a budget appeal process to overturn the budget priorities set by the municipality, regardless of the position of local law enforcement.

This provision will require the municipality to spend taxpayer and staff resources to defend any appeal that is brought by any resident with regard to any amount of reduction in funding. The provision contains strict timelines requiring the municipality to file a reply within 5 days to the Governor, and thereafter the municipality will need to defend their budget at a hearing, whereby their originally proposed budget will ultimately be approved, amended, or modified by the Administration Commission.

Given the economic realities stemming from COVID, municipalities need flexibility within their budget to address public health and safety, and do not need to be spending additional resources at the bequest of any resident who is unhappy with the municipality's budgetary decisions.

Section 2: Makes it Easier for Law Enforcement to Issue Citations to Protesters

Summary: Current law requires that obstruction of traffic must be "willfully" done in order violate Florida's traffic obstruction statute, this bill lowers the threshold by deleting the willful requirement and replacing it with the lesser "may not intentionally" requirement.[1] Additionally, the language is so broad that it appears to allow for law enforcement to issue pedestrian citations to any and all individuals peacefully protesting by merely standing on a street and temporarily hindering traffic.

[1] See Thunderbird Drive-In Theatre, Inc. v. Reed By & Through Reed, 571 So. 2d 1341, 1344 (Fla. Dist. Ct. App. 1990) (providing that "Prosser and Keeton's definition of willfulness requires that three elements be established: (1) the actor do an intentional act of an unreasonable character (2) in disregard of a *known or obvious risk* that was great (3) as to make it *highly probable* that harm would follow.") (emphasis in original).

Also appears to repeal statutory authority for local governments to issue permits to allow pedestrian use of roads.

Analysis/Impact: These changes will make it much easier for officers to cite protesters for "pedestrian violations" by lowering the necessary threshold from willful obstruction to allowing the citation for merely intentionally standing in a street or road or highway as compared to willfully and purposely obstructing traffic. The provision is vulnerable to discretionary enforcement aimed at suppressing protesters whose views the local authorities disagree with and panhandlers.

Section 3: Waives Sovereign Immunity for Municipalities and Opens Door to Civil Liability

Summary: Creates a previously unavailable civil cause of action against a city for a person who is injured or suffers property damage during an unlawful assembly when the city interfered with the law enforcement's ability to respond. The bill waives any sovereign immunity that would otherwise protect the city and eliminates any cap on the amount of damages.

Analysis/Impact: Opens the door to civil lawsuits against the city for unlimited damage liability. Significantly increases costs to the city to defend against such lawsuits and allocate resources to satisfy judgments and settlements. For example, a city's decision to sell an armored vehicle or instructions to police about using less-lethal force may result in civil liability, including punitive damages.

Section 4: Increases Penalties for Assault

Summary: The bill increases the penalty for assault from a 2nd degree misdemeanor to a 1st degree misdemeanor if the assault is done in furtherance of a "riot" or "aggravated riot."

Analysis/Impact: Under current law, the maximum penalty for an assault (e.g., threat of violence) is 60 days in county jail. SB 484/HB 1 provides that the maximum penalty for an assault (threat of violence) is 365 days (1 year) if committed during a "riot." That's approximately 300 days more jail time for a threat of violence if committed during a "riot," which is defined broadly in SB 484/HB 1 to consist of three or more people engaging in disorderly and violent conduct that would likely result in property damage.

To be clear, current law already provides tools for law enforcement to arrest individuals for assault and hold them in jail for up to 60 days. This bill allows police to arrest and jail individuals for up to 365 days.

Section 5: Increases Penalties for Aggravated Assault

Summary: This bill increases the penalty for aggravated assault if done in furtherance of a riot or aggravated riot. Aggravated assault is a third-degree felony punishable by up to 5 years in prison and a $5,000 fine. Under SB 484/HB 1, for the purpose of sentencing and gain-time eligibility, aggravated assault would be ranked one level above the ranking for the offense committed.

Analysis/Impact: Under current law, the maximum penalty for aggravated assault is 5 years in prison and there is no minimum sentence. This bill would require at least 21 months in prison if the assault happened during a riot. While SB 484/HB 1 provides that the maximum penalty of five years in prison for an aggravated assault would remain the same, the felony level would go from a 6 to a 7 on the sentencing scoresheet. Practically, that means that a crime that would normally give someone 36 points (allowing, but not requiring prison) on their scoresheet would now give someone 56 points (requiring prison). As a level 7 crime worth 56 points, the lowest permissible prison sentence, if this were the only crime on the person's scoresheet, would be 21 months in prison. Whereas before someone could potentially get probation for the crime, now they would face at least 21 months in prison.[2]

Current law already provides tools for law enforcement to arrest individuals for aggravated assault and hold them in jail or prison, but it doesn't mandate prison. The change in law would now raise someone's scoresheet points to be so high that prison is required for at least 21 months.

Section 6: Makes Battery a Felony Instead of a Misdemeanor

Summary: Increases the penalty for a battery from a 1st degree misdemeanor to a 3rd degree felony if it is committed in furtherance of a "riot" or "aggravated riot," whereby "riot" is broadly defined in the bill to include 3 or more people engaging in disorderly or violent conduct.

Analysis/Impact: Under current law, a battery is a misdemeanor with the maximum penalty of 1 year in county jail. SB 484/HB 1 provides that the battery would be a felony with a maximum penalty of 5 years in prison if committed during a "riot." That's 4 more years of prison and a felony record for the same offense (battery) if committed during a "riot," which, as mentioned above, is defined broadly in SB 484/HB 1 to consist of three or more people engaging in disorderly and violent conduct that would likely result in property damage.

Current law already provides tools for law enforcement to arrest individuals for battery and incarcerate them in jail for 1 year. This bill would make it a felony, which has lifelong consequences in terms of voting rights, ability to get a job, get loans, housing, education, etc. Additionally, the individual may be sentenced to up to 5 years in prison, rather than 1 year in county jail. It costs the state approximately $20,000 for each year an individual is incarcerated. Thus, the costs to the state for this provision could be an additional $80,000-$90,000 for each individual arrested for simple battery during a "riot."

[2] See the Criminal Punishment Code, http://www.dc.state.fl.us/pub/sen_cpcm/cpc_manual.pdf.

Section 7: Increases Penalties for Aggravated Battery

Summary: This bill increases the penalty for aggravated battery if done in furtherance of a riot or aggravated riot. Aggravated battery is a second-degree felony punishable by up to 15 years in prison and a $10,000 fine. Under SB 484/HB 1, for the purpose of increasing the sentencing and limiting gain-time eligibility, aggravated battery would be ranked one level above the ranking under s. 921.0022 for the offense committed.

Analysis/Impact: Aggravated battery is currently a level 7 on the scoresheet, worth 56 points and requiring a minimum of 21 months in prison. This proposed bill would change it from a level 7 to a level 8 on the scoresheet, which is worth 74 points, or a minimum of 34.5 months in prison, for an increase of 13.5 months in prison for the same crime.

Section 8: Creates New Crime of "Mob Intimidation"

Summary: Creates a new crime of "mob intimidation," whereby it is a first-degree misdemeanor, punishable by up to one year in county jail, for a person, assembled with two or more people, to compel or attempt to compel another by force or threat of force to do any act or assume/abandon a particular viewpoint. Further provides that the individual must be held in custody and not released until brought before the court for a bail hearing.

Analysis/Impact: Unnecessary and overly broad and vague. There is no need to create a new crime called "mob intimidation" to criminalize threats of force. Threats of force are already criminalized under "assault," which is a second-degree misdemeanor punishable by up to 60 days in jail. SB 484/HB 1 could result in an individual serving an additional 300 days in jail, at taxpayer expense, for the same offense.

- Confusing application/discretionary enforcement: If one person threatens "give me your backpack or else" it's an "assault" and up to 60 days in jail, but if that person is with two others and they make the same threat: "give me your backpack or else," it's considered "mob intimidation" and up to 365 days in jail?

Section 9: Creates a New Mandatory Minimum

Summary: Creates a mandatory minimum sentence of 6 months in prison for individuals convicted of battery on a law enforcement officer if the battery is in furtherance of a riot.

Under SB 484/HB 1, for the purpose of increasing the sentence and limiting gain-time eligibility, battery on a law enforcement officer during a riot would be ranked one level above the ranking under s. 921.0022 for the offense committed.

Analysis/Impact: Under current law, assault and battery on law enforcement officers are prohibited under Section 784.07, Florida Statutes. Battery on a law enforcement officer is a felony in the third degree, punishable by up to 5 years in prison. Judges have discretion depending on the

specific individual circumstances to sentence the individual to five years in prison. This bill takes away the judge's ability to sentence the defendant according to the individual circumstances presented and requires the judge to incarcerate the individual for a minimum of six months.

Section 10: Creates a Third-Degree Felony for Damaging a Confederate Memorial

Summary: Expands criminal mischief statute to provide that any person who willfully and maliciously defaces, injures, or otherwise damages a "memorial," with damage in excess of $200, commits a third-degree felony, punishable by up to five years in prison. Additionally, requires restitution of the full cost of repair or replacement.

SB 484/HB 1 defines "memorial" broadly as a "plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that is constructed and located with the intent of being permanently displayed or perpetually maintained" that *"honors or recounts the military service of any past or present United States Armed Forces Military personnel"* or any past or present public service of a United States resident.

Analysis/Impact: Current statutes already provide that damage to property of over $200 is a misdemeanor in the first degree, punishable by up to one year in county jail. SB 484/HB 1 would make it a third-degree felony, punishable by up to five years in jail, if the property that was damaged is considered a "memorial," as broadly defined in the bill. Thus, under SB 484/HB 1, an individual could spend an additional four years in prison at taxpayer expense of up to $80,000 ($20,000/year x 4 years) if the property damaged was a confederate memorial. Additionally, because the offense would be a felony conviction (instead of a misdemeanor), the individual would be subject to the numerous life-long collateral consequences of voting disenfranchisement, difficulty securing loans, housing, education, and employment.

As "deface" is not defined in the bill, protesters who apply paint or graffiti to a monument during a peaceful protest could face up to 5 years in prison.

Section 11: Creates a Second-Degree Felony for Destroying a Confederate Memorial

Summary: Creates new crime of destroying or demolishing a "memorial" that *honors or recounts the military service of any past or present United States Armed Forces Military personnel"* or any past or present public service of a United States resident. Provides that such offense is a second-degree felony, punishable by up to 15 years in prison, and $10,000 fine. Requires restitution of the full cost of repair or replacement.

Analysis/Impact: Current Florida statutes already protect against destruction of property, and penalties are commensurate with the value of the damage to the property. SB 484/HB 1 would make it a second-degree felony, punishable up to 15 years and prison, and $10,000 fine, if the property that was damaged was a confederate memorial or other memorial honoring past military

personnel or service, regardless of the assessed value of the property damage. Additionally, because the offense would be a felony conviction, the individual would be subject to the numerous life-long collateral consequences of voting disenfranchisement, difficulty securing loans, housing, education, and employment.

Sections 12 & 13: Increases Penalties for Burglary and Theft

Summary:

Burglary - Enhances the criminal penalty for burglary if committed during a riot or aggravated riot from a second-degree felony to a first-degree felony, or from a third degree felony to a second degree felony, depending on the circumstances. Requires individual to be held in custody and cannot be released on bail until first appearance. (Treats burglary during a riot the same as enhanced penalty for burglary during a state of emergency).

Theft- Enhances penalty for theft during a riot or aggravated riot from a second degree to a first-degree felony, or from a third degree to a second-degree felony, depending on the circumstances. Requires individual to be held in custody and cannot be released on bail until first appearance. (Treats theft during a riot the same as enhanced penalty for theft during a state of emergency).

Analysis/Impact: Burglary is already punishable by up to 15 years in prison, and $10,000 fine. SB 484/HB 1 would double that sentence, forcing the individual to be imprisoned up to 30 years – an additional 15 years – at taxpayer expense of up to $300,000 ($20,000 x 15) just because it occurred while three or more people were engaged in disorderly and violent conduct. Same with theft.

Treats a "riot" of three or more people the same as a "state of emergency" for the purpose of imposing harsher penalties on protesters. There is no rational or legitimate basis to equate three or more people engaged in disorderly conduct to "a state of emergency declared by the Governor under chapter 252." The Governor declares a "state of emergency," whereas the determination of whether an assembly is deemed a riot is entirely up to the discretion of law enforcement and prosecutors.

Section 14: Creates a New Crime of "Cyberintimidation by Publication"

Summary: Creates a new first-degree misdemeanor for the electronic publication of a person's personal identification information with the intent to threaten, intimidate, incite violence, etc.

Analysis/Impact: This bill is unnecessary as current criminal statutes already protect against threats, harassment, and inciting violence. Additionally, "intimidate" is undefined, vague, overly broad, and thus likely to chill protected speech.

Section 15: Broadly Defines "Riot" and Creates New Felony "Aggravated Riot."

Summary: Provides that a person commits a riot if he or she "*participates* in a public disturbance involving an assembly of three of more people acting with a common intent to mutually assist each other in disorderly and violent conduct resulting in injury or damage to another person or property or creating a clear and present danger of injury to another person or property." (emphasis added). Provides that it's a third-degree felony, punishable by up to 5 years in prison.

Creates a new crime of "aggravated rioting," which includes rioting with any of the following: (a) 9 or more people, (b) causing great bodily harm to nonparticipant, (c) causing property damage >$5,000, (d) displaying deadly weapons, or (e) endangering traffic by force or threat of force. Provides that it's a second-degree felony, punishable by up to 15 years in prison.

Creates new crime of inciting or encouraging "another to participate" in a riot. Provides that it's a third-degree felony.

Creates new crime of aggravated inciting or encouraging a riot. (Second degree felony).

Individuals arrested under these sections are required to be held until a bail hearing.

Analysis/Impact: Overbroad and vague; already covered by existing Florida law. Current Florida statutes provide that those guilty of a riot or inciting a riot are guilty of a third-degree felony, but the statutes do not define "riot." Instead, riot is defined through case law. The definition in SB 484/HB 1 is unclear and confusing. It provides that someone commits a riot if they participate in a public disturbance involving three or more people engaging in violent and disorderly conduct, but it does not define what it means to participate. Is attending a protest that turns violent participating in a riot? Under this definition it is unclear and entirely discretionary for law enforcement to determine who is and who is not "participating" in a riot, and thus who is and who is not subject to the harsher penalties.

This same problematic language arises with regard to the new offense of inciting or "encouraging" "another to participate" in a riot. What does it mean to encourage another to participate?

Section 16 & Section 17: Requires First Appearance Before Release on Bail

Summary: Adds language to the existing unlawful assembly and riot statutes requiring that individuals arrested for unlawful assembly or riot be held in custody without bail until brought before a judge for a bail determination.

Analysis/Impact: Chills speech/requires individuals be held in custody for protesting. Unlawful assembly is a second-degree misdemeanor, the lowest level state criminal offense. There is no rationale or legitimate reason that a person should be held in custody and denied bail for this low-level offense. Being denied the right to post bail before going in front of a judge is usually reserved for more serious or violent crimes, not low-level offenses such as unlawful assembly.

Section 18: Allows Counter-Protester to Avoid Liability for Civil Damages for Injuring or Killing a Protester

Summary: Creates affirmative defense in a civil action for personal injury, wrongful death, or property damage if the action arose from injury sustained in furtherance of a riot or unlawful assembly. When a defendant raises the affirmative defense, the action is stayed pending the outcome of the criminal action.

Analysis/Impact: Endangers peaceful protesters and chills dissent by emboldening counter-protesters to injure or kill protesters by shielding them from civil damages liability. Under this bill, counter-protesters who drive their car into protesters injuring or killing them, or otherwise inflict violence or damage personal property will be able to escape liability from a civil lawsuit brought by protesters they injured.

Section 19: Increases Sentencing Offense Level

Increases sentencing points by increasing the sentence severity level ranking for offense of defacing or removing monuments if committed in furtherance of a "riot" or "aggravated riot."

Section 20: Adds the New Crimes Created in SB 484/HB 1 to the Criminal Punishment Code

Adds as a Level 2 offense: Third degree felony for battery during a riot or aggravated riot; third degree felony damage of $200 or more to a memorial in honor of United States Armed Forces.

Adds as a Level 3 offense: Third degree felony of encouraging or inciting a riot.

Adds as a Level 4 offense: Second degree felony destroying memorial; third degree felony aggravated riot; third degree felony aggravated encouraging or inciting a riot.

Resources:

ACLU of Florida Denounces Gov. DeSantis' Proposal to Criminalize Protests, Jan. 8, 2021, https://www.aclufl.org/en/press-releases/aclu-florida-denounces-gov-desantis-proposal-criminalize-protests

Adora Obi Nweze, "DeSantis' latest proposal would harm the Black community", Tampa Bay Times, Nov. 29, 2020, https://www.tampabay.com/opinion/2020/11/29/desantis-latest-proposal-would-harm-the-black-community-letters/

Alleen Brown & Akela Lacy, "In Wake of Capitol Riot, GOP Legislatures "Rebrand" Old Anti-BLM Protest Laws," The Intercept, Jan. 12, 2021, Https://Theintercept.Com/2021/01/12/Capitol-Riot-Anti-Protest-Blm-Laws/

Russel Meyer, "Criminalizing protests in Florida is not the Christian thing to do," Tampa Bay Times, Dec. 16, 2020, https://www.tampabay.com/opinion/2020/12/16/criminalizing-protests-in-florida-is-not-the-christian-thing-to-do-column/

"Capitol Reax: SPLC Action Fund rails against anti-protest bill," Florida Politics, Jan. 11, 2021, https://floridapolitics.com/archives/394126-capitol-reax-splc-action-fund-rails-against-anti-protest-bill

Melba Pearson, "New Anti-Protest Bill is An Attack on Free Speech," Jan. 21, 2021, https://www.miamitimesonline.com/opinion/new-anti-protest-bill-is-an-attack-on-free-speech/article_3013c35e-5aa3-11eb-931c-bf425b0b9c3e.html

Gregory Lemos & Allen Kim, Florida Gov. Ron DeSantis calls for legislation aimed at cracking down on disorderly protests," Sept. 21, 2020, https://www.cnn.com/2020/09/21/politics/florida-desantis-protests-legislation-trnd/index.html

Armed Conflict Location & Event Data Project (ACLED), Demonstrations & Political Violence In America: New Data For Summer 2020; Sept. 9, 2020, https://acleddata.com/2020/09/03/demonstrations-political-violence-in-america-new-data-for-summer-2020/

242 F.Supp.2d 1226
United States District Court,
M.D. Florida.
Orlando Division.

Cheryl BISCHOFF, Vicky Stites, Seth Spangle, Plaintiffs,

v.

State of FLORIDA, Robert Butterworth, in his official capacity as Attorney General of the State of Florida, Sheriff Charles C. Aycock, in his Official Capacity, Defendants.

No. 6:98CV583–ORL–28JGG.
|
Jan. 3, 2003.

Synopsis

Protesters, who were threatened with arrest for engaging in a demonstration against company's support of homosexuality, brought action challenging constitutionality of Florida statutes prohibiting obstruction of public streets, highways, and roads and prohibiting the throwing advertising materials in motor vehicles. After remand, 222 F.3d 874, the District Court, Antoon, II, J., adopted the report and recommendation of United States Magistrate Judge Glazebrook, holding that: (1) protesters had standing to contest the constitutionality of Florida statutes, and (2) challenged statutes were facially invalid under First Amendment.

Judgment for plaintiffs.

West Headnotes (17)

[1] **Constitutional Law** Criminal Law

Although they were not arrested during demonstration, protesters, who were threatened with arrest for engaging in a demonstration against company's support of homosexuality and who refrained from exercising their First Amendment rights in order to avoid arrest, had standing to contest the constitutionality of Florida statutes prohibiting obstruction of public streets, highways, and roads and prohibiting the throwing advertising materials in motor vehicles. West's F.S.A. §§ 316.2045, 316.2055.

[2] **Federal Courts** Law of the case in general

Law of the case doctrine stands for the proposition that an appellate decision on an issue must be followed in all subsequent trial court proceedings unless the presentation of new evidence or an intervening change in the controlling law dictates a different result, or the appellate decision is clearly erroneous and, if implemented, would work a manifest injustice.

[3] **Federal Courts** Law of the case in general

Law of the case doctrine is primarily concerned with the duty of lower courts to follow what has already been decided in a case; it does not, however, extend to issues the appellate court does not address.

[4] **Constitutional Law** Streets and highways

Highways Obstruction of use of highway in general

Municipal Corporations Mode of Use and Regulation Thereof in General

Florida statute prohibiting obstruction of public streets, highways, and roads was content-based and vague, and therefore violated First Amendment free speech rights; statute facially preferred the viewpoints expressed by registered charities and political campaigners by allowing ubiquitous and free dissemination of their views, but restricted discussion of all other issues and subjects. U.S.C.A. Const.Amend. 1; West's F.S.A. § 316.2045.

4 Cases that cite this headnote

[5] **Constitutional Law** Streets and highways

Highways Obstruction of use of highway in general

Municipal Corporations Mode of Use and Regulation Thereof in General

Florida statute prohibiting obstruction of public streets, highways, and roads was not narrowly tailored to meet a significant state interest, but rather it was overbroad in violation of First Amendment; nothing in statute's content-based charity—non-charity distinction or political nonpolitical distinction has any bearing whatsoever on road safety or uniformity. U.S.C.A. Const.Amend. 1; West's F.S.A. § 316.2055.

1 Cases that cite this headnote

[6] **Constitutional Law** Advertising

Constitutional Law Particular Offenses

Highways Obstruction of use of highway in general

Florida statute prohibiting the throwing of advertising materials in motor vehicles was not narrowly tailored to meet a significant state interest as required by First Amendment; in addition, it was impermissibly vague in that it failed to define the terms "advertising or soliciting materials" and thus did not provide sufficient warning as to what conduct was proscribed by the law. U.S.C.A. Const.Amends. 1, 14; West's F.S.A. § 316.2055.

1 Cases that cite this headnote

[7] **Constitutional Law** Avoidance of constitutional questions

Court interprets statutes to avoid constitutional difficulties.

[8] **Constitutional Law** Justification for exclusion or limitation

In public fora, the government may regulate the time, place and manner of expression under First Amendment so long as the restrictions are: 1) content-neutral; 2) narrowly tailored to serve a significant government interest; and 3) leave open alternative channels of communication; content-neutral regulations are those that are justified without reference to the content of the regulated speech. U.S.C.A. Const.Amend. 1.

[9] **Constitutional Law** Justification for exclusion or limitation

Under First Amendment, a valid time, place and manner restriction must also be narrowly tailored to serve a significant government interest; government's interest in protecting the safety of persons using a public forum is a valid government objective. U.S.C.A. Const.Amend. 1.

2 Cases that cite this headnote

[10] **Constitutional Law** Time, Place, or Manner Restrictions

Under First Amendment, a valid time, place and manner restriction must allow for alternative channels of communication; government may not, however, abridge a citizen's right to exercise liberty of expression in an appropriate place simply because that same expression may be exercised in another place. U.S.C.A. Const.Amend. 1.

[11] **Constitutional Law** Content-Based Regulations or Restrictions

A content-based restriction, which regulates speech on the basis of the ideas expressed, is presumptively invalid under First Amendment. U.S.C.A. Const.Amend. 1.

2 Cases that cite this headnote

[12] **Constitutional Law** Strict or exacting scrutiny; compelling interest test

For a state to enforce a content-based restriction under First Amendment, it must show that the regulation is necessary to serve a compelling state interest and is narrowly drawn to achieve that end. U.S.C.A. Const.Amend. 1.

[13] **Constitutional Law** Facial invalidity

Statutes Effect of Total Invalidity

If a facial challenge is successful, the court will strike down the invalid statute; for a facial challenge to be successful, a plaintiff generally must establish that no set of circumstances exists under which the law would be valid.

[14] **Constitutional Law** Rules and regulations in general

Constitutional Law Statutes in general

Statutes or regulations may not sweep unnecessarily broadly and thereby invade the area of protected freedoms.

[15] **Constitutional Law** Overbreadth in General

A plaintiff may facially challenge an overly broad statute even though a more narrowly drawn statute would be valid as applied against the plaintiff.

1 Cases that cite this headnote

[16] **Constitutional Law** Prior Restraints

Plaintiffs may challenge statutes involving prior restraints on speech as facially invalid under First Amendment without demonstrating that there are no conceivable set of facts where the application of the particular government regulation might or would be constitutional. U.S.C.A. Const.Amend. 1.

1 Cases that cite this headnote

[17] **Constitutional Law** Prior Restraints

Constitutional Law Time limits on decision-making

A facially valid prior restraint on First Amendment protected expression contains procedural safeguards that obviate the dangers of censorship; first, burden of going to court to suppress the speech, and the burden of proof once in court, must rest with the government, second, any restraint prior to a judicial determination may only be for a specified brief time period in order to preserve the status quo., and third, an avenue for prompt judicial review of the censor's decision must be available. U.S.C.A. Const.Amend. 1.

West Codenotes

Held Unconstitutional

West's F.S.A. §§ 316.2045, 316.2055

Attorneys and Law Firms

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Alison L. Becker, Office of the Attorney General, Civil Litigation Div., Tampa, FL, Jeffrey F. Mahl, Attorney General's Office, West Palm Beach, FL, for Robert A. Butterworth.

Alison L. Becker, Office of the Attorney General, Civil Litigation Div., Tampa, FL, Jeffrey F. Mahl, Attorney General's Office, West Palm Beach, FL, for State of Florida.

ORDER

ANTOON, District Judge.

This cause is before the Court on Defendant Sheriff Aycock's Motion to Dismiss against Plaintiffs Cheryl Bischoff, Vicky Stites and Seth Spangle (Doc. 79, filed ***1229** January 9, 2002); and Defendant Robert Butterworth's ("Mr. Butterworth") Motion to Dismiss against Plaintiffs. (Doc. 81, filed January 29, 2002). The United States Magistrate Judge has submitted a Report and Recommendation (Doc. 100, filed September 19, 2002) providing that both Defendant Aycock's and Defendant Butterworth's Motion to Dismiss against Plaintiff be denied.

After an independent review of the record in this matter, including the Objections filed by all Defendants (Doc. 102, filed October 3, 2002 and Doc. 103, filed October 7, 2002)

and the response filed by Plaintiffs (Doc. 105 filed October 22, 2002), the Court agrees with the findings of fact and conclusions of law in the Report and Recommendation.

I. *Procedural History*

On December 29, 1997 religious activists gathered at the heavily trafficked intersection of Irlo Bronson Memorial Highway and Old Vineland Road in Osceola County, Florida for a demonstration. The activists were protesting Walt Disney's alleged support of homosexuality. The demonstrators carried signs and distributed handbills that articulated their criticism of Walt Disney's policies. In response to the demonstration, the Osceola County Sheriff's Deputies arrested three of the protesters, Phillip Benham ("Mr. Benham"), Matthew Bowman ("Mr. Bowman") and Seth Spangle ("Mr. Spangle"). They were each charged with violating section **316.2045**(2), Florida Statutes, for obstruction of traffic without a permit and section 316.2055 for throwing advertising material into vehicles.

Cheryl Bischoff ("Ms. Bischoff") and Vicky Stites ("Ms. Stites") were among the activists protesting against Walt Disney. On May 18, 1998 both Ms. Bischoff and Ms. Stites filed the instant action alleging that sections **316.2045** and 316.2055 were unconstitutional, both on their face and as applied to Plaintiffs.

Initially, this case was assigned to the Honorable Judge G. Kendall Sharp who dismissed the entire case because the Plaintiffs could not establish that they suffered an actual or threatened injury and therefore did not have standing to bring an as-applied challenge to the statute. With regard to the facial challenges, Judge Sharp declared the contested Florida Statutes constitutional and denied all outstanding motions as moot. (Doc. 48). However, on appeal the Eleventh Circuit reversed and remanded Judge Sharp's decision, ordering this court "to either hold an evidentiary hearing on the issue of standing or consider the merits of Plaintiff's as applied challenge." *Bischoff v. Osceola County, Fla.*, 222 F.3d 874, 876 (11th Cir.2000). According to the Eleventh Circuit, "the court erred in making findings of disputed facts and judgments regarding credibility, on which it then based its standing conclusion, without holding an evidentiary hearing." *Bischoff,* 222 F.3d at 885. Upon remand from the court of appeals, the case was reassigned to the undersigned United States district judge.

On February 7, 2001 Robert Butterworth ("Mr. Butterworth"), the Attorney General of the State of Florida, intervened as a Defendant (Doc. 60) and in late August Osceola County was dismissed from the case pursuant to agreement of the parties. (Doc. 72). A second amended complaint was filed on December 20, 2001 which added Mr. Spangle as a Plaintiff and substituted Sheriff Aycock for Sheriff Croft as a Defendant. (Doc. 76). Defendants filed a motion to dismiss the second ***1230** amended complaint (Docs. 79 & 81) to which Plaintiffs responded in opposition. (Docs. 80 & 82). In addition, the Plaintiffs filed a motion to set their facial challenge for summary judgment briefing. (Doc. 82).

This court referred these motions to Magistrate Judge James G. Glazebrook for a Report and Recommendation. Since the parties offered evidence outside the pleadings, on August 2, 2002 the Magistrate Judge converted the motions to dismiss to motions for summary judgment. An evidentiary hearing was held on August 27, 2002 on the issue of standing as well as on the facial challenges to sections **316.2045** and 316.2055. At oral argument the parties conceded that Plaintiffs' as-applied challenges were not ripe for summary judgment and that no sovereign immunity or qualified immunity issues remained. (Doc. 98 at 283–89). A Report and Recommendation was filed by Magistrate Judge Glazebrook on September 19, 2002 recommending denial of defendant's motions to dismiss and further recommending that Plaintiffs be found to have standing to pursue their First Amendment challenges to sections **316.2045** and 316.2055. Most significantly, the Magistrate Judge recommended that the relevant statutes be found facially unconstitutional and declared invalid. The Defendants subsequently filed objections to the Report and Recommendation (Docs. 102 & 103) and the Plaintiffs filed a response (Doc. 105).

II. *Defendants' Objections*

A. *The arrest of three protesters caused the termination of the demonstration.*

The Defendants object to the Magistrate Judge's use of the word "disbanded" in the following sentence: "On December 29, 1997, the Osceola County Sheriff's Office *disbanded* an organized protest at the heavily-trafficked intersection of Irlo Bronson Memorial Highway and Old Vineland Road in unincorporated Osceola County, Florida." (Doc. 100 at 2) (emphasis added). According to the Defendants, the use of the word "disbanded" can be interpreted to mean that Sheriff's officers told or instructed protestors to leave the demonstration. The Defendants argue that there is no evidence in the record to suggest that any officer instructed a

protestor to leave the area. Defendants however, do concede that the arrest of three of the protestors did result in the departure of other demonstrators. (Doc. 102 at 9).

The Court does not interpret the word "disbanded" in the Report and Recommendation to mean that the Sheriff's officers instructed the activists to leave the demonstration. However, the Court does interpret the Report and Recommendation to read that the December 29, 1997 demonstration was essentially disbanded by the arrest of three religious activists. Upon witnessing the arrest of three protesters the remaining activists feared the possibility of their own arrest and thus refrained from exercising their First Amendment right. The Magistrate Judge's Report and Recommendation does not in any way suggest that the Sheriff's officers instructed any demonstrators to leave. In fact, the Magistrate Judge explains that "Plaintiffs presented no evidence demonstrating that any Osceola County Deputy Sheriffs acted unprofessionally or in a manner inconsistent with their difficult responsibility of enforcing thousands of state and federal statutes." (Doc. 100 at 18 n. 8) Moreover, the interpretation of the word "disbanded" has no significance in the legal analysis of this case. This Court finds the use of the ***1231** word "disbanded" in the Report and Recommendation to be proper and agrees with the Magistrate Judge's finding of fact.

B. *The parties conceded at oral argument that no sovereign immunity or qualified immunity issues remained.*

The State of Florida and Mr. Butterworth object to the Magistrate Judge's finding that Defendants conceded that there are no issues as to sovereign immunity or qualified immunity remaining in the case.[1] It is clear from the transcript of the hearing that all Parties agreed that no sovereign immunity or qualified immunity issues remained:

(Doc. 98 at 286–87). The Court then proceeded to inquire about qualified immunity:

The Court:	All right. So there's really no issue as to sovereign immunity. And as to qualified immunity in that it's a declaratory judgment action, Attorney General's position.
Ms. Becker:	Your Honor, we didn't raise qualified immunity.
The Court:	Did the Sheriff raise that?
Mr. Poulton:	I don't think so.
The Court:	I'm sorry. That's not an issue.

(Doc. 98 at 287). The parties clearly conceded at oral argument that there were no sovereign or qualified immunity issues to be settled during oral argument. Therefore, the Magistrate Judge's conclusion with regard to these issues in the Report and Recommendation is proper and adopted by this Court.

C. *The Magistrate Judge properly converted the Defendants' Motions to Dismiss to Motions for Summary Judgment.*

The State of Florida and Mr. Butterworth also object to the Magistrate Judge's conversion of their motion to dismiss to a motion for summary judgment. (Doc. 103 at 12). Typically a court converts a motion to dismiss to a motion for summary judgment when the moving parties ask the court to resolve issues and consider evidence that are beyond the complaint. ***1232** Federal Rule of Civil Procedure 12(b) gives a court discretion to treat a motion to dismiss for failure to state a claim as a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. However, upon conversion of a motion to dismiss to a motion for summary judgment "[n]otice must be given to each party that the status of the action is now changed, and they must be given a 'reasonable opportunity' to present legal and factual material in support of or in opposition to the motion for summary judgment." *U.S. v. Gottlieb,* 424 F.Supp. 417, 418 (S.D.Fla.1976) (quoting *Sims v. Mercy Hosp.,* 451 F.2d 171 (6th Cir.1971)). "It is well established in this circuit that the ten day notice requirement of Fed. R. Civ. P. 56(c) is strictly enforced." *Herron v. Beck,*

693 F.2d 125 (11th Cir.1982) (citations and footnote omitted). Federal Rule of Civil Procedure 56(c) reads "[t]he motion [for summary judgment] shall be served at least 10 days before the time fixed for the hearing."

On August 2, 2002 the Magistrate Judge issued an Amended Order and Notice of Hearing which notified the parties of the court's conversion of Defendants' motions to dismiss to motions for summary judgment. (Doc. 87, filed August 2, 2002). The Magistrate Judge provided that "[o]n or before August 22, 2002, either party (or the intervener) may also file additional affidavits and exhibits within the purview of Fed. R. Civ. P. 56 as to matters that remain contested —as well as a Notice of Supplemental Authorities with explanatory parentheticals—in support of or in opposition to the motions." (Doc. 87 at 3). The Magistrate Judge further explained that "[t]he Court will hear oral argument on the motions, as well as any necessary evidence not otherwise presented (to the extent required by law), on Tuesday, August 27, 2002 at 9:30 a.m." (Doc. 87 at 3–4).

The parties were notified twenty-five days prior to the evidentiary hearing of the court's conversion of the pending motions to dismiss to motions for summary judgment. This notice was well within the ten-day requirement and certainly provided the parties with a reasonable opportunity to present legal and factual material in support of or in opposition to the motions for summary judgment. The conversion of the motions in this instance was proper and complied with the notice requirement of Federal Rule of Civil Procedure 56(c).

D. *The Plaintiffs have standing to bring their claims.*

[1] The State of Florida and Mr. Butterworth object to the Magistrate Judge's recommendation that Ms. Bischoff and Ms. Stites have standing to bring their claim.[3] The State of Florida and Mr. Butterworth argue that Ms. Bischoff and Ms. Stites do not have standing because they were not arrested during the demonstration and have not suffered an injury.

The Supreme Court in *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992), articulated the necessary requirements a Plaintiff must show to establish standing:

> First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection ***1233** between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative that the injury will be redressed by a favorable decision.

504 U.S. at 560–561, 112 S.Ct. 2130 (internal marks and citations, and footnote omitted). The Court further explained that "[t]he party invoking federal jurisdiction bears the burden of establishing these elements." *Id.* at 561, 112 S.Ct. 2130 (quoting *FW/PBS, Inc. v. Dallas,* 493 U.S. 215, 231, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990)).

Ms. Bischoff and Ms. Stites satisfy each of the constitutional requirements to establish standing. First, the fact that they were threatened with arrest for engaging in a demonstration is proof of a concrete injury to meet the "injury in fact" requirement. *See Bischoff,* 222 F.3d at 884 (explaining that the threat of arrest is wholly adequate to show injury in fact to establish standing). As noted by the Magistrate Judge, the threat of arrest was not limited to only those protesters engaged in particular activities. "First, the threat of arrest was not limited to those who stepped in the road—or at least no such limit was proved a the hearing. Sheriff Aycock himself argued in his brief that protestors who did not go into the street, but merely approached vehicles to solicit, nevertheless violated Florida law" and were thus subject to arrest. (Doc. 100 at 19–20). The threat of arrest in this instance was actual and concrete rather than merely conjectural or hypothetical. Ms. Bischoff and Ms. Stites refrained from exercising their First Amendment rights in order to avoid arrest. Thus, they suffered an injury in fact.

Second, Ms. Bischoff and Ms. Stites have established a causal link between the injury they suffered and Sheriff Aycock's enforcement of the contested statutes. "[B]oth Bischoff and Stites were engaged in conduct violative of the same Florida laws for which Osceola County Sheriff's Deputies arrested Plaintiff Spangle." (Doc. 100 at 20).

Finally, it is more than likely, not merely speculative, that Plaintiffs' injury would be redressed by a facial invalidation of the contested statutes. Defendants' primary argument in their objection to the Report and Recommendation with regard to the issue of standing focuses on the fact that neither Ms. Bischoff or Ms. Stites stepped in the road during the demonstration and were not arrested. The Defendants' Objection to the Report and Recommendation does not refer to any other factual evidence or case law that would bolster Defendant's position. As a result, this Court agrees with

the Magistrate Judge's conclusion that all the Plaintiffs have standing to contest the constitutionality of sections 316.2045 and 316.2055.

E. *The Magistrate Judge properly reconsidered the Plaintiffs' facial challenge to the contested Florida statutes.*

[2] In the Defendants' Objections to the Magistrate's Report and Recommendation (Docs. 102 & 103), the Defendants essentially argue that in revisiting the facial challenges to the relevant Florida statutes the Magistrate Judge violated the law of the case doctrine that requires trial courts to strictly adhere to the mandates of appellate courts. *See Piambino v. Bailey,* 757 F.2d 1112, 1120 (11th Cir.1985) (explaining that a "trial court, upon receiving the mandate of an appellate court, may ***1234** not alter, amend, or examine the mandate, or give any further relief or review, but must enter an order in strict compliance with the mandate"). The law of the case "doctrine stands for the proposition that an appellate decision on an issue must be followed in all subsequent trial court proceedings unless the presentation of new evidence or an intervening change in the controlling law dictates a different result, or the appellate decision is clearly erroneous and, if implemented, would work a manifest injustice." *Id.* (citing *Westbrook v. Zant,* 743 F.2d 764, 768–69 (11th Cir.1984)).

According to the Defendants, the disturbance of Judge Sharp's initial finding that the relevant Florida statutes were constitutional is against the Eleventh Circuit's August 14, 2000 mandate remanding the case "to the district court either to hold an evidentiary hearing on the question of standing or to rule on the merits of Plaintiffs' as applied challenge as raised in the parties' cross motion for summary judgment. *We refrain from reviewing the district court's ruling on the merits of Plaintiff's facial challenge at this time.*" *Bischoff v. Osceola County, Fla.,* 222 F.3d 874, 886 (11th Cir.2000) (emphasis added). The Defendants argue that the Eleventh Circuit reversed and remanded Judge Sharp's decision only for the District Court to reconsider standing or the Plaintiffs' as-applied challenge, not to reconsider Judge Sharp's conclusion with regard to the facial challenge. The hearing on the facial challenge along with the subsequent recommendation is, in the perspective of the Defendants, a violation of the Eleventh Circuit's instructions.

[3] The policy behind the law of the case doctrine is to maintain a sense of efficiency, finality and obedience within the judiciary. *See Litman v. Mass., Mutual Life Ins. Co.,* 825 F.2d 1506, 1511 (11th Cir.1987) (explaining that judicial dispute resolution must have elements of finality and stability). " 'Judicial precedence serves as the foundation of our federal judicial system. Adherence to it results in stability and predictability.' " *Id.* at 1510 (citing *Jaffree v. Wallace,* 705 F.2d 1526, 1533 (11th Cir.1983)). "[I]t would be impossible for an appellate court 'to perform its duties satisfactorily and efficiently' and 'expeditiously if a question, once considered and decided by it were to be litigated anew in the same case upon any and every subsequent appeal' thereof." *Terrell v. Household Goods Carriers' Bureau,* 494 F.2d 16, 19 (5th Cir.1974) (quoting *White v. Murtha,* 377 F.2d 428, 431 (5th Cir.1967)). In other words, the law of the case doctrine is primarily concerned with the duty of lower courts to follow what has already been decided in a case. It does not, however, extend to issues the appellate court does not address. *See Piambino,* 757 F.2d at 1120 (explaining that the "law of the case doctrine applies to all issues decided expressly or by necessary implication; it does not extend to issues the appellate court did not address."); *see also Terrell,* 494 F.2d at 19 (explaining that the law of the case rule applies only to issues that were decided, and does not include determination of questions which might have been decided). Therefore, a lower court would not violate the law of the case doctrine in deciding an issue that an appellate court did not address in a previous decision.

The law of the case doctrine simply does not extend to the Plaintiffs' facial challenge to the statutes because the Eleventh Circuit did not decide the issue. The Eleventh Circuit clearly stated that "[w]e refrain from reviewing the district court's ***1235** ruling on the merits of the Plaintiff's facial challenge at this time." *Bischoff,* 222 F.3d at 886. In re-examining the facial challenge, the Magistrate Judge did not exceed his authority but merely reconsidered an issue the Eleventh Circuit did not address. Moreover, the Magistrate Judge issued an Order on August 15, 2002 providing the parties with specific issues that they had to address during oral argument in order to ensure that all parties were prepared to address the question of facial constitutionality. (Doc. 88). In sum, the reconsideration of the facial challenge was appropriate and not a violation of the law of the case doctrine because the Eleventh Circuit decision did not require that Judge Sharp's ruling remain undisturbed.

F. *The contested Florida statutes are unconstitutional.*

1. *Section 316.2045 is unconstitutional because it is content-based and vague.*

[4] All the Defendants object to the Magistrate Judge's recommendation that section **316.2045** be declared unconstitutional.[4] The Magistrate Judge's recommendation is premised on the legal theory that section **316.2045** is content-based and vague. According to the Magistrate Judge, "the Florida statute facially prefers the viewpoints expressed by registered charities and political campaigners by allowing ubiquitous and free dissemination of their views, but restricts discussion of all other issues and subjects." (Doc. 100 at 31).

The Supreme Court in *Carey v. Brown,* 447 U.S. 455, 100 S.Ct. 2286, 65 L.Ed.2d 263 (1980), similarly dealt with an Illinois statute that made distinctions between peaceful picketing and peaceful labor picketing. The contested Illinois statute prohibited picketing on public streets and sidewalks in residential neighborhoods, but made an exception for peaceful labor picketing. The Supreme Court in *Carey* explained:

> The central problem with Chicago's ordinance is that it describes permissible picketing in terms of its subject mat ***1236** ter.... Any restriction on expressive activity because of its content would completely undercut the profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide open.

Id. at 462–63, 100 S.Ct. 2286 (internal citations and footnote omitted). The Court further explains in *Carey* that "[t]here is an equality of status in the field of ideas, and government must afford all points of view an equal opportunity to be heard. Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say." *Id.* at 463, 100 S.Ct. 2286 (internal citations and footnote omitted). The Court in *Carey* found the Illinois statute unconstitutional under the Equal Protection Clause of the Fourteenth Amendment because it made an impermissible subject matter distinction between lawful and unlawful picketing.

The Florida statute is similar to the Illinois statute at issue in *Carey.* The Florida statute suffers from the same constitutional infirmities. Facially the Florida statute prefers speech by § 501(c)(3) charities and those who are engaged in political speech. The Defendants in their objection to the Magistrate Judge's recommendation cite only to Judge Sharp's previous decision finding the contested Florida statute constitutional. The Defendants do not engage in any further analysis or cite to any other legal authority to support their position. In light of the impermissible distinctions made in section **316.2045**, Florida Statutes, the Court finds the statute unconstitutional under the Equal Protection Clause of the Fourteenth Amendment and the First Amendment of the United States Constitution.

The Magistrate Judge also found section **316.2045** void for vagueness. "The essential purpose of the 'void for vagueness' doctrine is to warn individuals of the criminal consequences of their conduct." *Jordan v. De George,* 341 U.S. 223, 230, 71 S.Ct. 703, 95 L.Ed. 886 (1951) (quoting *Williams v. United States,* 341 U.S. 97, 71 S.Ct. 576, 95 L.Ed. 774 (1951)). "The test is whether the language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." *Id.* at 231–2, 71 S.Ct. 576.

Section one of the contested statute in this case contains several ambiguous terms which make it difficult for an individual to determine what type of conduct is unlawful. "Section one is ambiguous as to whether it is unlawful for an individual to willfully obstruct the free use of the road 'by standing,' or whether she must do so by standing on the road. The undefined terms 'solicit' and 'political campaigning' contribute to the indefiniteness of § **316.2045**, as does section two's reference to and partial incorporation of the opaque and undecipherable permit provisions of another criminal statute, § 337.406." (Doc. 100 at 32). The language of section **316.2045** simply does not convey sufficiently definite warning as to the unlawful conduct when measured by common understanding. In the Defendants' Objections to the facial challenge they do not address the ambiguity of the statute. Therefore, this Court shall adopt the Magistrate Judge's recommendation that section **316.2045**, Florida Statutes, is void for vagueness.

2. *Section **316.2045** is not narrowly tailored to meet compelling state interest, but rather it is overbroad.*

[5] Generally, overbroad statutes have the potential to chill speech. Statutes or ***1237** regulations may not "sweep unnecessarily broadly and thereby invade the area of protected freedoms." *NAACP v. Alabama,* 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958). Courts invalidate overly broad statutes because "persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions provided by a statute susceptible of application to protected expression." *Gooding v. Wilson,* 405 U.S. 518, 521, 92 S.Ct. 1103, 31 L.Ed.2d 408 (1972).

The purpose behind the contested statutes is to ensure public safety on roads, which is a compelling government interest. However, the statute is not narrowly tailored to meet that compelling interest. "Nothing in the § 316.2045's content based charity—non-charity distinction or political nonpolitical distinction has any bearing whatsoever on road safety or uniformity." (Doc. 100 at 34). "Traffic accidents or backups caused by political campaigners or duly licensed charitable organizations are no less problematic than traffic accidents or backups caused by other political speakers or non-licensed charitable organizations." (Doc. 100 at 34). The Defendants argue in their objections that the statute is narrowly tailored and that it provides alternative channels for communication because individuals may apply for a permit in order to express their views. (Doc. 102 at 12). However, the Defendants do not address the Magistrate Judge's conclusion that the statute's permit scheme serves as a prior restraint on speech. "A prior restraint on expression exists when the government can deny access to a forum for expression before the expression occurs." *United States v. Frandsen,* 212 F.3d 1231, 1236–37 (2000). "Although prior restraints are not per se unconstitutional, there is a strong presumption against their constitutionality." *Id.* at 1237. In order for a regulation that places a restraint on speech to pass constitutional muster it must contain procedural safeguards to avoid censorship.

In this instance,

> [t]he permitting scheme established by § 316.2045 lacks the procedural safeguards necessary to ensure against undue suppression of protected speech. Neither this court, nor any citizen wishing to engage in legal speech on a Florida road, can determine whether a particular permitting procedure applies to a given stretch of road; whether a particular agency or person has been designated to accept and grant or deny applications; whether any substantive constraints are placed on that person's discretion to deny a license; whether prompt judicial review is available for a denial; and whether there is any time constraint on the issuance or denial of a license.

(Doc. 100 at 36). Although the Defendants argue that individuals could potentially apply for a permit, they do not point to anything in the record that convinces this Court that there are procedural safeguards in place to prevent the undue suppression of speech. Therefore, the Court adopts the recommendation that section 316.2045 is overbroad and not narrowly tailored to meet the government's compelling interest.

3. *Section 316.2055 is not narrowly tailored to meet a significant state interest.*[5]

[6] Although section 316.2055 is content neutral, it suppresses more speech ***1238** than is necessary to serve the stated government purpose of ensuring public safety on roads. In addition, it is impermissibly vague in that it fails to define the terms "advertising or soliciting materials" and thus does not provide sufficient warning as to what conduct is proscribed by the law. The Defendants do not specifically address the Magistrate Judge's legal analysis with regard to the constitutionality of section 316.2055. They do not offer any legal precedent that reaches a contrary conclusion or any factual evidence that persuades the Court to disagree with the Magistrate Judge's recommendation. Therefore, the Court agrees with the Magistrate Judge with regard to the unconstitutionality of section 316.2055.

III. Conclusion

Therefore, it is ORDERED as follows:

1. The Report and Recommendation (Doc. 100, filed September 19, 2002) is **ADOPTED AND CONFIRMED** and made part of this Order.

2. Defendant Aycock's Motion to Dismiss (Doc. 79, filed January 9, 2002) is **DENIED**.

3. Defendant Butterworth's Motion to Dismiss (Doc. 81, filed January 29, 2002) is **DENIED.**

4. It is further Ordered that the Court finds that Plaintiffs have standing to pursue their constitutional challenges to sections 316.2045 and 316.2055, Florida Statutes.

5. It is further Ordered that sections 316.2045 and 316.2055, Florida Statutes are found facially unconstitutional and invalid.

REPORT AND RECOMMENDATION

GLAZEBROOK, United States Magistrate Judge.

This cause came on for hearing on August 27, 2002 on the parties' motions for summary judgment. Those motions are:

1) Defendant Sheriff Charles Aycock's ("Sheriff Aycock's") Motion to Dismiss[1] against Plaintiffs Cheryl Bischoff ("Bischoff"), Vicky Stites ("Stites") and Seth Spangle[2]

("Spangle," collectively, "Plaintiffs"); Docket No. 79, filed January 9, 2002; and

2) Defendant Robert Butterworth's ("Butterworth's" or "the Attorney General's," with Aycock, "Defendants' "), Motion to Dismiss against Plaintiffs. Docket No. 81, filed January 29, 2002.

I. *INTRODUCTION*

On December 29, 1997, the Osceola County Sheriff's Office disbanded an organized protest at the heavily-trafficked ***1239** intersection of Irlo Bronson Memorial Highway and Old Vineland Road in unincorporated Osceola County, Florida. The group had gathered at the intersection to protest Walt Disney World's purported support of homosexuality. The Osceola County Sheriff's Deputies arrested three of the protesters, Phillip Benham ("Benham"), Matthew Bowman ("Bowman") and Spangle. The Sheriff's Office charged them with violating Fla. Stat. §§ **316**.**2045**(2) (obstruction of traffic to solicit without a permit) and 316.2055 (throwing advertising material into vehicles). Benham, Bowman, and Spangle later pled no contest to obstructing traffic to solicit without a permit, and each paid a $25 fine. Plaintiffs Bischoff and Stites were among the remaining protesters. Bischoff and Stites say that they were threatened with arrest under the same statutes, but that they disbanded in order to avoid arrest.

Bischoff and Stites filed this case on May 18, 1998, asking this Court to declare that Fla. Stat. §§ **316**.**2045** and 316.2055 were unconstitutional, both on their face and as applied to plaintiffs. The case was assigned to The Honorable G. Kendall Sharp. The original complaint named Osceola County as the sole defendant. Plaintiffs later amended their complaint, adding Osceola County Sheriff Charles Croft. Docket 17. Osceola County and Sheriff Croft moved to dismiss the amended complaint. Docket Nos. 19, 22. Sheriff Croft's motion to dismiss alternatively sought summary judgment. Bischoff and Stites filed a cross-motion for summary judgment, Docket No. 29, to which Osceola County and Sheriff Croft responded. Docket Nos. 34, 38.

On February 2, 1999, Judge Sharp dismissed the entire case for lack of standing, and denied all outstanding motions as moot. Docket No. 48. The United States Court of Appeals for the Eleventh Circuit reversed and remanded "to either hold an evidentiary hearing on the issue of standing or consider the merits of Plaintiffs' as applied challenge." *Bischoff v. Osceola County, Fla.*, 222 F.3d 874, 876 (11th Cir.2000). The Eleventh Circuit held that Judge Sharp had properly raised the issue of standing *sua sponte,* but had improperly decided standing based on contested facts without a hearing. *Id.* Upon remand from the court of appeals, Judge Sharp ordered the Clerk to reassign the case. The Clerk subsequently reassigned the case to The Honorable John Antoon II.

Robert Butterworth, Attorney General of the State of Florida, intervened as a defendant on February 7, 2001. Docket No. 60. By joint stipulation, the parties dismissed Osceola County on August 23, 2001. Docket No. 72. Bischoff and Stites filed a second amended complaint on December 20, 2001, adding Spangle as a plaintiff, and substituting Sheriff Charles Aycock for Sheriff Croft as a defendant. Docket No. 76. Defendants then moved to dismiss Plaintiffs' second amended complaint, Docket Nos. 79, 81, to which Plaintiffs responded in opposition. Docket Nos. 80, 82. Plaintiffs also filed a motion to set their facial challenge to the two statutes for summary judgment briefing. Docket No. 82.

On June 24, 2002, Judge Antoon referred these motions to the undersigned for preparation of a report and recommendation. Because the parties presented to the Court matters outside the pleadings, the Court converted the outstanding motions to dismiss to motions for summary judgment under Fed.R.Civ.P. 12(b), and established a schedule for hearing and resolving ***1240** all pending motions. Docket No. 87.

The Court held an evidentiary hearing on the standing issue on August 27, 2002, and also entertained extensive oral argument on the facial challenges to Fla. Stat. §§ **316**.**2045** and Fla. Stat. § 316.2055. The parties conceded at oral argument that Plaintiffs' as applied challenges were not ripe for summary judgment, and that no sovereign immunity or qualified immunity issues remained or existed. Therefore, the Court addresses only standing and facial validity.

II. *THE LAW*

A. THE STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). The moving party bears the initial burden of showing the Court, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial. *Celotex Corp. v. Catrett,* 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Clark v. Coats & Clark, Inc.,* 929 F.2d

604 (11th Cir.1991). A moving party discharges its burden on a motion for summary judgment by "showing" or "pointing out" to the Court that there is an absence of evidence to support the non-moving party's case. *Celotex,* 477 U.S. at 325, 106 S.Ct. 2548. Rule 56 permits the moving party to discharge its burden with or without supporting affidavits, and to move for summary judgment on the case as a whole or on any claim. *Id.* When a moving party has discharged its burden, the non-moving party must then "go beyond the pleadings," and by its own affidavits, or by "depositions, answers to interrogatories, and admissions on file," designate specific facts showing that there is a genuine issue for trial. *Id.* at 324, 106 S.Ct. 2548.

In determining whether the moving party has met its burden of establishing that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law, the Court must draw inferences from the evidence in the light most favorable to the non-movant and resolve all reasonable doubts in that party's favor. *Spence v. Zimmerman,* 873 F.2d 256 (11th Cir.1989). The Eleventh Circuit has explained the reasonableness standard:

> In deciding whether an inference is reasonable, the Court must "cull the universe of possible inferences from the facts established by weighing each against the abstract standard of reasonableness." The opposing party's inferences need not be more probable than those inferences in favor of the movant to create a factual dispute, so long as they reasonably may be drawn from the facts. When more than one inference reasonably can be drawn, it is for the trier of fact to determine the proper one.

WSB–TV v. Lee, 842 F.2d 1266, 1270 (11th Cir.1988) (internal citations omitted).

Thus, if a reasonable fact finder evaluating the evidence could draw more than one inference from the facts, and if that inference introduces a genuine issue of material fact, then the court should not grant the summary judgment motion. *Augusta Iron and Steel Works v. Employers Insurance of Wausau,* 835 F.2d 855, 856 (11th Cir.1988). A dispute about a material fact is "genuine" if the "evidence is such that a ***1241** reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). The inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id.* at 251–52, 106 S.Ct. 2505.

B. THE LAW OF STANDING

Unless a plaintiff has standing to bring her claims, the Court is without jurisdiction to hear her case. *Warth v. Seldin,* 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). The party invoking federal jurisdiction bears the burden of proving standing. *Bischoff v. Osceola County, Fla.,* 222 F.3d 874, 878 (11th Cir.2000), citing *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). To satisfy constitutional standing requirements, a plaintiff must show three elements:

> First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal relationship between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely as opposed to merely speculative that the injury will be redressed by favorable decision.

222 F.3d at 883, citing *Lujan,* 504 U.S. at 560–61, 112 S.Ct. 2130 (internal marks, citations, and footnote omitted).

C. FACIAL CHALLENGES UNDER THE CONSTITUTION

1. *The United States Constitution*

The First Amendment guarantees that "Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const., amend. I. Although the First Amendment is directed at the federal government's conduct, the rights guaranteed by the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment. U.S. Const., amend. XIV ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.").

Federal courts are courts of limited jurisdiction. The courts do not reach out to reform or rewrite state statutes that seem to require some improvement. Neither do the federal courts strike down valid laws of which they disapprove. It is the state legislature's duty to enact valid laws, and the Court's duty to

declare what the law is, and how the law applies to the facts. The federal courts do not substitute laws that they prefer for the will of the elected state legislature. But where parties in a controversy ask a federal court to declare whether a state law violates the Constitution of the United States, the Court must not shrink from its duty to adjudicate the question presented.

2. *The Standards of Constitutional Scrutiny*

a. Forum Analysis

When a state regulation restricts the use of government property as a forum for expression, a court must first determine the nature of the government property ***1242** involved. *United States v. Kokinda,* 497 U.S. 720, 726–27, 110 S.Ct. 3115, 111 L.Ed.2d 571 (1990). The nature of the property determines the level of constitutional scrutiny applied to the restrictions on expression. *Capitol Square Review & Advisory Bd. v. Pinette,* 515 U.S. 753, 761, 115 S.Ct. 2440, 132 L.Ed.2d 650 (1995). The Supreme Court has delineated three categories of government-owned property for First Amendment purposes: the traditional public forum, the designated public forum, and the nonpublic forum. *Crowder v. Housing Authority of Atlanta,* 990 F.2d 586, 590 (11th Cir.1993).

Streets and parks are the quintessential traditional public fora, because those areas "have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n,* 460 U.S. 37, 45, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983) (*quoting Hague v. Committee for Indus. Org.,* 307 U.S. 496, 515, 59 S.Ct. 954, 83 L.Ed. 1423 (1939)); *see also Int'l Soc. for Krishna Consciousness, Inc., v. Lee,* 505 U.S. 672, 696, 112 S.Ct. 2701, 120 L.Ed.2d 541 (1992) (Kennedy, J., concurring) ("At the heart of our jurisprudence lies the principal that in a free nation citizens must have the right to gather and speak with other persons in public places. The recognition that certain government owned property is a public forum provides open notice to citizens that their freedoms may be exercised there without fear of a censorial government, adding tangible reinforcement to the idea that we are a free people"); *Redd v. City of Enterprise,* 140 F.3d 1378, 1383 (11th Cir.1998) (where traveling minister was arrested for disorderly conduct for preaching on the corner of a busy intersection, streets were a traditional public forum).

b. Content–Neutral versus Content–Based

[7] Courts apply different levels of scrutiny to contested statutes. At issue in the instant case is whether Fla. Stat. §§ **316.2045** and 316.2055 impose only content-neutral restrictions, or whether the restrictions are content-based. In any event, the Court interprets[3] statutes to avoid constitutional difficulties. *Frisby v. Schultz,* 487 U.S. 474, 483, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988).

i. *Content–Neutral Restrictions*

[8] **[9]** In public fora, the government may regulate the time, place and manner of expression so long as the restrictions are: 1) content-neutral; 2) narrowly tailored to serve a significant government interest; and 3) leave open alternative channels of communication. *United States v. Grace,* 461 U.S. 171, 177, 103 S.Ct. 1702, 75 L.Ed.2d 736 (1983). Content-neutral regulations are those that are "justified without reference to the content of the regulated speech." *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.,* 425 U.S. 748, 771, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976). A valid time, place and manner restriction must also be ***1243** narrowly tailored to serve a significant government interest. *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council,* 425 U.S. 748, 771, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976). The government's interest in protecting the safety of persons using a public forum is a valid government objective. *See Heffron v. Int'l Soc. for Krishna Consciousness, Inc.,* 452 U.S. 640, 650, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981), *citing Grayned,* 408 U.S. at 109, 92 S.Ct. 2294; *see also News and Sun–Sentinel Co. v. Cox,* 702 F.Supp. 891, 900 (S.D.Fla.1988) ("It requires neither towering intellect nor an expensive 'expert' study to conclude that mixing pedestrians and temporarily stopped motor vehicles in the same space at the same time is dangerous."). The Supreme Court has held, however, that an ordinance may not prohibit "a person rightfully on a public street from handing literature to one willing to receive it" because the defendant has an interest in keeping its streets clean and of good appearance. *Schneider v. New Jersey,* 308 U.S. 147, 162–63, 60 S.Ct. 146, 84 L.Ed. 155 (1939).

[10] Lastly, a valid time, place and manner restriction must allow for alternative channels of communication. The government may not, however, abridge a citizen's right to exercise liberty of expression in an appropriate place simply because that same expression may be exercised in another place. *Cox,* 702 F.Supp. at 902, *quoting Schneider v. State,* 308 U.S. 147, 163, 60 S.Ct. 146, 84 L.Ed. 155 (1939).

The level of scrutiny the Court must apply "is initially tied to whether the statute distinguishes between prohibited and permitted conduct on the basis of content." *Frisby,* 487 U.S. at 481, 108 S.Ct. 2495. In *Frisby,* individuals who strongly opposed abortion held at least six demonstrations on a public street in front of a doctor's residence. The town of Brookfield, Wisconsin then adopted a municipal ordinance that completely banned picketing "before or about" any residence. Two individuals who wished to continue picketing sought a declaration that the ordinance was facially invalid under the First Amendment. 487 U.S. at 477, 108 S.Ct. 2495. The Supreme Court held that the street in front of the doctor's house in a residential neighborhood was a traditional public forum, and deferred to the district court's finding that the municipal ordinance was facially content neutral—*i.e.,* the ban on all focused picketing did not distinguish between prohibited and permitted speech on the basis of content.[4] 487 U.S. at 481–82, 108 S.Ct. 2495.

The Court then applied the test for whether a statute is narrowly tailored—i.e., it "targets and eliminates no more than the exact source of the 'evil' it needs to remedy." 487 U.S. at 485, 108 S.Ct. 2495. The Court found that the ordinance's complete ban on focused picketing was narrowly directed at the household, not the general public, and that the "First Amendment permits the government to prohibit offensive speech as intrusive when the 'captive' audience cannot avoid the objectionable speech." 487 U.S. at 487, 108 S.Ct. 2495. Because of the narrow scope of the Brookfield ordinance, and because ***1244** "the ordinance prohibited speech directed primarily at those who are presumptively unwilling to receive it," the state had a substantial interest in banning picketing. 487 U.S. at 488, 108 S.Ct. 2495. The ordinance was facially valid under the First Amendment.

ii. *Content–Based Restrictions*

[11] **[12]** Content-based restrictions, on the other hand, regulate speech on the basis of the ideas expressed. A content-based restriction is presumptively invalid. *R.A.V. v. City of St. Paul,* 505 U.S. 377, 382, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992); *Simon & Schuster v. New York Crime Victims Bd.,* 502 U.S. 105, 116, 112 S.Ct. 501, 116 L.Ed.2d 476 (1991) (*quoting Regan v. Time, Inc.,* 468 U.S. 641, 648–49, 104 S.Ct. 3262, 82 L.Ed.2d 487 (1984) (regulations which "permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment"); *Dimmitt v. City of Clearwater,* 985 F.2d 1565, 1569 (11th Cir.1993) (finding that an ordinance prohibiting nonresidential flag display without a permit unless the flags "represent a governmental unit or body" was content-based and invalid); *Krafchow v. Town of Woodstock,* 62 F.Supp.2d 698, 710 (N.D.N.Y.1999) (finding that an ordinance prohibiting all political speech and solicitation except political campaigning on a village green was content-based and invalid)). Our society, however, has permitted content-based restrictions in types of speech that are "of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." *R.A.V.,* 505 U.S. at 383, 112 S.Ct. 2538 (*quoting Chaplinsky v. New Hampshire,* 315 U.S. 568, 572, 62 S.Ct. 766, 86 L.Ed. 1031 (1942)). For a state to enforce a content-based restriction, it must show that the regulation is necessary to serve a compelling state interest and is narrowly drawn to achieve that end. *Perry,* 460 U.S. at 45, 103 S.Ct. 948.

In *Carey v. Brown,* 447 U.S. 455, 459, 100 S.Ct. 2286, 65 L.Ed.2d 263 (1980), a civil rights organization protested the alleged failure of the Mayor of Chicago to support busing of school children. The protest occurred on the public sidewalk on front of the Mayor's home. The protestors were arrested and charged with violating an Illinois statute that made it a Class B misdemeanor to "picket before or about the residence or dwelling of any person," but permitted the peaceful picketing of a "place of employment involved in a labor dispute." 447 U.S. at 457, 100 S.Ct. 2286. The protestors sought a declaration that the Illinois residential picketing statute was facially invalid under the First and Fourteenth Amendments. The protestors argued that the law was overbroad and vague, and that it imposed an impermissible content-based restriction on protected expression in light of the exception for labor picketing. 447 U.S. at 458, 100 S.Ct. 2286.

The Supreme Court held that the Illinois statute violated the Equal Protection Clause because it selectively proscribed peaceful picketing "on the basis of the placard's message"—*i.e.,* it impermissibly "distinguished between labor picketing and all other peaceful picketing without any showing that the latter was 'clearly more disruptive' than the former." *Carey,* 447 U.S. at 459–60, 465, 100 S.Ct. 2286; *accord, Police Department of Chicago v. Mosley,* 408 U.S. 92, 100, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972) (invalidating as content-based an ordinance criminalizing picketing in front of schools, but excepting ***1245** labor-related picketing). The Court reasoned that the legality of residential picketing

depends solely on the nature of the message being conveyed. On its face, the Illinois statute prefers the expression of views about labor disputes, and allows the free dissemination of views on that subject, but restricts discussion of all other issues and subjects. *Carey,* 447 U.S. at 460–61, 100 S.Ct. 2286.

The Supreme Court found that "nothing in the content-based labor-nonlabor distinction has any bearing whatsoever on privacy," and that peaceful labor picketing is no less disruptive than peaceful picketing on issues of broader social concern. 447 U.S. at 465, 100 S.Ct. 2286. The Court observed that labor picketing is no more deserving of First Amendment protection than are public protests over other issues, particularly the economic, social, and political subjects about which the parties before the Court wished to demonstrate. 447 U.S. at 466, 100 S.Ct. 2286.

c. Overbreadth

[13] A facial challenge, as distinguished from an as-applied challenge, seeks to invalidate a statute or regulation itself. *Jacobs v. Florida Bar,* 50 F.3d 901, 905–06 (11th Cir.1995). If a facial challenge is successful, the court will strike down the invalid statute. *Stromberg v. California,* 283 U.S. 359, 369–70, 51 S.Ct. 532, 75 L.Ed. 1117 (1931). For a facial challenge to be successful, a plaintiff generally must establish that no set of circumstances exists under which the law would be valid. *Adler v. Duval County Sch. Bd.,* 206 F.3d 1070, 1083–84 (11th Cir.2000) (*en banc*) (*quoting U.S. v. Salerno,* 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987)).

[14] Statutes or regulations may not "sweep unnecessarily broadly and thereby invade the area of protected freedoms." *NAACP v. Alabama,* 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958). This is known as the overbreadth doctrine. *See* Gerald Gunther & Kathleen M. Sullivan, Constitutional Law 1326—37 (13th ed.1997). A court may invalidate an overly broad law even though the speech at issue could have been proscribed by a more narrowly drawn law. *Id.* Courts invalidate overly broad statutes or regulations because "persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions provided by a statute susceptible of application to protected expression." *Gooding v. Wilson,* 405 U.S. 518, 521, 92 S.Ct. 1103, 31 L.Ed.2d 408 (1972); *see also United States v. Frandsen,* 212 F.3d 1231, 1236 n. 3 (11th Cir.2000), *quoting Forsyth County v. Nationalist Movement,* 505 U.S. 123, 129, 112 S.Ct. 2395, 120 L.Ed.2d 101 (1992).

[15] A plaintiff may facially challenge an overly broad statute even though a more narrowly drawn statute would be valid as applied against the plaintiff. *Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent,* 466 U.S. 789, 799, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984). Courts are circumspect in applying overbreadth, however, for fear that a wide-sweeping overbreadth doctrine would swallow traditional standing requirements. *Id.* As such, the Supreme Court has stated that, in order for the doctrine to apply, a statute's overbreadth must be substantial. *Broadrick v. Oklahoma,* 413 U.S. 601, 615, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973).

While "substantial overbreadth" has never been defined, the Supreme Court has held that "the mere fact that one can conceive of some impermissible applications ***1246** of a statute is not sufficient to render it susceptible to an overbreadth challenge." *Vincent,* 466 U.S. at 800, 104 S.Ct. 2118. The overbreadth doctrine stems from the interest of "preventing an invalid statute from inhibiting the speech of third parties who are not before the Court." *Id.* at 800–01, 104 S.Ct. 2118 ("there must be a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court for it to be facially challenged on overbreadth grounds."); *cf. Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.,* 455 U.S. 489, 497, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982) (the overbreadth doctrine does not apply to commercial speech).

At least one court of appeals has recognized the similarity between the overbreadth analysis, and the time, place, and manner restriction analysis. *Krantz v. City of Fort Smith,* 160 F.3d 1214, 1218–22 (8th Cir.1998), *cert. denied,* 527 U.S. 1037, 119 S.Ct. 2397, 144 L.Ed.2d 797 (1999) ("we also agree with the district court that plaintiffs' overbreadth challenge is governed by the line of cases addressing time, place and manner restrictions"). Indeed, determining whether a content-neutral statute is narrowly tailored is similar, if not identical, to determining overbreadth. Logic, if not existing case law, suggests that an overly broad statute cannot be narrowly tailored. Conversely, a narrowly-tailored statute cannot be overly broad. Accordingly, this Court's analysis of the narrowly-tailored prong of the time, place and manner regulation mirrors its overbreadth analysis.

d. Vagueness

Statutes or regulations may also be invalid because of vagueness.[5] The void-for-vagueness doctrine draws upon the procedural due process requirement that a law must provide "sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." *Jordan v. De George,* 341 U.S. 223, 231, 71 S.Ct. 703, 95 L.Ed. 886 (1951). A law will be void for vagueness if persons "of common intelligence must necessarily guess at its meaning and differ as to its application...." *Connally v. General Constr. Co.,* 269 U.S. 385, 391, 46 S.Ct. 126, 70 L.Ed. 322 (1926). In analyzing a statute or regulation for vagueness, the court applies a stricter standard for First Amendment challenges than in other contexts. *Smith v. Goguen,* 415 U.S. 566, 572–73, 94 S.Ct. 1242, 39 L.Ed.2d 605 (1974); *compare* ***1247** *Grayned v. City of Rockford,* 408 U.S. 104, 105, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972) (anti-noise ordinance) *with United States v. Nat'l Dairy Products Corp.,* 372 U.S. 29, 29–30, 83 S.Ct. 594, 9 L.Ed.2d 561 (1963) (consumer competition statute).

e. Prior Restraints on Speech

[16] A law that prohibits or restricts speech without a permit is a prior restraint on speech. A prior restraint exists "when the government can deny access to a forum for expression before the expression occurs." *United States v. Frandsen,* 212 F.3d 1231, 1236–37 (11th Cir.2000). Plaintiffs may challenge statutes involving prior restraints on speech as facially invalid without demonstrating that "there are no conceivable set of facts where the application of the particular government regulation might or would be constitutional." *Frandsen,* 212 F.3d at 1236, *citing City of Lakewood v. Plain Dealer Publ'g Co.,* 486 U.S. 750, 755–56, 108 S.Ct. 2138, 100 L.Ed.2d 771 (1988). A facial challenge is appropriate when a permit lacks adequate procedural safeguards necessary to ensure against undue suppression of protected speech. 212 F.3d at 1236.

[17] A facially valid prior restraint on protected expression contains three procedural safeguards that obviate the dangers of censorship. *Freedman v. Maryland,* 380 U.S. 51, 58–59, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965). First, the burden of going to court to suppress the speech, and the burden of proof once in court, must rest with the government. *Id.; Frandsen,* 212 F.3d at 1238. Second, any restraint prior to a judicial determination may only be for a specified brief time period in order to preserve the *status quo.* Where a licensor "has unlimited time within which to issue a license, the risk of arbitrary suppression is as great as the provision of unbridled discretion." *Frandsen,* 212 F.3d at 1239, *quoting FW/PBS, Inc., v. City of Dallas,* 493 U.S. 215, 226–27, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990) (plurality). Third, an avenue for prompt judicial review of the censor's decision must be available. *Freedman,* 380 U.S. at 58–59, 85 S.Ct. 734; *Frandsen,* 212 F.3d at 1238.

f. Reconsideration of Facial Challenges

"The law of the case" doctrine states that a trial court must follow an appellate court decision on an issue in subsequent trial court proceedings unless the presentation of new evidence or a change in controlling laws compels a different result. *Piambino v. Bailey,* 757 F.2d 1112, 1120 (11th Cir.1985); *see also White v. Murtha,* 377 F.2d 428, 431 (5th Cir.1967); *Terrell v. Household Goods Carriers' Bureau,* 494 F.2d 16, 19 (5th Cir.1974). The law of the case doctrine "applies to all issues decided expressly or by necessary implication; it does not extend to issues the appellate court did not address." *Piambino,* 757 F.2d at 1120.

III. *APPLICATION*

A. STANDING

1. *Background Regarding Standing*

On December 29, 2002, Bischoff, Stites and Spangle went to the heavily-trafficked intersection of Irlo Bronson Memorial Highway and Old Vineland Road in Osceola County, Florida, with other members of the Christian Life Family Center, a Baptist Church.[6] They protested Walt Disney World's purported support of homosexuality ***1248** by standing in the median between traffic lanes and on the side of the road, displaying signs and distributing literature to passing vehicles. Protesters carried large signs bearing slogans like "Choose Jesus Over Mickey" and "Disney Promotes Homosexuality." Docket No. 95, Exhibit B. The literature was titled "Why Boycott Disney?," and listed a number of reasons why the protesters believed that Walt Disney, Inc. supported "anti-family activities," including homosexuality, violence, incest, and drug abuse. *Id.,* Exhibit A. Bischoff held a sign and distributed literature. Stites also held a sign, and held literature for others. Spangle distributed literature.

Soon after the protesters arrived at around 8:00 a.m., an Osceola County Sheriff's Deputy identifying herself as Officer Crawford approached Bischoff.[7] The deputy told Bischoff that the protesters were impeding traffic, and that if they did not move, she would have to arrest them. According to Bischoff, the deputy did not answer her inquiries

concerning exactly why Bischoff might be arrested, but instead returned to her vehicle and spoke on the radio.

More Osceola County Sheriff's Deputies arrived, and warned the protesters that they were impeding traffic and had to disperse. Officers then arrested Benham, whom Bischoff never saw standing in the road or distributing literature. The officers warned the protesters that anybody who stepped in the road would be arrested. The officers then arrested Bowman and Spangle when they stepped into the road.[8] Bischoff and Stites witnessed these arrests.

After the arrests of Bowman and Spangle, the protesters soon disbanded at around 1:00 p.m., although they had planned to protest until around 5:00 p.m. Both Bischoff and Stites were afraid that they would also be arrested. They have not returned to the intersection of Irlo Bronson Memorial Highway and Old Vineland Road to protest since December 29, 1997, although they expressed a desire to protest again at that location.

2. *Standing Analysis*

All parties concede that Spangle, who was arrested, has standing. Bischoff and Stites claim to have been threatened with arrest for a violation of Fla. Stat. §§ **316.2045** and 316.2055, and the Court addresses their claims collectively.

a. Findings as to Injury in Fact

The Court finds that both Bischoff and Stites were threatened with arrest, and ***1249** thereby suffered an injury in fact.[9] *See Bischoff,* 222 F.3d at 884 ("Plaintiffs' testimony that they were threatened with arrest for engaging in free speech activities is evidence of an actual and concrete injury wholly adequate to satisfy the injury in fact requirement of standing."). Bischoff and Stites' unrefuted testimony was credible in this regard. At the hearing, Sheriff Aycock and the Attorney General argued that Bischoff and Stites had suffered no injury in fact because they had never been threatened with arrest for the same activities that led to the arrests of Spangle, Bowman and Benham. Specifically, Defendants maintained that the officers warned the protesters that they would be arrested for stepping into the road to distribute literature, and that Spangle, Bowman and Benham had stepped into the road. Because Bischoff and Spangle did not step in the road, according to Sheriff Aycock and the Attorney General, they suffered no injury from the threat to arrest those who stepped into the road. This argument is meritless.

First, the threat of arrest was not limited to those who stepped in the road—or at least no such limit was proved at the hearing. Sheriff Aycock himself argued in his brief that protesters who did not go into the street, but merely approached vehicles to solicit, nevertheless violated Florida law. Although Sheriff Aycock argued in his memorandum that the conduct of Spangle, Benham and Bowman was more hazardous because they entered the road, according to the Sheriff of Osceola County "those who stood on the grassy island and handed their materials across to drivers ..." also were subject to arrest. Docket No. 91 at 6, filed August 22, 2002. Sheriff Aycock's contrary argument five days later at the hearing—that persons who distributed literature (Bischoff) or persons who aided and abetted them (Stites) were not subject to arrest—rings hollow.

Second, it is insignificant that Bischoff and Stites may have been threatened with arrest for violating different sub-parts of Fla. Stat. §§ **316.2045** and 316.2055 than those for which Spangle, Benham and Bowman were arrested. As discussed in detail below, these statutes state numerous means by which a defendant might impede traffic or unlawfully distribute handbills. Bischoff and Stites may well suffer an injury-in-fact sufficient to confer standing even if their conduct did not mirror, subsection for subsection or step for step, Spangle's conduct. To deny standing to Bischoff and Stites on this basis would elevate form over substance.

b. Findings as to Causation

Similarly, Bischoff and Stites have demonstrated a causal link between the injury they suffered and Sheriff Aycock's enforcement of the contested statutes. According to Sheriff Aycock, both Bischoff and Stites were engaged in conduct violative of the same Florida laws for which Osceola County Sheriff's Deputies arrested Plaintiff Spangle. *Bischoff,* 222 F.3d at 885.

c. Findings as to Likelihood of Redress

Finally, the relief Bischoff and Stites seek, a facial invalidation of the Florida ***1250** statutes at issue, would redress their injury if granted. *Bischoff,* 222 F.3d at 885. If Fla. Stat. §§ **316.2045** and 316.2055 are declared invalid, then Bischoff and Stites could return to the same site in Osceola County to protest without fear of arrest for violating these statutes. For the above reasons, Bischoff, Stites and Spangle have standing to contest the constitutionality of these Florida statutes.

B. FACIAL CHALLENGES UNDER THE CONSTITUTION

1. *Reconsideration of Facial Challenges*

The district court first must decide whether to re-examine Fla. Stat. §§ 316.2045 and 2055 on remand in light of the pre-appeal disposition of The Honorable G. Kendall Sharp. Docket 48. Judge Sharp granted summary judgment to former defendants Sheriff Charles Croft and Osceola County on Bischoff and Stites' facial challenges. Judge Sharp relied primarily on a finding that neither plaintiff had standing to challenge either statute, but ruled in the alternative that the two statutes imposed permissible time, place and manner restrictions. *Id.* at 9. The Eleventh Circuit refrained from reviewing the district court's ruling on the merits of Plaintiffs' facial challenges. *See Bischoff,* 222 F.3d at 886. Defendants argue that the Eleventh Circuit's refusal to address the facial challenge prohibits the district court from reconsidering Plaintiffs' facial challenges.

Plainly, the Eleventh Circuit did not address the facial validity of the contested Florida laws. *See Bischoff,* 222 F.3d at 886. Absent a limited remand and clear retention of jurisdiction in the Court of Appeals, a district court is free to re-evaluate its earlier rulings in order to achieve a legally correct result, particularly when the Court of Appeals has provided new enlightenment. Accordingly, the Court proceeds to consider Plaintiffs' facial challenges to Fla. Stat. §§ 316.2045 and 316.2055.

2. *Facial Analysis of Fla. Stat. § 316.2045*

Plaintiffs contest the facial validity of Fla. Stat. § 316.2045, a law prohibiting the willful obstruction of public streets, highways and roads. Plaintiffs raise three grounds. First, Plaintiffs contend that Fla. Stat. § 316.2045 is an invalid content-based statute that impermissibly regulates the type of speech allowed in a public forum. Second, Plaintiffs argue that Fla. Stat. § 316.2045 is void for vagueness because it criminalizes conduct that falls within undefined terms, and because it establishes a licensing system that lacks the requisite procedural safeguards. Third, Plaintiffs allege that Fla. Stat. § 316.2045 is overly broad in that it applies to a wide range of protected First Amendment conduct.

Any facial analysis must begin with a very close analysis of the language chosen by the legislature in order to determine the statute's exact reach or scope. *See Frisby,* 487 U.S. at 482, 108 S.Ct. 2495. Section 316.2045 (captioned "Obstruction of public streets, highways and roads") states, in pertinent part:

> (1) It is unlawful for any person or persons willfully to obstruct the free, convenient and normal use of any public street, highway or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, by standing or approaching motor vehicles thereon, or by endangering ***1251** the safe movement of vehicles or pedestrians traveling thereon; and any person or persons who violate the provisions of this subsection, upon conviction, shall be cited for a pedestrian violation, punishable as provided in chapter 318.
>
> (2) It is unlawful, without proper authorization or a lawful permit, for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by any of the means specified in subsection (1) in order to solicit. Any person who violates the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. Organizations qualified under § 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, or persons acting on their behalf are exempted from the provisions of this subsection by the state. Permits for the use of any portion of a state-maintained road or right-of-way shall be required only for those purposes and in the manner set out in § 337.406.
>
> (3) Permits for the use of any street, road or right-of-way not maintained by the state may be issued by the appropriate local government.
>
> (4) Nothing in this section shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity.

Fla. Stat. § 316.2045.

Section one of § 316.2045 makes it unlawful wilfully to obstruct the normal use of any road "by impeding, hindering, stifling, retarding, or restraining traffic or passage" on the road. Section one also prohibits the wilful obstruction of any road's normal use "by standing or approaching motor vehicles thereon." Section one is ambiguous as to whether it is unlawful for an individual to wilfully obstruct the free use of a road simply "by standing," or whether she must do so "by standing ... thereon," *i.e.,* on the road. It is clear, however, from the language of section one that a person

may violate § 316.2045(1) by standing without approaching a motor vehicle.

Thus, section one prohibits a person from wilfully retarding traffic by standing on the side of the road, whether or not she is holding a sign.[10] Section one makes no exceptions for political campaigning, for charitable work, or for permitted conduct. ***1252** A person violating section one commits a non-criminal pedestrian violation or infraction punishable by a fifteen dollar fine. Fla. Stat. § 316.2045(1); Fla. Stat. § 316.655(1); Fla. Stat. § 318.13(3); Fla. Stat. § 318.18(1)(a); Fla. Stat. § 775.082(5).[11]

Section two of § 316.2045 similarly makes it unlawful for any person wilfully to obstruct the normal use of a road by any means specified in section one "in order to solicit." The term "solicit" is not defined. Any person who violates section two, however, is guilty of a crime—a second degree misdemeanor punishable by "a definite term of imprisonment not exceeding 60 days," a $500 fine, or both. Fla. Stat. § 316.2045(2); Fla. Stat. § 775.082(4)(b); Fla. Stat. § 775.083(1)(e). The criminality of a defendant's conduct and the possibility that she may spend up to two months in jail depends on whether she has retarded traffic "in order to solicit." The firefighter collecting money in a boot for the families of firefighters killed on September 11 is subject to arrest and up to two months imprisonment, as is the ninth grader hoping to entice cars into a charity car wash.

Unlike section one, section two of § 316.2045 lists three exceptions that decriminalize specific activities: 1.) the Internal Revenue Code § 501(c)(3) exception; 2.) the exception for political campaigning; and 3.) the exception for permitted conduct. First, registered organizations qualified under Internal Revenue Code, 26 U.S.C. § 501(c)(3) (list of types of tax exempt organizations)—or "*any persons or organizations acting on their behalf* "—are exempted from section two for activities on roads not maintained by the state. Fla. Stat. § 316.2045(2) (emphasis supplied). Thus, a person acting on behalf of Church A (which qualifies under § 501(c)(3)) may protest, wilfully retard traffic, and solicit with impunity on an Osceola County road, but a Church B parishioner engaged in the very same conduct a few blocks down the same road faces possible imprisonment because Church B is not § 501(c)(3) qualified or registered. Similarly, persons from Church A may protest perceived pro-homosexual bias at Walt Disney World, Inc.—no matter how severe the effect on traffic—but persons protesting on behalf of Disney (which is not likely a § 501(c)(3) corporation) would risk incarceration if they responded from the other side of the same Osceola County road.[12]

Second, section four of Fla. Stat. § 316.2045 states that "[n]othing in this ***1253** section shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity." The term "political campaigning" is not defined. One can surmise from ordinary usage that some conduct is political campaigning: "Vote for Janet Reno;" or "Vote Republican."[13] Other conduct may be less clear, or depend on the context: "Impeach Nixon;" "Support Democrats on Prescription Drugs;" "Defeat the NRA Candidate;" "Vote Pro–Choice;" "Elect Judge Jones" (non-partisan); or perhaps "Choose Mickey." Yet the criminality of a defendant's conduct and the possibility that she may spend up to two months in jail depends on whether she has retarded traffic while "political campaigning."[14] Under all parties' interpretation of § 316.2045, a ninth grader risks a term in the Osceola County Jail if her charity car wash sign slightly retards traffic, but a Nazi party candidate for governor may back up traffic for miles with impunity.

Section 316.2045 specifies a third exception available to law-abiding citizens who do not wish to violate Florida law—obtain a permit. Sections two, three, and four of § 316.2045 decriminalize the wilful retarding of traffic where the solicitor has obtained a permit. Section two specifies that it is only unlawful to solicit "without proper authorization or a lawful permit." Section two is unclear as to whether the words "proper authorization or" are mere surplusage, or whether one can obtain "proper authorization" without obtaining a "lawful permit."[15] In any event, there is no violation of § 316.2045(2) (a second degree misdemeanor)[16] if one obtains a permit. The permit exception should be a useful option for a law-abiding person wishing to avoid criminal conduct. That person may seek a permit's protection because she cannot discern whether her intended conduct is in fact "soliciting," or whether her intended conduct falls within the safe harbor of the § 501(c)(3) exception or the "political campaigning" exception.

But the permit exception is far more complicated than it appears upon first examination. Section 316.2045(3) establishes a permitting rule for roads not maintained by the state. Section three simply states that "[p]ermits for the use of any street, road, or right-of-way not maintained by the state may be issued by the appropriate local government." Section two, however, establishes a different permitting rule for state-maintained roads. Permits for the ***1254** use of a

state-maintained road or right-of-way "shall be required *only for those purposes* and in the manner set out in § 337.406." Fla. Stat. § **316**.**2045**(2) (emphasis supplied). The language of § **316**.**2045**(2) requires a permit for the use of state roads only for certain specified purposes—no permit is otherwise required. Apparently, a solicitor may wilfully retard traffic without a lawful permit so long as he is not using the state road for a purpose specified in Fla. Stat. § 337.406.[17]

But how would a person intending to solicit on a state road determine whether or not he will be using the state road for a specified purpose (and therefore need a permit)? Section 337.406 of the Florida Statutes does not clearly specify those purposes for which a permit is required. Section 337.406 is itself a separate criminal statute—a second degree misdemeanor—punishable by "a definite term of imprisonment not exceeding 60 days," a $500 fine, or both. Fla. Stat. § 337.406(4); Fla. Stat. § 775.082(4)(b); Fla. Stat. § 775.083(1)(e). Under § 337.406(1), it is unlawful to make any use of the right-of-way of a state transportation facility (an undefined term) outside an incorporated municipality in any manner that interferes with the safe and efficient movement of people or property on the facility. Any such use is a *prohibited use.* Prohibited uses include, but are not limited to, the free distribution or display of any goods or property; solicitation for charitable purposes; and the display of advertising of any sort. Fla. Stat. § 337.406(1).

Although no party in this action seeks a declaration that Fla. Stat. § 337.406 is unconstitutional, our analysis of § **316**.**2045** is aided by identifying the conduct that § 337.406 criminalizes. Again, the firefighter collecting money in a boot and the ninth grader hoping to entice cars into a car wash are each subject to arrest and a jail term of up to two months if they interfere with the safe and efficient movement of cars. Indeed, § 337.406 not only omits the § 501(c)(3) exemption found in § **316**.**2045**(2), but expressly criminalizes "solicitation for charitable purposes." Furthermore, § 337.406 not only omits the "political campaigning" exemption found in § **316**.**2045**(4), but expressly criminalizes "the display of advertising of any sort." Florida legislators and state judges advertising for re-election or retention along the roadway may join the firefighters and ninth graders in jail.

Section 337.406(1) does provide for permits: "any portion of a state transportation facility may be used for an art festival, parade, fair, or other special event if permitted by the appropriate local governmental entity." The term "other special event" is not defined, and the "appropriate" local governmental entity (*i.e.,* the county, an unincorporated municipality) is not specified. Section 337.406(1) confers on incorporated municipalities special authority to issue permits of limited duration for the temporary use of the right-of-way "*for any of these prohibited uses* if it is determined that the use will not interfere with the safe and efficient movement of traffic and the use will cause no danger to the public." Fla. Stat. § 337.406(1) (emphasis supplied).[18]

But § 337.406(1) is unclear as to whether the term "*these* prohibited uses" refers ***1255** only to uses "for an art festival, parade, fair or other special event." May municipalities also permit other uses prohibited by § 337.406(1), such as charitable solicitation that interferes with traffic movement? The answer may be important not only to someone seeking a permit for soliciting in a municipality, but also to someone who simply wants to avoid using a state road for a purpose specified in Fla. Stat. § 337.406—*i.e.,* a person who has no permit but wants to avoid violating § **316**.**2045**(2). The statute provides no answer. This level of detail in the analysis is necessary because the Florida Legislature chose to make the criminality of a person's conduct under § **316**.**2045**(2) dependent on the "purposes" set forth in § 337.406.

On its face, § **316**.**2045**(2)–(3) seems to decriminalize conduct by a permit holder, but the permit exemptions are illusory. Although forewarned that the Court would inquire about permitting at oral argument, Docket No. 88 at 2, neither Sheriff Aycock nor the Attorney General of the State of Florida could point to a description in the record (or otherwise describe) how one might obtain the permits referred to in Fla. Stat. § **316**.**2045**(2)–(3) (permits for state-maintained and non-state-maintained roads, or other "proper authorization") and § 337.406(1)–(2) (permits for use of state transportation facilities by the appropriate local governmental entity, both outside and within incorporated municipalities, including roads on the State Highway System).

Although Sheriff Aycock and the Attorney General agreed that the intersection of Irlo Bronson Memorial Highway and Old Vineland Road was in unincorporated Osceola County, they could not identify the appropriate local government entity to issue a permit for that location. Also, they were unable to determine whether the intersection was or was not state-maintained.[19] Counsel for the Attorney General was unable to point the Court to any written procedures for obtaining permits, although she orally described what little a

colleague had learned about the State of Florida's permitting practice.

According to the Attorney General, a permit seeker would first go to the local government, in this case the Osceola County Sheriff's Office, to request a permit. If a permitting process existed at all in Osceola County, then the Osceola County Sheriff's Office would have the applicant fill out a permit application. Someone at the Osceola County Sheriff's Office would decide "what their interests are in granting or denying the permit." If the Osceola County Sheriff's Office wanted to grant the permit, then the Sheriff's Office would forward the application to an unspecified person at the Florida Department of Transportation, Maintenance Department (location unavailable, although counsel believed that the Maintenance Division had an office in Orange County). Counsel for the Attorney General was uncertain whether someone in the Maintenance Department would then review, grant, or deny the application, and was uncertain whether further review of an adverse decision was possible. The Attorney General could point to no time limits imposed at any stage of the permitting procedure. If ***1256** no local permitting procedure existed in a particular county or municipality, then there would be no permitting available at the state level. Sheriff Aycock read into the record a letter stating that Osceola County had no procedure for permitting.[20] Docket No. 98 at 191.

3. *Fla. Stat. § 316.2045 Is Content–Based and Vague*

On its face, § **316**.**2045** regulates speech on the basis of the ideas expressed even though § **316**.**2045** says nothing about pro-homosexual or anti-homosexual speech, and nothing about pro-Disney or anti-Disney speech. Rather, section **316**.**2045** selectively proscribes protected First Amendment activity—*i.e.,* it impermissibly prefers speech by § 501(c)(3) charities and by persons who are engaged in "political campaigning" over all other activity that retards traffic, without any showing that the latter is more disruptive than the former. *See Carey,* 447 U.S. at 459–60, 465, 100 S.Ct. 2286; *Mosley,* 408 U.S. at 100, 92 S.Ct. 2286.

Section **316**.**2045** makes the legality of conduct that retards traffic depend solely on the nature of the message being conveyed. Said differently, the Florida statute facially prefers the viewpoints expressed by registered charities and political campaigners by allowing ubiquitous and free dissemination of their views, but restricts discussion of all other issues and subjects. Section **316**.**2045** of the Florida Statutes, therefore, is presumptively invalid under the Equal Protection Clause and the First Amendment of the United States Constitution because it imposes content-based restrictions on speech in a traditional public forum.

Furthermore, § **316**.**2045** does not sufficiently define the conduct that it proscribes when measured by common understanding and practices. As is evident from the above facial analysis, persons of common intelligence (including Osceola County Sheriff's Deputies and the Attorney General of the State of Florida) must necessarily guess at its meaning and differ as to its application. Section one is ambiguous as to whether it is unlawful for an individual to wilfully obstruct the free use of a road simply "by standing," or whether she must do so by standing on the road. The undefined terms "solicit" and "political campaigning" contribute to the indefiniteness of § **316**.**2045**, as does section two's reference to and partial incorporation of the opaque and undecipherable permit provisions of another criminal statute, § 337.406. It is equally problematic that section two creates a different permit scheme from the permit scheme in section three, and that the permit scheme in section two actually seems to criminalize *additional* conduct that would otherwise be exempted under section two, *i.e.,* § 501(c)(3) solicitation and political campaigning. Section **316**.**2045** therefore is void for vagueness.

4. *Section 316.2045 Is Not Narrowly Tailored to Meet a Compelling State Interest, But Rather Is Overbroad*

Because Fla. Stat. § **316**.**2045** is content-based, it is only valid if narrowly tailored to meet a compelling state interest. *Perry,* 460 U.S. at 45, 103 S.Ct. 948. Determining ***1257** whether a statute is narrowly tailored is similar, if not identical, to determining overbreadth. Defendants assert that Fla. Stat. § **316**.**2045** is designed to protect the safety of both motorists and pedestrians. Section **316**.**2045** supports defendants' assertion. Section **316**.**2045**(2) refers to and adopts the licensing provisions in Fla. Stat. § 337.406. That statute states the legislature's intent:

> Failure to prohibit the use of right-of-way in this manner will endanger the health, safety, and general welfare of the public by causing distractions to motorists, unsafe pedestrian movement within travel lanes, sudden stoppage or slowdown of traffic, rapid lane changing and other dangerous traffic movement, increased vehicular accidents, and motorist injuries and fatalities.

Fla. Stat. § 337.406(1).

The Florida legislature has also stated its interest in uniformity from county to county. Section 316.2045 is part of the Florida Uniform Traffic Control Law. Fla. Stat. § 316.001. The Florida legislature's intent in adopting the Florida Uniform Traffic Control Law was "to make uniform traffic laws to apply throughout the state and its several counties and uniform traffic ordinances to apply in all municipalities." Fla. Stat. § 316.002 (purpose); *accord,* Fla. Stat. § 316.007 (the "provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein ..."). The Florida legislature's intent in decriminalizing the pedestrian violations in Fla. Stat. §§ 316.2045(1) and 316.2055 is "facilitating the implementation of a more uniform and expeditious system for the disposition of traffic infractions." Fla. Stat. § 318.12 (Florida Uniform Disposition of Traffic Infractions Act).

Florida's interest in protecting the safety of persons using a public forum is at least a "significant" governmental objective. *See Heffron,* 452 U.S. at 650, 101 S.Ct. 2559 (content-neutral restriction of speech to rented booths met a significant government interest in maintaining the orderly movement of crowds at a state fairground). The Court assumes without deciding that Florida's desire to protect public safety on the roads is also a "compelling" government interest. Therefore, the Court proceeds to determine whether Fla. Stat. § 316.2045 is narrowly tailored to meet Florida's stated objectives. It is not.

Nothing in the § 316.2045's content-based charity-noncharity distinction or political-nonpolitical distinction has any bearing whatsoever on road safety or uniformity. Speech by a § 501(c)(3) charity and speech by a politician is no more deserving of First Amendment protection than is a public protest over other issues, particularly the economic, social, and political subjects about which the parties before the Court wish to demonstrate. Traffic accidents or backups caused by political campaigners or duly-licensed charitable organizations are no less problematic than traffic accidents or backups caused by other political speakers or non-licensed charitable organizations. *See Krafchow,* 62 F.Supp.2d at 710. These groups' differing political messages are entirely irrelevant to Defendants' stated goal of pedestrian and motorist safety. Furthermore, there are less restrictive alternatives available. Florida could allow all political speech regardless of message on the state's roads, while continuing the prohibition on solicitation. 62 F.Supp.2d at 711, *citing Boos v. Barry,* 485 U.S. 312, 326–27, 108 S.Ct. 1157, 99 L.Ed.2d 333 (1988) (finding the law at issue not narrowly tailored because ***1258** "a less restrictive alternative was readily available.").

The language of Fla. Stat. § 316.2045 does nothing to promote Florida's interest in uniform traffic laws and dispositions. The statute's permitting procedure varies as one travels along a given road from county to county, municipality to municipality, and also as one enters and then leaves parts of the road that the Florida Department of Transportation's Maintenance Division maintains. If the Attorney General of the State of Florida was unable to determine whether the intersection in question is state-maintained when the issue is relevant in a federal action, and was unable to identify the proper person to contact for a permit, no law-abiding citizen likely can. The undefined terms "solicit" and "political campaigning," which transform handbilling from a civil pedestrian infraction into a crime, will also encourage varying on-the-spot interpretations by the arresting deputies, not uniformity.[21]

Therefore, Fla. Stat. § 316.2045 is an invalid content-based statute. Section 316.2045 sweeps unnecessarily broadly, and invades the area of protected freedoms. There is a realistic danger that section 316.2045 will significantly compromise recognized First Amendment protections of parties not before the Court. Section 316.2045, therefore, is content-based and substantially overbroad. Persons whose expression is constitutionally protected—whether firemen, ninth-graders, politicians, or judges—may well refrain from exercising their rights for fear of arrest and incarceration.

Section 316.2045 also imposes a prior restraint on speech by restricting speech without a permit. A prior restraint exists because the governments of Florida and of each county can deny access to a forum for expression, the borders of Florida's roads, before the expression occurs. The permitting scheme established by § 316.2045 lacks the procedural safeguards necessary to ensure against undue suppression of protected speech. Neither this Court, nor any citizen wishing to engage in legal speech on a Florida road, can determine whether a particular permitting procedure applies to a given stretch of road; whether a particular agency or person has been designated to accept and grant or deny applications; whether any substantive constraints are placed on that person's discretion to deny a license;[22] whether prompt judicial review is available for a denial; and whether there is any time constraint on the issuance or denial of a license. From the face of the statute, it appears that the licensor has unlimited time within which to issue a license, so the risk

of ***1259** arbitrary suppression is as great as the provision of unbridled discretion. *Frandsen,* 212 F.3d at 1239.

5. *Facial Analysis of Fla. Stat. § 316.2055*

Plaintiffs contest the facial validity of Fla. Stat. § 316.2055 on three grounds. First, Plaintiffs contend Fla. Stat. § 316.2055 is an invalid time, place and manner restriction. Second, Plaintiffs argue Fla. Stat. § 316.2055 is void-for-vagueness because it criminalizes terms without defining them. Third, Plaintiffs allege that Fla. Stat. § 316.2055 is overly broad and applies to a wide range of protected First Amendment conduct.

Once again, a facial analysis of § 316.2055 begins with a close analysis of the language chosen by the legislature to determine the statute's scope. Section 316.2055 (captioned "Motor vehicles, throwing advertising material in") states, in pertinent part:

> It is unlawful for any person on a public street, highway, or sidewalk in the state to throw into, or attempt to throw into, any motor vehicle, or offer, or attempt to offer, to any occupant of any motor vehicle, whether standing or moving, or to place or throw into any motor vehicle any advertising or soliciting materials or to cause or secure any person or persons to do any one of such unlawful acts.

Fla. Stat. § 316.2055. A person violating § 316.2055 commits a non-criminal pedestrian violation or infraction punishable by a fifteen dollar fine. Fla. Stat. § 316.2055(1); Fla. Stat. § 316.655(1); Fla. Stat. § 318.13(3); Fla. Stat. § 318.18(1)(a); Fla. Stat. § 775.082(5).

Although § 316.2055 makes unlawful the dangerous practice of throwing advertising into a motor vehicle, the statute has a far broader impact on protected speech. The statute also makes it unlawful for any person on a sidewalk to offer soliciting materials to the occupant of a standing motor vehicle. The term "soliciting materials" is not defined. The term "standing" means "the halting of a vehicle, whether occupied or not, otherwise than temporarily, for the purpose of, and while actually engaged in, receiving or discharging passengers, as may be permitted by law ..." Fla. Stat. § 316.106(49).

6. *Section 316.2055 Is Not Narrowly Tailored to Meet a Significant State Interest, But Rather Is Overbroad*

Both parties agree that the intersection of Irlo Bronson Memorial Highway and Old Vineland Road is a traditional public forum, and that Fla. Stat. § 316.2055 is a content-neutral statute. Therefore, in order to be valid, Fla. Stat. § 316.2055 must be narrowly tailored to serve a significant government interest, and provide alternative channels of communication. *Grace,* 461 U.S. at 177, 103 S.Ct. 1702. While the safety interest asserted by Defendants is certainly a significant government interest, and alternative channels of communication unquestionably exist, the statute is not narrowly tailored.

Rather, Fla. Stat. § 316.2055 is a remarkably broad statute. Section 316.2055 makes it unlawful for a pedestrian on a sidewalk to hand an advertising leaflet to a willing recipient in a car that has stopped in a metered space or in a private driveway, even though such conduct has no effect on traffic or safety. The statute also makes it unlawful for someone on a roadside to hand "soliciting materials" to passengers in cars that have stopped at a light. Section 316.2055 requires no retarding ***1260** of traffic, and contains no exceptions for § 501(c)(3) charities, for "political campaigning," or for permitted activity. Because § 316.2055 makes political campaigning unlawful even from the sidewalk, the Florida legislators and state judges who choose to advertise for re-election or retention along Florida's sidewalks and roadways may join the firefighters and ninth graders in line when paying their $15 fines (or in the back of an Osceola County Sheriff's Office prisoner van should they be arrested despite the "sign-and-pay" provisions of Fla. Stat. § 318.14).

Section 316.2055 inhibits the speech of third parties not before the Court, and suppresses considerably more speech than is necessary to serve the stated government purpose of traffic safety and uniformity. It is therefore substantially overbroad, and not narrowly tailored to meet a significant state interest.

Section 316.2055 is also impermissibly vague. Section 316.2055 makes it unlawful to hand into a car any "advertising or soliciting materials." "Advertising or soliciting materials" is undefined. To some people, the term might include political campaign fund-raising materials; a road map containing service station advertisements; a matchbook embossed with the name of a hotel or candidate; a resume; an invitation to join a church or synagogue; a theme park ticket and brochure; or a coupon for a free hamburger at a local restaurant. Section 316.2055 does not provide sufficiently definite warning as to the conduct that it proscribes when measured by common understanding and practices. Persons of common intelligence (again including

the Osceola County Sheriff's Deputies and the Attorney General) must necessarily guess at its meaning and differ as to its application.

IV. *CONCLUSION*

For the above reasons, it is:

RECOMMENDED that Defendant Aycock's Motion to Dismiss against Plaintiffs [Doc. 79, filed January 9, 2002] be **DENIED**. It is

FURTHER RECOMMENDED that Defendant Butterworth's Motion to Dismiss against Plaintiffs [Doc. 81, filed January 29, 2002] be **DENIED**. It is

FURTHER RECOMMENDED that Plaintiffs be found to have standing to pursue their constitutional challenges to Fla. Stat. §§ **316.2045** and 316.2055. It is

FURTHER RECOMMENDED that Fla. Stat §§ **316.2045** and 316.2055 be found facially unconstitutional, and declared invalid.

Failure to file written objections to the proposed findings and recommendations in this report pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 6.02 within ten days of the date of its filing shall bar an aggrieved party from a *de novo* determination by the district court of issues covered in the report, and shall bar an aggrieved party from attacking the factual findings on appeal.

September 19, 2002.

All Citations

242 F.Supp.2d 1226, 17 Fla. L. Weekly Fed. D 98

Footnotes

1 Defendant Sheriff Aycock states in his Objection that "[t]he parties conceded at oral argument that Plaintiffs' as applied challenges were not ripe for summary judgment, and that no sovereign immunity or qualified immunity issues remained or existed." (Doc. 102 at 6).

The Court:	Does the State of Florida say that it could pass any statute no matter how strongly in violation of the U.S. Constitution and there could be no suit in federal court, but that the only federal review can occur after a full exhaustion of state remedies through the Florida Supreme Court and on the chance that the U.S. Supreme Court grants cert?
Ms. Becker[2]:	We understand that we have an obligation to defend the statute? ... So I was using this primarily to narrow the scope so that everybody understands the State of Florida and Attorney General are only in this case to defend that statute, but that if this broadens out to anything beyond that, that we can't be sued beyond that.
The Court:	So you don't contest that the State of Florida can be sued in federal court to determine the federal constitutionality of statutes in a declaratory judgment context?
Ms. Becker:	To the best of my knowledge, yes, your Honor, that's, yes, the state can come in for those purposes.
The Court:	And it doesn't impair that there are nominal damages sought.
Ms. Becker:	Well, the nominal damages cannot be sought against the state is what I'm getting at. So in other words, we can defend the statute, but that's it.

2 Ms. Becker is counsel for Defendants the State of Florida and Mr. Butterworth.

3 The "Defendant Sheriff in [his] Objection does not object to Magistrate Judge Glazebrook's ruling that the Plaintiffs have standing to bring their claims." (Doc. 102 at 8). All Defendants, however, concede that Mr. Spangle has standing to bring suit.

4 Section **316.2045** states:

> (1) It is unlawful for any person or persons willfully to obstruct the free, convenient and normal use of any public street, highway or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, by standing or approaching motor vehicles thereon, or by endangering the safe movement of vehicles or pedestrians

traveling thereon; and any person or persons who violate the provisions of this subsection, upon conviction, shall be cited for a pedestrian violation, punishable as provided in chapter 318.

(2) It is unlawful, without proper authorization or a lawful permit, for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by any of the means specified in subsection (1) in order to solicit. Any person who violates the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. Organizations qualified under § 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, or persons acting on their behalf are exempted from the provisions of this subsection by the state. Permits for the use of any portion of a state-maintained road or right-of-way shall be required only for those purposes and in the manner set out in § 337.406.

(3) Permits for the use of any street, road or right-of-way not maintained by the state may be issued by the appropriate local government.

(4) Nothing in this section shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity.

5 Section 316.2055 states:

It is unlawful for any person on a public street, highway, or sidewalk in the state to throw into, or attempt to throw into, any motor vehicle, or offer, or attempt to offer, to any occupant of any motor vehicle, whether standing or moving, or to place or throw into any motor vehicle any advertising or soliciting materials or to cause or secure any person or persons to do any one of such unlawful acts.

1 The Court converted Defendants' motions to dismiss to motions for summary judgment pursuant to Federal Rule of Civil Procedure 12(b)(6) because the parties presented matters outside the pleadings. Docket 87. The Court denied Plaintiffs' motion to set facial challenges for summary judgment to the extent it was inconsistent with this order. *Id.*

2 Plaintiff Seth Spangle was formerly known as Seth Marchke. He is referred to as Marchke in arrest reports, Spangle in pending motions, and both Marchke and Spangle at oral argument.

3 The Court looks primarily to the language of the statute, and also to the record. The Court's reading or construction of an ordinance, however, may find support in the representation of town counsel at oral argument. *See Frisby v. Schultz,* 487 U.S. 474, 483, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988) (majority opinion by Justice O'Connor); *but cf.,* 487 U.S. at 493 n. 3, 108 S.Ct. 2495 (questioned in Justice Brennan's dissent because town counsel's interpretations did not bind the state courts).

4 The municipality had revised the ordinance to omit an exception for labor picketing after reviewing *Carey v. Brown,* 447 U.S. 455, 100 S.Ct. 2286, 65 L.Ed.2d 263 (1980) (invalidating similar ordinance under the Equal Protection Clause). The individuals challenging the ordinance apparently conceded the law's facial content-neutrality, but argued that state law nevertheless implied an exception for labor picketing. *Frisby,* 487 U.S. at 481, 108 S.Ct. 2495.

5 The Supreme Court has stated that:

Vague laws offend several important values. First, because we assume man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute abuts upon sensitive areas of First Amendment freedoms, it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.

Grayned v. City of Rockford, 408 U.S. 104, 108–09, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972) (internal citations, marks, and footnotes omitted).

6 The Court held an evidentiary hearing on standing on August 27, 2002. At the hearing, both Bischoff and Stites testified about the events of December 29, 1997. Defendants cross-examined Bischoff and Stites and introduced in evidence: 1) a copy of the literature distributed by the protesters; 2) a videotape showing some of the events of December 29, 1997; and 3) arrest reports of Spangle, Benham and Bowman. Docket 95. Defendants offered no witnesses of their own. The Court admitted the evidence solely on the issue of standing. Therefore, the facts set forth in the above section on “Background Regarding Standing” may have no bearing on issues resolved as a matter of law in the rest of this report and recommendation.

7 Plaintiffs believe that Officer Crawford's real name was Officer Gens.

8 Plaintiffs presented no evidence demonstrating that any Osceola County Deputy Sheriffs acted unprofessionally or in a manner inconsistent with their difficult responsibility of enforcing thousands of state and federal statutes.

9 The "injury-in-fact" analysis is solely for the purposes of addressing standing to challenge the constitutionality of the Florida statutes allegedly affecting Plaintiffs' First Amendment rights. The Court makes no finding critical of Sheriff Aycock or the Osceola County Sheriff's Office.

10 As written, Fla. Stat. § **316**.**2045** criminalizes all activity that retards traffic. Therefore, any roadside speech—except for exempt § 501(c)(3) speech and political campaigning—whether political or solicitous, will violate the statute. The parties acknowledge that the Plaintiffs' action are more accurately described as "handbilling," an activity traditionally accorded more deference by the Supreme Court. *See United States v. Belsky,* 799 F.2d 1485, 1489 (11th Cir.1986) ("soliciting funds is an inherently more intrusive and complicated activity than is distributing literature"). Nevertheless, the activity may well be considered "solicitation" for the purposes of Fla. Stat. § **316**.**2045**(2)–(4). Indeed, the Attorney General argued at the hearing that Plaintiff Spangle's arrest record shows that he was arrested for solicitation, even though the protesters' activities bore none of the traditional hallmarks of solicitation. *Heffron,* 452 U.S. at 653, 665, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981) (Blackmun, J., concurring in part and dissenting in part) ("The distribution of literature does not require that the recipient stop in order to receive the message the speaker wishes to convey; instead, the recipient is free to read the message at a later time... [S]ales and the collection of solicited funds not only require the fairgoer to stop, but also 'engender additional confusion ... because they involve acts of exchanging articles for money, fumbling for and dropping money, making change, etc.' ").

11 The Florida Legislature adopted the Florida Uniform Disposition of Traffic Infractions Act in order to decriminalize certain violations of Chapter 316, the Florida Uniform Traffic Control Law, thereby facilitating the implementation of a more uniform and expeditious system for the disposition of traffic infractions. Fla. Stat. § 318.12. A person charged with a non-criminal infraction simply signs the citation, and promises to appear. Fla. Stat. § 318.14(2). A person who does not elect to appear, may pay the fine by mail or in person, and is deemed to have admitted the infraction. Fla. Stat. § 318.14(4). Such admission shall not be used as evidence in any other proceeding. *Id.* There is no right to a trial by jury or a right to court-appointed counsel for a non-criminal infraction. Fla. Stat. § 318.13(3).

12 All protesters nevertheless may be subject to non-criminal pedestrian violations under section one, which contains no § 501(c)(3) exemption. Persons who are engaged in "political campaigning," however, are exempt from both pedestrian and criminal violations under sections one and two. *See* Fla. Stat. § **316**.**2045**(4).

13 Defendants contend that the term "political campaigning" has a "clear meaning traditionally and commonly understood to refer to urging the election of a candidate to office." Docket No. 91 at 7. But the traditional and common understanding may be broader. Political campaigning may include urging the election of a slate of candidates; urging support for a political party; urging the defeat of an opposing candidate; urging the defeat of a proposition or initiative on the ballot; or urging a party-line vote on a political issue.

14 Under defendant's understanding of "political campaigning," the Osceola County Sheriff's Office must arrest the group on one side of the street holding "Impeach Clinton" posters, while the group on the other side of the street holding "Re–Elect Clinton" signs would be allowed to remain and wilfully retard traffic.

15 Section 337.406 of the Florida Statutes makes it lawful to use a state transportation facility right-of-way in a manner that interferes with traffic movement where the use is "otherwise authorized" by the rules of the Florida Department of Transportation. No such rules appear in the record.

16 There may nevertheless be a pedestrian violation. Section one contains no permitting exception.

17 Once again, there may nevertheless be a pedestrian violation. Section one contains no permitting exception.

18 Section two of Fla. Stat. § 337.406 also permits sales by persons "holding valid peddlers' licenses issued by appropriate governmental entities."

19 The Florida Department of Transportation designates roads as state-maintained roads. *See* Fla. Stat. § 316.106(50). Jurisdiction to control traffic on state roads is vested in the Florida Department of Transportation. Fla. Stat. § 316.006(1). Chartered municipalities have jurisdiction over all non-state roads in their boundaries, while counties have jurisdiction over all roads within their boundaries that do not fall under state or municipal jurisdiction. Fla. Stat. § 316.006(2)–(3).

20 Apparently some counties and some municipalities have permitting procedures, and others do not. A person's ability to obtain a permit for otherwise criminal conduct may vary from county to county, even along the same road.

21 Section one of Fla. Stat. § **316**.**2045** does not, standing alone, have the problems created by the preferences in § **316**.**2045**(2)–(4) for § 501(c)(3) speech, for "political campaigning," and for licensed speech. Standing alone, Fla. Stat. § **316**.**2045**(1) appears to be facially content-neutral. But the Florida legislature chose to include the specified exceptions

as important parts of the statute. Absent an express direction as to the legislature's intent, this Court will not sever the unconstitutional parts, and leave section one standing alone. That is a decision for the legislature.

22 The statute provides little guidance even for a permit for the use of a state-maintained road or right-of-way that is within an incorporated municipality. An unspecified local government entity "may" issue a limited and temporary permit for certain ambiguously specified uses if the entity determines that "the use will not interfere with the safe and efficient movement of traffic and the use will cause no danger to the public." Fla Stat. §§ **316**.**2045**(2) and 337.406(1).

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242 F.Supp.2d 1226
United States District Court,
M.D. Florida.
Orlando Division.

Cheryl BISCHOFF, Vicky Stites, Seth Spangle, Plaintiffs,

v.

State of FLORIDA, Robert Butterworth, in his official capacity as Attorney General of the State of Florida, Sheriff Charles C. Aycock, in his Official Capacity, Defendants.

No. 6:98CV583–ORL–28JGG.
|
Jan. 3, 2003.

Synopsis
Protesters, who were threatened with arrest for engaging in a demonstration against company's support of homosexuality, brought action challenging constitutionality of Florida statutes prohibiting obstruction of public streets, highways, and roads and prohibiting the throwing advertising materials in motor vehicles. After remand, 222 F.3d 874, the District Court, Antoon, II, J., adopted the report and recommendation of United States Magistrate Judge Glazebrook, holding that: (1) protesters had standing to contest the constitutionality of Florida statutes, and (2) challenged statutes were facially invalid under First Amendment.

Judgment for plaintiffs.

West Headnotes (17)

[1] **Constitutional Law** Criminal Law

Although they were not arrested during demonstration, protesters, who were threatened with arrest for engaging in a demonstration against company's support of homosexuality and who refrained from exercising their First Amendment rights in order to avoid arrest, had standing to contest the constitutionality of Florida statutes prohibiting obstruction of public streets, highways, and roads and prohibiting the throwing advertising materials in motor vehicles. West's F.S.A. §§ 316.2045, 316.2055.

[2] **Federal Courts** Law of the case in general

Law of the case doctrine stands for the proposition that an appellate decision on an issue must be followed in all subsequent trial court proceedings unless the presentation of new evidence or an intervening change in the controlling law dictates a different result, or the appellate decision is clearly erroneous and, if implemented, would work a manifest injustice.

[3] **Federal Courts** Law of the case in general

Law of the case doctrine is primarily concerned with the duty of lower courts to follow what has already been decided in a case; it does not, however, extend to issues the appellate court does not address.

[4] **Constitutional Law** Streets and highways

Highways Obstruction of use of highway in general

Municipal Corporations Mode of Use and Regulation Thereof in General

Florida statute prohibiting obstruction of public streets, highways, and roads was content-based and vague, and therefore violated First Amendment free speech rights; statute facially preferred the viewpoints expressed by registered charities and political campaigners by allowing ubiquitous and free dissemination of their views, but restricted discussion of all other issues and subjects. U.S.C.A. Const.Amend. 1; West's F.S.A. § 316.2045.

4 Cases that cite this headnote

[5] **Constitutional Law** Streets and highways

Highways Obstruction of use of highway in general

Municipal Corporations Mode of Use and Regulation Thereof in General

Florida statute prohibiting obstruction of public streets, highways, and roads was not narrowly tailored to meet a significant state interest, but rather it was overbroad in violation of First Amendment; nothing in statute's content-based charity—non-charity distinction or political nonpolitical distinction has any bearing whatsoever on road safety or uniformity. U.S.C.A. Const.Amend. 1; West's F.S.A. § 316.2055.

1 Cases that cite this headnote

[6] **Constitutional Law** Advertising

Constitutional Law Particular Offenses

Highways Obstruction of use of highway in general

Florida statute prohibiting the throwing of advertising materials in motor vehicles was not narrowly tailored to meet a significant state interest as required by First Amendment; in addition, it was impermissibly vague in that it failed to define the terms "advertising or soliciting materials" and thus did not provide sufficient warning as to what conduct was proscribed by the law. U.S.C.A. Const.Amends. 1, 14; West's F.S.A. § 316.2055.

1 Cases that cite this headnote

[7] **Constitutional Law** Avoidance of constitutional questions

Court interprets statutes to avoid constitutional difficulties.

[8] **Constitutional Law** Justification for exclusion or limitation

In public fora, the government may regulate the time, place and manner of expression under First Amendment so long as the restrictions are: 1) content-neutral; 2) narrowly tailored to serve a significant government interest; and 3) leave open alternative channels of communication; content-neutral regulations are those that are justified without reference to the content of the regulated speech. U.S.C.A. Const.Amend. 1.

[9] **Constitutional Law** Justification for exclusion or limitation

Under First Amendment, a valid time, place and manner restriction must also be narrowly tailored to serve a significant government interest; government's interest in protecting the safety of persons using a public forum is a valid government objective. U.S.C.A. Const.Amend. 1.

2 Cases that cite this headnote

[10] **Constitutional Law** Time, Place, or Manner Restrictions

Under First Amendment, a valid time, place and manner restriction must allow for alternative channels of communication; government may not, however, abridge a citizen's right to exercise liberty of expression in an appropriate place simply because that same expression may be exercised in another place. U.S.C.A. Const.Amend. 1.

[11] **Constitutional Law** Content-Based Regulations or Restrictions

A content-based restriction, which regulates speech on the basis of the ideas expressed, is presumptively invalid under First Amendment. U.S.C.A. Const.Amend. 1.

2 Cases that cite this headnote

[12] **Constitutional Law** Strict or exacting scrutiny; compelling interest test

For a state to enforce a content-based restriction under First Amendment, it must show that the regulation is necessary to serve a compelling state interest and is narrowly drawn to achieve that end. U.S.C.A. Const.Amend. 1.

[13] **Constitutional Law** Facial invalidity

Statutes Effect of Total Invalidity

If a facial challenge is successful, the court will strike down the invalid statute; for a facial challenge to be successful, a plaintiff generally must establish that no set of circumstances exists under which the law would be valid.

[14] **Constitutional Law** Rules and regulations in general

Constitutional Law Statutes in general

Statutes or regulations may not sweep unnecessarily broadly and thereby invade the area of protected freedoms.

[15] **Constitutional Law** Overbreadth in General

A plaintiff may facially challenge an overly broad statute even though a more narrowly drawn statute would be valid as applied against the plaintiff.

1 Cases that cite this headnote

[16] **Constitutional Law** Prior Restraints

Plaintiffs may challenge statutes involving prior restraints on speech as facially invalid under First Amendment without demonstrating that there are no conceivable set of facts where the application of the particular government regulation might or would be constitutional. U.S.C.A. Const.Amend. 1.

1 Cases that cite this headnote

[17] **Constitutional Law** Prior Restraints

Constitutional Law Time limits on decision-making

A facially valid prior restraint on First Amendment protected expression contains procedural safeguards that obviate the dangers of censorship; first, burden of going to court to suppress the speech, and the burden of proof once in court, must rest with the government, second, any restraint prior to a judicial determination may only be for a specified brief time period in order to preserve the status quo., and third, an avenue for prompt judicial review of the censor's decision must be available. U.S.C.A. Const.Amend. 1.

West Codenotes

Held Unconstitutional
West's F.S.A. §§ 316.2045, 316.2055

Attorneys and Law Firms

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Alison L. Becker, Office of the Attorney General, Civil Litigation Div., Tampa, FL, Jeffrey F. Mahl, Attorney General's Office, West Palm Beach, FL, for State of Florida.

ORDER

ANTOON, District Judge.

This cause is before the Court on Defendant Sheriff Aycock's Motion to Dismiss against Plaintiffs Cheryl Bischoff, Vicky Stites and Seth Spangle (Doc. 79, filed ***1229** January 9, 2002); and Defendant Robert Butterworth's ("Mr. Butterworth") Motion to Dismiss against Plaintiffs. (Doc. 81, filed January 29, 2002). The United States Magistrate Judge has submitted a Report and Recommendation (Doc. 100, filed September 19, 2002) providing that both Defendant Aycock's and Defendant Butterworth's Motion to Dismiss against Plaintiff be denied.

After an independent review of the record in this matter, including the Objections filed by all Defendants (Doc. 102, filed October 3, 2002 and Doc. 103, filed October 7, 2002)

and the response filed by Plaintiffs (Doc. 105 filed October 22, 2002), the Court agrees with the findings of fact and conclusions of law in the Report and Recommendation.

I. *Procedural History*

On December 29, 1997 religious activists gathered at the heavily trafficked intersection of Irlo Bronson Memorial Highway and Old Vineland Road in Osceola County, Florida for a demonstration. The activists were protesting Walt Disney's alleged support of homosexuality. The demonstrators carried signs and distributed handbills that articulated their criticism of Walt Disney's policies. In response to the demonstration, the Osceola County Sheriff's Deputies arrested three of the protesters, Phillip Benham ("Mr. Benham"), Matthew Bowman ("Mr. Bowman") and Seth Spangle ("Mr. Spangle"). They were each charged with violating section **316.2045**(2), Florida Statutes, for obstruction of traffic without a permit and section 316.2055 for throwing advertising material into vehicles.

Cheryl Bischoff ("Ms. Bischoff") and Vicky Stites ("Ms. Stites") were among the activists protesting against Walt Disney. On May 18, 1998 both Ms. Bischoff and Ms. Stites filed the instant action alleging that sections **316.2045** and 316.2055 were unconstitutional, both on their face and as applied to Plaintiffs.

Initially, this case was assigned to the Honorable Judge G. Kendall Sharp who dismissed the entire case because the Plaintiffs could not establish that they suffered an actual or threatened injury and therefore did not have standing to bring an as-applied challenge to the statute. With regard to the facial challenges, Judge Sharp declared the contested Florida Statutes constitutional and denied all outstanding motions as moot. (Doc. 48). However, on appeal the Eleventh Circuit reversed and remanded Judge Sharp's decision, ordering this court "to either hold an evidentiary hearing on the issue of standing or consider the merits of Plaintiff's as applied challenge." *Bischoff v. Osceola County, Fla.*, 222 F.3d 874, 876 (11th Cir.2000). According to the Eleventh Circuit, "the court erred in making findings of disputed facts and judgments regarding credibility, on which it then based its standing conclusion, without holding an evidentiary hearing." *Bischoff,* 222 F.3d at 885. Upon remand from the court of appeals, the case was reassigned to the undersigned United States district judge.

On February 7, 2001 Robert Butterworth ("Mr. Butterworth"), the Attorney General of the State of Florida, intervened as a Defendant (Doc. 60) and in late August Osceola County was dismissed from the case pursuant to agreement of the parties. (Doc. 72). A second amended complaint was filed on December 20, 2001 which added Mr. Spangle as a Plaintiff and substituted Sheriff Aycock for Sheriff Croft as a Defendant. (Doc. 76). Defendants filed a motion to dismiss the second ***1230** amended complaint (Docs. 79 & 81) to which Plaintiffs responded in opposition. (Docs. 80 & 82). In addition, the Plaintiffs filed a motion to set their facial challenge for summary judgment briefing. (Doc. 82).

This court referred these motions to Magistrate Judge James G. Glazebrook for a Report and Recommendation. Since the parties offered evidence outside the pleadings, on August 2, 2002 the Magistrate Judge converted the motions to dismiss to motions for summary judgment. An evidentiary hearing was held on August 27, 2002 on the issue of standing as well as on the facial challenges to sections **316.2045** and 316.2055. At oral argument the parties conceded that Plaintiffs' as-applied challenges were not ripe for summary judgment and that no sovereign immunity or qualified immunity issues remained. (Doc. 98 at 283–89). A Report and Recommendation was filed by Magistrate Judge Glazebrook on September 19, 2002 recommending denial of defendant's motions to dismiss and further recommending that Plaintiffs be found to have standing to pursue their First Amendment challenges to sections **316.2045** and 316.2055. Most significantly, the Magistrate Judge recommended that the relevant statutes be found facially unconstitutional and declared invalid. The Defendants subsequently filed objections to the Report and Recommendation (Docs. 102 & 103) and the Plaintiffs filed a response (Doc. 105).

II. *Defendants' Objections*

A. *The arrest of three protesters caused the termination of the demonstration.*

The Defendants object to the Magistrate Judge's use of the word "disbanded" in the following sentence: "On December 29, 1997, the Osceola County Sheriff's Office *disbanded* an organized protest at the heavily-trafficked intersection of Irlo Bronson Memorial Highway and Old Vineland Road in unincorporated Osceola County, Florida." (Doc. 100 at 2) (emphasis added). According to the Defendants, the use of the word "disbanded" can be interpreted to mean that Sheriff's officers told or instructed protestors to leave the demonstration. The Defendants argue that there is no evidence in the record to suggest that any officer instructed a

protestor to leave the area. Defendants however, do concede that the arrest of three of the protestors did result in the departure of other demonstrators. (Doc. 102 at 9).

The Court does not interpret the word "disbanded" in the Report and Recommendation to mean that the Sheriff's officers instructed the activists to leave the demonstration. However, the Court does interpret the Report and Recommendation to read that the December 29, 1997 demonstration was essentially disbanded by the arrest of three religious activists. Upon witnessing the arrest of three protesters the remaining activists feared the possibility of their own arrest and thus refrained from exercising their First Amendment right. The Magistrate Judge's Report and Recommendation does not in any way suggest that the Sheriff's officers instructed any demonstrators to leave. In fact, the Magistrate Judge explains that "Plaintiffs presented no evidence demonstrating that any Osceola County Deputy Sheriffs acted unprofessionally or in a manner inconsistent with their difficult responsibility of enforcing thousands of state and federal statutes." (Doc. 100 at 18 n. 8) Moreover, the interpretation of the word "disbanded" has no significance in the legal analysis of this case. This Court finds the use of the ***1231** word "disbanded" in the Report and Recommendation to be proper and agrees with the Magistrate Judge's finding of fact.

B. *The parties conceded at oral argument that no sovereign immunity or qualified immunity issues remained.*

The State of Florida and Mr. Butterworth object to the Magistrate Judge's finding that Defendants conceded that there are no issues as to sovereign immunity or qualified immunity remaining in the case.[1] It is clear from the transcript of the hearing that all Parties agreed that no sovereign immunity or qualified immunity issues remained:

(Doc. 98 at 286–87). The Court then proceeded to inquire about qualified immunity:

The Court:	All right. So there's really no issue as to sovereign immunity. And as to qualified immunity in that it's a declaratory judgment action, Attorney General's position.
Ms. Becker:	Your Honor, we didn't raise qualified immunity.
The Court:	Did the Sheriff raise that?
Mr. Poulton:	I don't think so.
The Court:	I'm sorry. That's not an issue.

(Doc. 98 at 287). The parties clearly conceded at oral argument that there were no sovereign or qualified immunity issues to be settled during oral argument. Therefore, the Magistrate Judge's conclusion with regard to these issues in the Report and Recommendation is proper and adopted by this Court.

C. *The Magistrate Judge properly converted the Defendants' Motions to Dismiss to Motions for Summary Judgment.*

The State of Florida and Mr. Butterworth also object to the Magistrate Judge's conversion of their motion to dismiss to a motion for summary judgment. (Doc. 103 at 12). Typically a court converts a motion to dismiss to a motion for summary judgment when the moving parties ask the court to resolve issues and consider evidence that are beyond the complaint. ***1232** Federal Rule of Civil Procedure 12(b) gives a court discretion to treat a motion to dismiss for failure to state a claim as a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. However, upon conversion of a motion to dismiss to a motion for summary judgment "[n]otice must be given to each party that the status of the action is now changed, and they must be given a 'reasonable opportunity' to present legal and factual material in support of or in opposition to the motion for summary judgment." *U.S. v. Gottlieb,* 424 F.Supp. 417, 418 (S.D.Fla.1976) (quoting *Sims v. Mercy Hosp.,* 451 F.2d 171 (6th Cir.1971)). "It is well established in this circuit that the ten day notice requirement of Fed. R. Civ. P. 56(c) is strictly enforced." *Herron v. Beck,*

693 F.2d 125 (11th Cir.1982) (citations and footnote omitted). Federal Rule of Civil Procedure 56(c) reads "[t]he motion [for summary judgment] shall be served at least 10 days before the time fixed for the hearing."

On August 2, 2002 the Magistrate Judge issued an Amended Order and Notice of Hearing which notified the parties of the court's conversion of Defendants' motions to dismiss to motions for summary judgment. (Doc. 87, filed August 2, 2002). The Magistrate Judge provided that "[o]n or before August 22, 2002, either party (or the intervener) may also file additional affidavits and exhibits within the purview of Fed. R. Civ. P. 56 as to matters that remain contested —as well as a Notice of Supplemental Authorities with explanatory parentheticals—in support of or in opposition to the motions." (Doc. 87 at 3). The Magistrate Judge further explained that "[t]he Court will hear oral argument on the motions, as well as any necessary evidence not otherwise presented (to the extent required by law), on Tuesday, August 27, 2002 at 9:30 a.m." (Doc. 87 at 3–4).

The parties were notified twenty-five days prior to the evidentiary hearing of the court's conversion of the pending motions to dismiss to motions for summary judgment. This notice was well within the ten-day requirement and certainly provided the parties with a reasonable opportunity to present legal and factual material in support of or in opposition to the motions for summary judgment. The conversion of the motions in this instance was proper and complied with the notice requirement of Federal Rule of Civil Procedure 56(c).

D. *The Plaintiffs have standing to bring their claims.*

[1] The State of Florida and Mr. Butterworth object to the Magistrate Judge's recommendation that Ms. Bischoff and Ms. Stites have standing to bring their claim.[3] The State of Florida and Mr. Butterworth argue that Ms. Bischoff and Ms. Stites do not have standing because they were not arrested during the demonstration and have not suffered an injury.

The Supreme Court in *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992), articulated the necessary requirements a Plaintiff must show to establish standing:

> First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection ***1233** between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative that the injury will be redressed by a favorable decision.

504 U.S. at 560–561, 112 S.Ct. 2130 (internal marks and citations, and footnote omitted). The Court further explained that "[t]he party invoking federal jurisdiction bears the burden of establishing these elements." *Id.* at 561, 112 S.Ct. 2130 (quoting *FW/PBS, Inc. v. Dallas,* 493 U.S. 215, 231, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990)).

Ms. Bischoff and Ms. Stites satisfy each of the constitutional requirements to establish standing. First, the fact that they were threatened with arrest for engaging in a demonstration is proof of a concrete injury to meet the "injury in fact" requirement. *See Bischoff,* 222 F.3d at 884 (explaining that the threat of arrest is wholly adequate to show injury in fact to establish standing). As noted by the Magistrate Judge, the threat of arrest was not limited to only those protesters engaged in particular activities. "First, the threat of arrest was not limited to those who stepped in the road—or at least no such limit was proved a the hearing. Sheriff Aycock himself argued in his brief that protestors who did not go into the street, but merely approached vehicles to solicit, nevertheless violated Florida law" and were thus subject to arrest. (Doc. 100 at 19–20). The threat of arrest in this instance was actual and concrete rather than merely conjectural or hypothetical. Ms. Bischoff and Ms. Stites refrained from exercising their First Amendment rights in order to avoid arrest. Thus, they suffered an injury in fact.

Second, Ms. Bischoff and Ms. Stites have established a causal link between the injury they suffered and Sheriff Aycock's enforcement of the contested statutes. "[B]oth Bischoff and Stites were engaged in conduct violative of the same Florida laws for which Osceola County Sheriff's Deputies arrested Plaintiff Spangle." (Doc. 100 at 20).

Finally, it is more than likely, not merely speculative, that Plaintiffs' injury would be redressed by a facial invalidation of the contested statutes. Defendants' primary argument in their objection to the Report and Recommendation with regard to the issue of standing focuses on the fact that neither Ms. Bischoff or Ms. Stites stepped in the road during the demonstration and were not arrested. The Defendants' Objection to the Report and Recommendation does not refer to any other factual evidence or case law that would bolster Defendant's position. As a result, this Court agrees with

the Magistrate Judge's conclusion that all the Plaintiffs have standing to contest the constitutionality of sections 316.2045 and 316.2055.

E. *The Magistrate Judge properly reconsidered the Plaintiffs' facial challenge to the contested Florida statutes.*

[2] In the Defendants' Objections to the Magistrate's Report and Recommendation (Docs. 102 & 103), the Defendants essentially argue that in revisiting the facial challenges to the relevant Florida statutes the Magistrate Judge violated the law of the case doctrine that requires trial courts to strictly adhere to the mandates of appellate courts. *See Piambino v. Bailey,* 757 F.2d 1112, 1120 (11th Cir.1985) (explaining that a "trial court, upon receiving the mandate of an appellate court, may ***1234** not alter, amend, or examine the mandate, or give any further relief or review, but must enter an order in strict compliance with the mandate"). The law of the case "doctrine stands for the proposition that an appellate decision on an issue must be followed in all subsequent trial court proceedings unless the presentation of new evidence or an intervening change in the controlling law dictates a different result, or the appellate decision is clearly erroneous and, if implemented, would work a manifest injustice." *Id.* (citing *Westbrook v. Zant,* 743 F.2d 764, 768–69 (11th Cir.1984)).

According to the Defendants, the disturbance of Judge Sharp's initial finding that the relevant Florida statutes were constitutional is against the Eleventh Circuit's August 14, 2000 mandate remanding the case "to the district court either to hold an evidentiary hearing on the question of standing or to rule on the merits of Plaintiffs' as applied challenge as raised in the parties' cross motion for summary judgment. *We refrain from reviewing the district court's ruling on the merits of Plaintiff's facial challenge at this time.*" *Bischoff v. Osceola County, Fla.,* 222 F.3d 874, 886 (11th Cir.2000) (emphasis added). The Defendants argue that the Eleventh Circuit reversed and remanded Judge Sharp's decision only for the District Court to reconsider standing or the Plaintiffs' as-applied challenge, not to reconsider Judge Sharp's conclusion with regard to the facial challenge. The hearing on the facial challenge along with the subsequent recommendation is, in the perspective of the Defendants, a violation of the Eleventh Circuit's instructions.

[3] The policy behind the law of the case doctrine is to maintain a sense of efficiency, finality and obedience within the judiciary. *See Litman v. Mass., Mutual Life Ins. Co.,* 825 F.2d 1506, 1511 (11th Cir.1987) (explaining that judicial dispute resolution must have elements of finality and stability). " 'Judicial precedence serves as the foundation of our federal judicial system. Adherence to it results in stability and predictability.' " *Id.* at 1510 (citing *Jaffree v. Wallace,* 705 F.2d 1526, 1533 (11th Cir.1983)). "[I]t would be impossible for an appellate court 'to perform its duties satisfactorily and efficiently' and 'expeditiously if a question, once considered and decided by it were to be litigated anew in the same case upon any and every subsequent appeal' thereof." *Terrell v. Household Goods Carriers' Bureau,* 494 F.2d 16, 19 (5th Cir.1974) (quoting *White v. Murtha,* 377 F.2d 428, 431 (5th Cir.1967)). In other words, the law of the case doctrine is primarily concerned with the duty of lower courts to follow what has already been decided in a case. It does not, however, extend to issues the appellate court does not address. *See Piambino,* 757 F.2d at 1120 (explaining that the "law of the case doctrine applies to all issues decided expressly or by necessary implication; it does not extend to issues the appellate court did not address."); *see also Terrell,* 494 F.2d at 19 (explaining that the law of the case rule applies only to issues that were decided, and does not include determination of questions which might have been decided). Therefore, a lower court would not violate the law of the case doctrine in deciding an issue that an appellate court did not address in a previous decision.

The law of the case doctrine simply does not extend to the Plaintiffs' facial challenge to the statutes because the Eleventh Circuit did not decide the issue. The Eleventh Circuit clearly stated that "[w]e refrain from reviewing the district court's ***1235** ruling on the merits of the Plaintiff's facial challenge at this time." *Bischoff,* 222 F.3d at 886. In re-examining the facial challenge, the Magistrate Judge did not exceed his authority but merely reconsidered an issue the Eleventh Circuit did not address. Moreover, the Magistrate Judge issued an Order on August 15, 2002 providing the parties with specific issues that they had to address during oral argument in order to ensure that all parties were prepared to address the question of facial constitutionality. (Doc. 88). In sum, the reconsideration of the facial challenge was appropriate and not a violation of the law of the case doctrine because the Eleventh Circuit decision did not require that Judge Sharp's ruling remain undisturbed.

F. *The contested Florida statutes are unconstitutional.*

1. *Section 316.2045 is unconstitutional because it is content-based and vague.*

[4] All the Defendants object to the Magistrate Judge's recommendation that section **316.2045** be declared unconstitutional.[4] The Magistrate Judge's recommendation is premised on the legal theory that section **316.2045** is content-based and vague. According to the Magistrate Judge, "the Florida statute facially prefers the viewpoints expressed by registered charities and political campaigners by allowing ubiquitous and free dissemination of their views, but restricts discussion of all other issues and subjects." (Doc. 100 at 31).

The Supreme Court in *Carey v. Brown,* 447 U.S. 455, 100 S.Ct. 2286, 65 L.Ed.2d 263 (1980), similarly dealt with an Illinois statute that made distinctions between peaceful picketing and peaceful labor picketing. The contested Illinois statute prohibited picketing on public streets and sidewalks in residential neighborhoods, but made an exception for peaceful labor picketing. The Supreme Court in *Carey* explained:

> The central problem with Chicago's ordinance is that it describes permissible picketing in terms of its subject mat ***1236** ter.... Any restriction on expressive activity because of its content would completely undercut the profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide open.

Id. at 462–63, 100 S.Ct. 2286 (internal citations and footnote omitted). The Court further explains in *Carey* that "[t]here is an equality of status in the field of ideas, and government must afford all points of view an equal opportunity to be heard. Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say." *Id.* at 463, 100 S.Ct. 2286 (internal citations and footnote omitted). The Court in *Carey* found the Illinois statute unconstitutional under the Equal Protection Clause of the Fourteenth Amendment because it made an impermissible subject matter distinction between lawful and unlawful picketing.

The Florida statute is similar to the Illinois statute at issue in *Carey.* The Florida statute suffers from the same constitutional infirmities. Facially the Florida statute prefers speech by § 501(c)(3) charities and those who are engaged in political speech. The Defendants in their objection to the Magistrate Judge's recommendation cite only to Judge Sharp's previous decision finding the contested Florida statute constitutional. The Defendants do not engage in any further analysis or cite to any other legal authority to support their position. In light of the impermissible distinctions made in section **316.2045**, Florida Statutes, the Court finds the statute unconstitutional under the Equal Protection Clause of the Fourteenth Amendment and the First Amendment of the United States Constitution.

The Magistrate Judge also found section **316.2045** void for vagueness. "The essential purpose of the 'void for vagueness' doctrine is to warn individuals of the criminal consequences of their conduct." *Jordan v. De George,* 341 U.S. 223, 230, 71 S.Ct. 703, 95 L.Ed. 886 (1951) (quoting *Williams v. United States,* 341 U.S. 97, 71 S.Ct. 576, 95 L.Ed. 774 (1951)). "The test is whether the language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." *Id.* at 231–2, 71 S.Ct. 576.

Section one of the contested statute in this case contains several ambiguous terms which make it difficult for an individual to determine what type of conduct is unlawful. "Section one is ambiguous as to whether it is unlawful for an individual to willfully obstruct the free use of the road 'by standing,' or whether she must do so by standing on the road. The undefined terms 'solicit' and 'political campaigning' contribute to the indefiniteness of § **316.2045**, as does section two's reference to and partial incorporation of the opaque and undecipherable permit provisions of another criminal statute, § 337.406." (Doc. 100 at 32). The language of section **316.2045** simply does not convey sufficiently definite warning as to the unlawful conduct when measured by common understanding. In the Defendants' Objections to the facial challenge they do not address the ambiguity of the statute. Therefore, this Court shall adopt the Magistrate Judge's recommendation that section **316.2045**, Florida Statutes, is void for vagueness.

2. *Section **316.2045** is not narrowly tailored to meet compelling state interest, but rather it is overbroad.*

[5] Generally, overbroad statutes have the potential to chill speech. Statutes or ***1237** regulations may not "sweep unnecessarily broadly and thereby invade the area of protected freedoms." *NAACP v. Alabama,* 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958). Courts invalidate overly broad statutes because "persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions provided by a statute susceptible of application to protected expression." *Gooding v. Wilson,* 405 U.S. 518, 521, 92 S.Ct. 1103, 31 L.Ed.2d 408 (1972).

The purpose behind the contested statutes is to ensure public safety on roads, which is a compelling government interest. However, the statute is not narrowly tailored to meet that compelling interest. "Nothing in the § 316.2045's content based charity—non-charity distinction or political nonpolitical distinction has any bearing whatsoever on road safety or uniformity." (Doc. 100 at 34). "Traffic accidents or backups caused by political campaigners or duly licensed charitable organizations are no less problematic than traffic accidents or backups caused by other political speakers or non-licensed charitable organizations." (Doc. 100 at 34). The Defendants argue in their objections that the statute is narrowly tailored and that it provides alternative channels for communication because individuals may apply for a permit in order to express their views. (Doc. 102 at 12). However, the Defendants do not address the Magistrate Judge's conclusion that the statute's permit scheme serves as a prior restraint on speech. "A prior restraint on expression exists when the government can deny access to a forum for expression before the expression occurs." *United States v. Frandsen,* 212 F.3d 1231, 1236–37 (2000). "Although prior restraints are not per se unconstitutional, there is a strong presumption against their constitutionality." *Id.* at 1237. In order for a regulation that places a restraint on speech to pass constitutional muster it must contain procedural safeguards to avoid censorship.

In this instance,

> [t]he permitting scheme established by § 316.2045 lacks the procedural safeguards necessary to ensure against undue suppression of protected speech. Neither this court, nor any citizen wishing to engage in legal speech on a Florida road, can determine whether a particular permitting procedure applies to a given stretch of road; whether a particular agency or person has been designated to accept and grant or deny applications; whether any substantive constraints are placed on that person's discretion to deny a license; whether prompt judicial review is available for a denial; and whether there is any time constraint on the issuance or denial of a license.

(Doc. 100 at 36). Although the Defendants argue that individuals could potentially apply for a permit, they do not point to anything in the record that convinces this Court that there are procedural safeguards in place to prevent the undue suppression of speech. Therefore, the Court adopts the recommendation that section 316.2045 is overbroad and not narrowly tailored to meet the government's compelling interest.

3. *Section 316.2055 is not narrowly tailored to meet a significant state interest.*[5]

[6] Although section 316.2055 is content neutral, it suppresses more speech ***1238** than is necessary to serve the stated government purpose of ensuring public safety on roads. In addition, it is impermissibly vague in that it fails to define the terms "advertising or soliciting materials" and thus does not provide sufficient warning as to what conduct is proscribed by the law. The Defendants do not specifically address the Magistrate Judge's legal analysis with regard to the constitutionality of section 316.2055. They do not offer any legal precedent that reaches a contrary conclusion or any factual evidence that persuades the Court to disagree with the Magistrate Judge's recommendation. Therefore, the Court agrees with the Magistrate Judge with regard to the unconstitutionality of section 316.2055.

III. Conclusion

Therefore, it is ORDERED as follows:

1. The Report and Recommendation (Doc. 100, filed September 19, 2002) is **ADOPTED AND CONFIRMED** and made part of this Order.

2. Defendant Aycock's Motion to Dismiss (Doc. 79, filed January 9, 2002) is **DENIED**.

3. Defendant Butterworth's Motion to Dismiss (Doc. 81, filed January 29, 2002) is **DENIED.**

4. It is further Ordered that the Court finds that Plaintiffs have standing to pursue their constitutional challenges to sections 316.2045 and 316.2055, Florida Statutes.

5. It is further Ordered that sections 316.2045 and 316.2055, Florida Statutes are found facially unconstitutional and invalid.

REPORT AND RECOMMENDATION

GLAZEBROOK, United States Magistrate Judge.

This cause came on for hearing on August 27, 2002 on the parties' motions for summary judgment. Those motions are:

1) Defendant Sheriff Charles Aycock's ("Sheriff Aycock's") Motion to Dismiss[1] against Plaintiffs Cheryl Bischoff ("Bischoff"), Vicky Stites ("Stites") and Seth Spangle[2]

("Spangle," collectively, "Plaintiffs"); Docket No. 79, filed January 9, 2002; and

2) Defendant Robert Butterworth's ("Butterworth's" or "the Attorney General's," with Aycock, "Defendants' "), Motion to Dismiss against Plaintiffs. Docket No. 81, filed January 29, 2002.

I. *INTRODUCTION*

On December 29, 1997, the Osceola County Sheriff's Office disbanded an organized protest at the heavily-trafficked ***1239** intersection of Irlo Bronson Memorial Highway and Old Vineland Road in unincorporated Osceola County, Florida. The group had gathered at the intersection to protest Walt Disney World's purported support of homosexuality. The Osceola County Sheriff's Deputies arrested three of the protesters, Phillip Benham ("Benham"), Matthew Bowman ("Bowman") and Spangle. The Sheriff's Office charged them with violating Fla. Stat. §§ **316**.**2045**(2) (obstruction of traffic to solicit without a permit) and 316.2055 (throwing advertising material into vehicles). Benham, Bowman, and Spangle later pled no contest to obstructing traffic to solicit without a permit, and each paid a $25 fine. Plaintiffs Bischoff and Stites were among the remaining protesters. Bischoff and Stites say that they were threatened with arrest under the same statutes, but that they disbanded in order to avoid arrest.

Bischoff and Stites filed this case on May 18, 1998, asking this Court to declare that Fla. Stat. §§ **316**.**2045** and 316.2055 were unconstitutional, both on their face and as applied to plaintiffs. The case was assigned to The Honorable G. Kendall Sharp. The original complaint named Osceola County as the sole defendant. Plaintiffs later amended their complaint, adding Osceola County Sheriff Charles Croft. Docket 17. Osceola County and Sheriff Croft moved to dismiss the amended complaint. Docket Nos. 19, 22. Sheriff Croft's motion to dismiss alternatively sought summary judgment. Bischoff and Stites filed a cross-motion for summary judgment, Docket No. 29, to which Osceola County and Sheriff Croft responded. Docket Nos. 34, 38.

On February 2, 1999, Judge Sharp dismissed the entire case for lack of standing, and denied all outstanding motions as moot. Docket No. 48. The United States Court of Appeals for the Eleventh Circuit reversed and remanded "to either hold an evidentiary hearing on the issue of standing or consider the merits of Plaintiffs' as applied challenge." *Bischoff v. Osceola County, Fla.*, 222 F.3d 874, 876 (11th Cir.2000). The Eleventh Circuit held that Judge Sharp had properly raised the issue of standing *sua sponte,* but had improperly decided standing based on contested facts without a hearing. *Id.* Upon remand from the court of appeals, Judge Sharp ordered the Clerk to reassign the case. The Clerk subsequently reassigned the case to The Honorable John Antoon II.

Robert Butterworth, Attorney General of the State of Florida, intervened as a defendant on February 7, 2001. Docket No. 60. By joint stipulation, the parties dismissed Osceola County on August 23, 2001. Docket No. 72. Bischoff and Stites filed a second amended complaint on December 20, 2001, adding Spangle as a plaintiff, and substituting Sheriff Charles Aycock for Sheriff Croft as a defendant. Docket No. 76. Defendants then moved to dismiss Plaintiffs' second amended complaint, Docket Nos. 79, 81, to which Plaintiffs responded in opposition. Docket Nos. 80, 82. Plaintiffs also filed a motion to set their facial challenge to the two statutes for summary judgment briefing. Docket No. 82.

On June 24, 2002, Judge Antoon referred these motions to the undersigned for preparation of a report and recommendation. Because the parties presented to the Court matters outside the pleadings, the Court converted the outstanding motions to dismiss to motions for summary judgment under Fed.R.Civ.P. 12(b), and established a schedule for hearing and resolving ***1240** all pending motions. Docket No. 87.

The Court held an evidentiary hearing on the standing issue on August 27, 2002, and also entertained extensive oral argument on the facial challenges to Fla. Stat. §§ **316**.**2045** and Fla. Stat. § 316.2055. The parties conceded at oral argument that Plaintiffs' as applied challenges were not ripe for summary judgment, and that no sovereign immunity or qualified immunity issues remained or existed. Therefore, the Court addresses only standing and facial validity.

II. *THE LAW*

A. THE STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). The moving party bears the initial burden of showing the Court, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial. *Celotex Corp. v. Catrett,* 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Clark v. Coats & Clark, Inc.,* 929 F.2d

604 (11th Cir.1991). A moving party discharges its burden on a motion for summary judgment by "showing" or "pointing out" to the Court that there is an absence of evidence to support the non-moving party's case. *Celotex,* 477 U.S. at 325, 106 S.Ct. 2548. Rule 56 permits the moving party to discharge its burden with or without supporting affidavits, and to move for summary judgment on the case as a whole or on any claim. *Id.* When a moving party has discharged its burden, the non-moving party must then "go beyond the pleadings," and by its own affidavits, or by "depositions, answers to interrogatories, and admissions on file," designate specific facts showing that there is a genuine issue for trial. *Id.* at 324, 106 S.Ct. 2548.

In determining whether the moving party has met its burden of establishing that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law, the Court must draw inferences from the evidence in the light most favorable to the non-movant and resolve all reasonable doubts in that party's favor. *Spence v. Zimmerman,* 873 F.2d 256 (11th Cir.1989). The Eleventh Circuit has explained the reasonableness standard:

> In deciding whether an inference is reasonable, the Court must "cull the universe of possible inferences from the facts established by weighing each against the abstract standard of reasonableness." The opposing party's inferences need not be more probable than those inferences in favor of the movant to create a factual dispute, so long as they reasonably may be drawn from the facts. When more than one inference reasonably can be drawn, it is for the trier of fact to determine the proper one.

WSB–TV v. Lee, 842 F.2d 1266, 1270 (11th Cir.1988) (internal citations omitted).

Thus, if a reasonable fact finder evaluating the evidence could draw more than one inference from the facts, and if that inference introduces a genuine issue of material fact, then the court should not grant the summary judgment motion. *Augusta Iron and Steel Works v. Employers Insurance of Wausau,* 835 F.2d 855, 856 (11th Cir.1988). A dispute about a material fact is "genuine" if the "evidence is such that a ***1241** reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). The inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id.* at 251–52, 106 S.Ct. 2505.

B. THE LAW OF STANDING

Unless a plaintiff has standing to bring her claims, the Court is without jurisdiction to hear her case. *Warth v. Seldin,* 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). The party invoking federal jurisdiction bears the burden of proving standing. *Bischoff v. Osceola County, Fla.,* 222 F.3d 874, 878 (11th Cir.2000), citing *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). To satisfy constitutional standing requirements, a plaintiff must show three elements:

> First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal relationship between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely as opposed to merely speculative that the injury will be redressed by favorable decision.

222 F.3d at 883, citing *Lujan,* 504 U.S. at 560–61, 112 S.Ct. 2130 (internal marks, citations, and footnote omitted).

C. FACIAL CHALLENGES UNDER THE CONSTITUTION

1. *The United States Constitution*

The First Amendment guarantees that "Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const., amend. I. Although the First Amendment is directed at the federal government's conduct, the rights guaranteed by the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment. U.S. Const., amend. XIV ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.").

Federal courts are courts of limited jurisdiction. The courts do not reach out to reform or rewrite state statutes that seem to require some improvement. Neither do the federal courts strike down valid laws of which they disapprove. It is the state legislature's duty to enact valid laws, and the Court's duty to

declare what the law is, and how the law applies to the facts. The federal courts do not substitute laws that they prefer for the will of the elected state legislature. But where parties in a controversy ask a federal court to declare whether a state law violates the Constitution of the United States, the Court must not shrink from its duty to adjudicate the question presented.

2. *The Standards of Constitutional Scrutiny*

a. Forum Analysis

When a state regulation restricts the use of government property as a forum for expression, a court must first determine the nature of the government property ***1242** involved. *United States v. Kokinda,* 497 U.S. 720, 726–27, 110 S.Ct. 3115, 111 L.Ed.2d 571 (1990). The nature of the property determines the level of constitutional scrutiny applied to the restrictions on expression. *Capitol Square Review & Advisory Bd. v. Pinette,* 515 U.S. 753, 761, 115 S.Ct. 2440, 132 L.Ed.2d 650 (1995). The Supreme Court has delineated three categories of government-owned property for First Amendment purposes: the traditional public forum, the designated public forum, and the nonpublic forum. *Crowder v. Housing Authority of Atlanta,* 990 F.2d 586, 590 (11th Cir.1993).

Streets and parks are the quintessential traditional public fora, because those areas "have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n,* 460 U.S. 37, 45, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983) (*quoting Hague v. Committee for Indus. Org.,* 307 U.S. 496, 515, 59 S.Ct. 954, 83 L.Ed. 1423 (1939)); *see also Int'l Soc. for Krishna Consciousness, Inc., v. Lee,* 505 U.S. 672, 696, 112 S.Ct. 2701, 120 L.Ed.2d 541 (1992) (Kennedy, J., concurring) ("At the heart of our jurisprudence lies the principal that in a free nation citizens must have the right to gather and speak with other persons in public places. The recognition that certain government owned property is a public forum provides open notice to citizens that their freedoms may be exercised there without fear of a censorial government, adding tangible reinforcement to the idea that we are a free people"); *Redd v. City of Enterprise,* 140 F.3d 1378, 1383 (11th Cir.1998) (where traveling minister was arrested for disorderly conduct for preaching on the corner of a busy intersection, streets were a traditional public forum).

b. Content–Neutral versus Content–Based

[7] Courts apply different levels of scrutiny to contested statutes. At issue in the instant case is whether Fla. Stat. §§ **316.2045** and 316.2055 impose only content-neutral restrictions, or whether the restrictions are content-based. In any event, the Court interprets[3] statutes to avoid constitutional difficulties. *Frisby v. Schultz,* 487 U.S. 474, 483, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988).

i. *Content–Neutral Restrictions*

[8] **[9]** In public fora, the government may regulate the time, place and manner of expression so long as the restrictions are: 1) content-neutral; 2) narrowly tailored to serve a significant government interest; and 3) leave open alternative channels of communication. *United States v. Grace,* 461 U.S. 171, 177, 103 S.Ct. 1702, 75 L.Ed.2d 736 (1983). Content-neutral regulations are those that are "justified without reference to the content of the regulated speech." *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.,* 425 U.S. 748, 771, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976). A valid time, place and manner restriction must also be ***1243** narrowly tailored to serve a significant government interest. *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council,* 425 U.S. 748, 771, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976). The government's interest in protecting the safety of persons using a public forum is a valid government objective. *See Heffron v. Int'l Soc. for Krishna Consciousness, Inc.,* 452 U.S. 640, 650, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981), *citing Grayned,* 408 U.S. at 109, 92 S.Ct. 2294; *see also News and Sun–Sentinel Co. v. Cox,* 702 F.Supp. 891, 900 (S.D.Fla.1988) ("It requires neither towering intellect nor an expensive 'expert' study to conclude that mixing pedestrians and temporarily stopped motor vehicles in the same space at the same time is dangerous."). The Supreme Court has held, however, that an ordinance may not prohibit "a person rightfully on a public street from handing literature to one willing to receive it" because the defendant has an interest in keeping its streets clean and of good appearance. *Schneider v. New Jersey,* 308 U.S. 147, 162–63, 60 S.Ct. 146, 84 L.Ed. 155 (1939).

[10] Lastly, a valid time, place and manner restriction must allow for alternative channels of communication. The government may not, however, abridge a citizen's right to exercise liberty of expression in an appropriate place simply because that same expression may be exercised in another place. *Cox,* 702 F.Supp. at 902, *quoting Schneider v. State,* 308 U.S. 147, 163, 60 S.Ct. 146, 84 L.Ed. 155 (1939).

The level of scrutiny the Court must apply "is initially tied to whether the statute distinguishes between prohibited and permitted conduct on the basis of content." *Frisby,* 487 U.S. at 481, 108 S.Ct. 2495. In *Frisby,* individuals who strongly opposed abortion held at least six demonstrations on a public street in front of a doctor's residence. The town of Brookfield, Wisconsin then adopted a municipal ordinance that completely banned picketing "before or about" any residence. Two individuals who wished to continue picketing sought a declaration that the ordinance was facially invalid under the First Amendment. 487 U.S. at 477, 108 S.Ct. 2495. The Supreme Court held that the street in front of the doctor's house in a residential neighborhood was a traditional public forum, and deferred to the district court's finding that the municipal ordinance was facially content neutral—*i.e.,* the ban on all focused picketing did not distinguish between prohibited and permitted speech on the basis of content.[4] 487 U.S. at 481–82, 108 S.Ct. 2495.

The Court then applied the test for whether a statute is narrowly tailored—i.e., it "targets and eliminates no more than the exact source of the 'evil' it needs to remedy." 487 U.S. at 485, 108 S.Ct. 2495. The Court found that the ordinance's complete ban on focused picketing was narrowly directed at the household, not the general public, and that the "First Amendment permits the government to prohibit offensive speech as intrusive when the 'captive' audience cannot avoid the objectionable speech." 487 U.S. at 487, 108 S.Ct. 2495. Because of the narrow scope of the Brookfield ordinance, and because ***1244** "the ordinance prohibited speech directed primarily at those who are presumptively unwilling to receive it," the state had a substantial interest in banning picketing. 487 U.S. at 488, 108 S.Ct. 2495. The ordinance was facially valid under the First Amendment.

ii. *Content–Based Restrictions*

[11] **[12]** Content-based restrictions, on the other hand, regulate speech on the basis of the ideas expressed. A content-based restriction is presumptively invalid. *R.A.V. v. City of St. Paul,* 505 U.S. 377, 382, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992); *Simon & Schuster v. New York Crime Victims Bd.,* 502 U.S. 105, 116, 112 S.Ct. 501, 116 L.Ed.2d 476 (1991) (*quoting Regan v. Time, Inc.,* 468 U.S. 641, 648–49, 104 S.Ct. 3262, 82 L.Ed.2d 487 (1984) (regulations which "permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment"); *Dimmitt v. City of Clearwater,* 985 F.2d 1565, 1569 (11th Cir.1993) (finding that an ordinance prohibiting nonresidential flag display without a permit unless the flags "represent a governmental unit or body" was content-based and invalid); *Krafchow v. Town of Woodstock,* 62 F.Supp.2d 698, 710 (N.D.N.Y.1999) (finding that an ordinance prohibiting all political speech and solicitation except political campaigning on a village green was content-based and invalid)). Our society, however, has permitted content-based restrictions in types of speech that are "of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." *R.A.V.,* 505 U.S. at 383, 112 S.Ct. 2538 (*quoting Chaplinsky v. New Hampshire,* 315 U.S. 568, 572, 62 S.Ct. 766, 86 L.Ed. 1031 (1942)). For a state to enforce a content-based restriction, it must show that the regulation is necessary to serve a compelling state interest and is narrowly drawn to achieve that end. *Perry,* 460 U.S. at 45, 103 S.Ct. 948.

In *Carey v. Brown,* 447 U.S. 455, 459, 100 S.Ct. 2286, 65 L.Ed.2d 263 (1980), a civil rights organization protested the alleged failure of the Mayor of Chicago to support busing of school children. The protest occurred on the public sidewalk on front of the Mayor's home. The protestors were arrested and charged with violating an Illinois statute that made it a Class B misdemeanor to "picket before or about the residence or dwelling of any person," but permitted the peaceful picketing of a "place of employment involved in a labor dispute." 447 U.S. at 457, 100 S.Ct. 2286. The protestors sought a declaration that the Illinois residential picketing statute was facially invalid under the First and Fourteenth Amendments. The protestors argued that the law was overbroad and vague, and that it imposed an impermissible content-based restriction on protected expression in light of the exception for labor picketing. 447 U.S. at 458, 100 S.Ct. 2286.

The Supreme Court held that the Illinois statute violated the Equal Protection Clause because it selectively proscribed peaceful picketing "on the basis of the placard's message"—*i.e.,* it impermissibly "distinguished between labor picketing and all other peaceful picketing without any showing that the latter was 'clearly more disruptive' than the former." *Carey,* 447 U.S. at 459–60, 465, 100 S.Ct. 2286; *accord, Police Department of Chicago v. Mosley,* 408 U.S. 92, 100, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972) (invalidating as content-based an ordinance criminalizing picketing in front of schools, but excepting ***1245** labor-related picketing). The Court reasoned that the legality of residential picketing

depends solely on the nature of the message being conveyed. On its face, the Illinois statute prefers the expression of views about labor disputes, and allows the free dissemination of views on that subject, but restricts discussion of all other issues and subjects. *Carey,* 447 U.S. at 460–61, 100 S.Ct. 2286.

The Supreme Court found that "nothing in the content-based labor-nonlabor distinction has any bearing whatsoever on privacy," and that peaceful labor picketing is no less disruptive than peaceful picketing on issues of broader social concern. 447 U.S. at 465, 100 S.Ct. 2286. The Court observed that labor picketing is no more deserving of First Amendment protection than are public protests over other issues, particularly the economic, social, and political subjects about which the parties before the Court wished to demonstrate. 447 U.S. at 466, 100 S.Ct. 2286.

c. Overbreadth

[13] A facial challenge, as distinguished from an as-applied challenge, seeks to invalidate a statute or regulation itself. *Jacobs v. Florida Bar,* 50 F.3d 901, 905–06 (11th Cir.1995). If a facial challenge is successful, the court will strike down the invalid statute. *Stromberg v. California,* 283 U.S. 359, 369–70, 51 S.Ct. 532, 75 L.Ed. 1117 (1931). For a facial challenge to be successful, a plaintiff generally must establish that no set of circumstances exists under which the law would be valid. *Adler v. Duval County Sch. Bd.,* 206 F.3d 1070, 1083–84 (11th Cir.2000) (*en banc*) (*quoting U.S. v. Salerno,* 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987)).

[14] Statutes or regulations may not "sweep unnecessarily broadly and thereby invade the area of protected freedoms." *NAACP v. Alabama,* 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958). This is known as the overbreadth doctrine. *See* Gerald Gunther & Kathleen M. Sullivan, Constitutional Law 1326—37 (13th ed.1997). A court may invalidate an overly broad law even though the speech at issue could have been proscribed by a more narrowly drawn law. *Id.* Courts invalidate overly broad statutes or regulations because "persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions provided by a statute susceptible of application to protected expression." *Gooding v. Wilson,* 405 U.S. 518, 521, 92 S.Ct. 1103, 31 L.Ed.2d 408 (1972); *see also United States v. Frandsen,* 212 F.3d 1231, 1236 n. 3 (11th Cir.2000), *quoting Forsyth County v. Nationalist Movement,* 505 U.S. 123, 129, 112 S.Ct. 2395, 120 L.Ed.2d 101 (1992).

[15] A plaintiff may facially challenge an overly broad statute even though a more narrowly drawn statute would be valid as applied against the plaintiff. *Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent,* 466 U.S. 789, 799, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984). Courts are circumspect in applying overbreadth, however, for fear that a wide-sweeping overbreadth doctrine would swallow traditional standing requirements. *Id.* As such, the Supreme Court has stated that, in order for the doctrine to apply, a statute's overbreadth must be substantial. *Broadrick v. Oklahoma,* 413 U.S. 601, 615, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973).

While "substantial overbreadth" has never been defined, the Supreme Court has held that "the mere fact that one can conceive of some impermissible applications ***1246** of a statute is not sufficient to render it susceptible to an overbreadth challenge." *Vincent,* 466 U.S. at 800, 104 S.Ct. 2118. The overbreadth doctrine stems from the interest of "preventing an invalid statute from inhibiting the speech of third parties who are not before the Court." *Id.* at 800–01, 104 S.Ct. 2118 ("there must be a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court for it to be facially challenged on overbreadth grounds."); *cf. Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.,* 455 U.S. 489, 497, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982) (the overbreadth doctrine does not apply to commercial speech).

At least one court of appeals has recognized the similarity between the overbreadth analysis, and the time, place, and manner restriction analysis. *Krantz v. City of Fort Smith,* 160 F.3d 1214, 1218–22 (8th Cir.1998), *cert. denied,* 527 U.S. 1037, 119 S.Ct. 2397, 144 L.Ed.2d 797 (1999) ("we also agree with the district court that plaintiffs' overbreadth challenge is governed by the line of cases addressing time, place and manner restrictions"). Indeed, determining whether a content-neutral statute is narrowly tailored is similar, if not identical, to determining overbreadth. Logic, if not existing case law, suggests that an overly broad statute cannot be narrowly tailored. Conversely, a narrowly-tailored statute cannot be overly broad. Accordingly, this Court's analysis of the narrowly-tailored prong of the time, place and manner regulation mirrors its overbreadth analysis.

d. Vagueness

Statutes or regulations may also be invalid because of vagueness.[5] The void-for-vagueness doctrine draws upon the procedural due process requirement that a law must provide "sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." *Jordan v. De George,* 341 U.S. 223, 231, 71 S.Ct. 703, 95 L.Ed. 886 (1951). A law will be void for vagueness if persons "of common intelligence must necessarily guess at its meaning and differ as to its application...." *Connally v. General Constr. Co.,* 269 U.S. 385, 391, 46 S.Ct. 126, 70 L.Ed. 322 (1926). In analyzing a statute or regulation for vagueness, the court applies a stricter standard for First Amendment challenges than in other contexts. *Smith v. Goguen,* 415 U.S. 566, 572–73, 94 S.Ct. 1242, 39 L.Ed.2d 605 (1974); *compare* ***1247** *Grayned v. City of Rockford,* 408 U.S. 104, 105, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972) (anti-noise ordinance) *with United States v. Nat'l Dairy Products Corp.,* 372 U.S. 29, 29–30, 83 S.Ct. 594, 9 L.Ed.2d 561 (1963) (consumer competition statute).

e. Prior Restraints on Speech

[16] A law that prohibits or restricts speech without a permit is a prior restraint on speech. A prior restraint exists "when the government can deny access to a forum for expression before the expression occurs." *United States v. Frandsen,* 212 F.3d 1231, 1236–37 (11th Cir.2000). Plaintiffs may challenge statutes involving prior restraints on speech as facially invalid without demonstrating that "there are no conceivable set of facts where the application of the particular government regulation might or would be constitutional." *Frandsen,* 212 F.3d at 1236, *citing City of Lakewood v. Plain Dealer Publ'g Co.,* 486 U.S. 750, 755–56, 108 S.Ct. 2138, 100 L.Ed.2d 771 (1988). A facial challenge is appropriate when a permit lacks adequate procedural safeguards necessary to ensure against undue suppression of protected speech. 212 F.3d at 1236.

[17] A facially valid prior restraint on protected expression contains three procedural safeguards that obviate the dangers of censorship. *Freedman v. Maryland,* 380 U.S. 51, 58–59, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965). First, the burden of going to court to suppress the speech, and the burden of proof once in court, must rest with the government. *Id.; Frandsen,* 212 F.3d at 1238. Second, any restraint prior to a judicial determination may only be for a specified brief time period in order to preserve the *status quo.* Where a licensor "has unlimited time within which to issue a license, the risk of arbitrary suppression is as great as the provision of unbridled discretion." *Frandsen,* 212 F.3d at 1239, *quoting FW/PBS, Inc., v. City of Dallas,* 493 U.S. 215, 226–27, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990) (plurality). Third, an avenue for prompt judicial review of the censor's decision must be available. *Freedman,* 380 U.S. at 58–59, 85 S.Ct. 734; *Frandsen,* 212 F.3d at 1238.

f. Reconsideration of Facial Challenges

"The law of the case" doctrine states that a trial court must follow an appellate court decision on an issue in subsequent trial court proceedings unless the presentation of new evidence or a change in controlling laws compels a different result. *Piambino v. Bailey,* 757 F.2d 1112, 1120 (11th Cir.1985); *see also White v. Murtha,* 377 F.2d 428, 431 (5th Cir.1967); *Terrell v. Household Goods Carriers' Bureau,* 494 F.2d 16, 19 (5th Cir.1974). The law of the case doctrine "applies to all issues decided expressly or by necessary implication; it does not extend to issues the appellate court did not address." *Piambino,* 757 F.2d at 1120.

III. *APPLICATION*

A. STANDING

1. *Background Regarding Standing*

On December 29, 2002, Bischoff, Stites and Spangle went to the heavily-trafficked intersection of Irlo Bronson Memorial Highway and Old Vineland Road in Osceola County, Florida, with other members of the Christian Life Family Center, a Baptist Church.[6] They protested Walt Disney World's purported support of homosexuality ***1248** by standing in the median between traffic lanes and on the side of the road, displaying signs and distributing literature to passing vehicles. Protesters carried large signs bearing slogans like "Choose Jesus Over Mickey" and "Disney Promotes Homosexuality." Docket No. 95, Exhibit B. The literature was titled "Why Boycott Disney?," and listed a number of reasons why the protesters believed that Walt Disney, Inc. supported "anti-family activities," including homosexuality, violence, incest, and drug abuse. *Id.,* Exhibit A. Bischoff held a sign and distributed literature. Stites also held a sign, and held literature for others. Spangle distributed literature.

Soon after the protesters arrived at around 8:00 a.m., an Osceola County Sheriff's Deputy identifying herself as Officer Crawford approached Bischoff.[7] The deputy told Bischoff that the protesters were impeding traffic, and that if they did not move, she would have to arrest them. According to Bischoff, the deputy did not answer her inquiries

concerning exactly why Bischoff might be arrested, but instead returned to her vehicle and spoke on the radio.

More Osceola County Sheriff's Deputies arrived, and warned the protesters that they were impeding traffic and had to disperse. Officers then arrested Benham, whom Bischoff never saw standing in the road or distributing literature. The officers warned the protesters that anybody who stepped in the road would be arrested. The officers then arrested Bowman and Spangle when they stepped into the road.[8] Bischoff and Stites witnessed these arrests.

After the arrests of Bowman and Spangle, the protesters soon disbanded at around 1:00 p.m., although they had planned to protest until around 5:00 p.m. Both Bischoff and Stites were afraid that they would also be arrested. They have not returned to the intersection of Irlo Bronson Memorial Highway and Old Vineland Road to protest since December 29, 1997, although they expressed a desire to protest again at that location.

2. *Standing Analysis*

All parties concede that Spangle, who was arrested, has standing. Bischoff and Stites claim to have been threatened with arrest for a violation of Fla. Stat. §§ **316.2045** and 316.2055, and the Court addresses their claims collectively.

a. Findings as to Injury in Fact

The Court finds that both Bischoff and Stites were threatened with arrest, and ***1249** thereby suffered an injury in fact.[9] *See Bischoff,* 222 F.3d at 884 ("Plaintiffs' testimony that they were threatened with arrest for engaging in free speech activities is evidence of an actual and concrete injury wholly adequate to satisfy the injury in fact requirement of standing."). Bischoff and Stites' unrefuted testimony was credible in this regard. At the hearing, Sheriff Aycock and the Attorney General argued that Bischoff and Stites had suffered no injury in fact because they had never been threatened with arrest for the same activities that led to the arrests of Spangle, Bowman and Benham. Specifically, Defendants maintained that the officers warned the protesters that they would be arrested for stepping into the road to distribute literature, and that Spangle, Bowman and Benham had stepped into the road. Because Bischoff and Spangle did not step in the road, according to Sheriff Aycock and the Attorney General, they suffered no injury from the threat to arrest those who stepped into the road. This argument is meritless.

First, the threat of arrest was not limited to those who stepped in the road—or at least no such limit was proved at the hearing. Sheriff Aycock himself argued in his brief that protesters who did not go into the street, but merely approached vehicles to solicit, nevertheless violated Florida law. Although Sheriff Aycock argued in his memorandum that the conduct of Spangle, Benham and Bowman was more hazardous because they entered the road, according to the Sheriff of Osceola County "those who stood on the grassy island and handed their materials across to drivers ..." also were subject to arrest. Docket No. 91 at 6, filed August 22, 2002. Sheriff Aycock's contrary argument five days later at the hearing—that persons who distributed literature (Bischoff) or persons who aided and abetted them (Stites) were not subject to arrest—rings hollow.

Second, it is insignificant that Bischoff and Stites may have been threatened with arrest for violating different sub-parts of Fla. Stat. §§ **316.2045** and 316.2055 than those for which Spangle, Benham and Bowman were arrested. As discussed in detail below, these statutes state numerous means by which a defendant might impede traffic or unlawfully distribute handbills. Bischoff and Stites may well suffer an injury-in-fact sufficient to confer standing even if their conduct did not mirror, subsection for subsection or step for step, Spangle's conduct. To deny standing to Bischoff and Stites on this basis would elevate form over substance.

b. Findings as to Causation

Similarly, Bischoff and Stites have demonstrated a causal link between the injury they suffered and Sheriff Aycock's enforcement of the contested statutes. According to Sheriff Aycock, both Bischoff and Stites were engaged in conduct violative of the same Florida laws for which Osceola County Sheriff's Deputies arrested Plaintiff Spangle. *Bischoff,* 222 F.3d at 885.

c. Findings as to Likelihood of Redress

Finally, the relief Bischoff and Stites seek, a facial invalidation of the Florida ***1250** statutes at issue, would redress their injury if granted. *Bischoff,* 222 F.3d at 885. If Fla. Stat. §§ **316.2045** and 316.2055 are declared invalid, then Bischoff and Stites could return to the same site in Osceola County to protest without fear of arrest for violating these statutes. For the above reasons, Bischoff, Stites and Spangle have standing to contest the constitutionality of these Florida statutes.

B. FACIAL CHALLENGES UNDER THE CONSTITUTION

1. *Reconsideration of Facial Challenges*

The district court first must decide whether to re-examine Fla. Stat. §§ 316.2045 and 2055 on remand in light of the pre-appeal disposition of The Honorable G. Kendall Sharp. Docket 48. Judge Sharp granted summary judgment to former defendants Sheriff Charles Croft and Osceola County on Bischoff and Stites' facial challenges. Judge Sharp relied primarily on a finding that neither plaintiff had standing to challenge either statute, but ruled in the alternative that the two statutes imposed permissible time, place and manner restrictions. *Id.* at 9. The Eleventh Circuit refrained from reviewing the district court's ruling on the merits of Plaintiffs' facial challenges. *See Bischoff,* 222 F.3d at 886. Defendants argue that the Eleventh Circuit's refusal to address the facial challenge prohibits the district court from reconsidering Plaintiffs' facial challenges.

Plainly, the Eleventh Circuit did not address the facial validity of the contested Florida laws. *See Bischoff,* 222 F.3d at 886. Absent a limited remand and clear retention of jurisdiction in the Court of Appeals, a district court is free to re-evaluate its earlier rulings in order to achieve a legally correct result, particularly when the Court of Appeals has provided new enlightenment. Accordingly, the Court proceeds to consider Plaintiffs' facial challenges to Fla. Stat. §§ 316.2045 and 316.2055.

2. *Facial Analysis of Fla. Stat. § 316.2045*

Plaintiffs contest the facial validity of Fla. Stat. § 316.2045, a law prohibiting the willful obstruction of public streets, highways and roads. Plaintiffs raise three grounds. First, Plaintiffs contend that Fla. Stat. § 316.2045 is an invalid content-based statute that impermissibly regulates the type of speech allowed in a public forum. Second, Plaintiffs argue that Fla. Stat. § 316.2045 is void for vagueness because it criminalizes conduct that falls within undefined terms, and because it establishes a licensing system that lacks the requisite procedural safeguards. Third, Plaintiffs allege that Fla. Stat. § 316.2045 is overly broad in that it applies to a wide range of protected First Amendment conduct.

Any facial analysis must begin with a very close analysis of the language chosen by the legislature in order to determine the statute's exact reach or scope. *See Frisby,* 487 U.S. at 482, 108 S.Ct. 2495. Section 316.2045 (captioned "Obstruction of public streets, highways and roads") states, in pertinent part:

> (1) It is unlawful for any person or persons willfully to obstruct the free, convenient and normal use of any public street, highway or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, by standing or approaching motor vehicles thereon, or by endangering ***1251** the safe movement of vehicles or pedestrians traveling thereon; and any person or persons who violate the provisions of this subsection, upon conviction, shall be cited for a pedestrian violation, punishable as provided in chapter 318.
>
> (2) It is unlawful, without proper authorization or a lawful permit, for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by any of the means specified in subsection (1) in order to solicit. Any person who violates the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. Organizations qualified under § 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, or persons acting on their behalf are exempted from the provisions of this subsection by the state. Permits for the use of any portion of a state-maintained road or right-of-way shall be required only for those purposes and in the manner set out in § 337.406.
>
> (3) Permits for the use of any street, road or right-of-way not maintained by the state may be issued by the appropriate local government.
>
> (4) Nothing in this section shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity.

Fla. Stat. § 316.2045.

Section one of § 316.2045 makes it unlawful wilfully to obstruct the normal use of any road "by impeding, hindering, stifling, retarding, or restraining traffic or passage" on the road. Section one also prohibits the wilful obstruction of any road's normal use "by standing or approaching motor vehicles thereon." Section one is ambiguous as to whether it is unlawful for an individual to wilfully obstruct the free use of a road simply "by standing," or whether she must do so "by standing ... thereon," *i.e.,* on the road. It is clear, however, from the language of section one that a person

may violate § 316.2045(1) by standing without approaching a motor vehicle.

Thus, section one prohibits a person from wilfully retarding traffic by standing on the side of the road, whether or not she is holding a sign.[10] Section one makes no exceptions for political campaigning, for charitable work, or for permitted conduct. ***1252** A person violating section one commits a non-criminal pedestrian violation or infraction punishable by a fifteen dollar fine. Fla. Stat. § 316.2045(1); Fla. Stat. § 316.655(1); Fla. Stat. § 318.13(3); Fla. Stat. § 318.18(1)(a); Fla. Stat. § 775.082(5).[11]

Section two of § 316.2045 similarly makes it unlawful for any person wilfully to obstruct the normal use of a road by any means specified in section one "in order to solicit." The term "solicit" is not defined. Any person who violates section two, however, is guilty of a crime—a second degree misdemeanor punishable by "a definite term of imprisonment not exceeding 60 days," a $500 fine, or both. Fla. Stat. § 316.2045(2); Fla. Stat. § 775.082(4)(b); Fla. Stat. § 775.083(1)(e). The criminality of a defendant's conduct and the possibility that she may spend up to two months in jail depends on whether she has retarded traffic "in order to solicit." The firefighter collecting money in a boot for the families of firefighters killed on September 11 is subject to arrest and up to two months imprisonment, as is the ninth grader hoping to entice cars into a charity car wash.

Unlike section one, section two of § 316.2045 lists three exceptions that decriminalize specific activities: 1.) the Internal Revenue Code § 501(c)(3) exception; 2.) the exception for political campaigning; and 3.) the exception for permitted conduct. First, registered organizations qualified under Internal Revenue Code, 26 U.S.C. § 501(c)(3) (list of types of tax exempt organizations)—or "*any persons or organizations acting on their behalf* "—are exempted from section two for activities on roads not maintained by the state. Fla. Stat. § 316.2045(2) (emphasis supplied). Thus, a person acting on behalf of Church A (which qualifies under § 501(c)(3)) may protest, wilfully retard traffic, and solicit with impunity on an Osceola County road, but a Church B parishioner engaged in the very same conduct a few blocks down the same road faces possible imprisonment because Church B is not § 501(c)(3) qualified or registered. Similarly, persons from Church A may protest perceived pro-homosexual bias at Walt Disney World, Inc.—no matter how severe the effect on traffic—but persons protesting on behalf of Disney (which is not likely a § 501(c)(3) corporation) would risk incarceration if they responded from the other side of the same Osceola County road.[12]

Second, section four of Fla. Stat. § 316.2045 states that "[n]othing in this ***1253** section shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity." The term "political campaigning" is not defined. One can surmise from ordinary usage that some conduct is political campaigning: "Vote for Janet Reno;" or "Vote Republican."[13] Other conduct may be less clear, or depend on the context: "Impeach Nixon;" "Support Democrats on Prescription Drugs;" "Defeat the NRA Candidate;" "Vote Pro–Choice;" "Elect Judge Jones" (non-partisan); or perhaps "Choose Mickey." Yet the criminality of a defendant's conduct and the possibility that she may spend up to two months in jail depends on whether she has retarded traffic while "political campaigning."[14] Under all parties' interpretation of § 316.2045, a ninth grader risks a term in the Osceola County Jail if her charity car wash sign slightly retards traffic, but a Nazi party candidate for governor may back up traffic for miles with impunity.

Section 316.2045 specifies a third exception available to law-abiding citizens who do not wish to violate Florida law—obtain a permit. Sections two, three, and four of § 316.2045 decriminalize the wilful retarding of traffic where the solicitor has obtained a permit. Section two specifies that it is only unlawful to solicit "without proper authorization or a lawful permit." Section two is unclear as to whether the words "proper authorization or" are mere surplusage, or whether one can obtain "proper authorization" without obtaining a "lawful permit."[15] In any event, there is no violation of § 316.2045(2) (a second degree misdemeanor)[16] if one obtains a permit. The permit exception should be a useful option for a law-abiding person wishing to avoid criminal conduct. That person may seek a permit's protection because she cannot discern whether her intended conduct is in fact "soliciting," or whether her intended conduct falls within the safe harbor of the § 501(c)(3) exception or the "political campaigning" exception.

But the permit exception is far more complicated than it appears upon first examination. Section 316.2045(3) establishes a permitting rule for roads not maintained by the state. Section three simply states that "[p]ermits for the use of any street, road, or right-of-way not maintained by the state may be issued by the appropriate local government." Section two, however, establishes a different permitting rule for state-maintained roads. Permits for the ***1254** use of a

state-maintained road or right-of-way "shall be required *only for those purposes* and in the manner set out in § 337.406." Fla. Stat. § **316**.**2045**(2) (emphasis supplied). The language of § **316**.**2045**(2) requires a permit for the use of state roads only for certain specified purposes—no permit is otherwise required. Apparently, a solicitor may wilfully retard traffic without a lawful permit so long as he is not using the state road for a purpose specified in Fla. Stat. § 337.406.[17]

But how would a person intending to solicit on a state road determine whether or not he will be using the state road for a specified purpose (and therefore need a permit)? Section 337.406 of the Florida Statutes does not clearly specify those purposes for which a permit is required. Section 337.406 is itself a separate criminal statute—a second degree misdemeanor—punishable by "a definite term of imprisonment not exceeding 60 days," a $500 fine, or both. Fla. Stat. § 337.406(4); Fla. Stat. § 775.082(4)(b); Fla. Stat. § 775.083(1)(e). Under § 337.406(1), it is unlawful to make any use of the right-of-way of a state transportation facility (an undefined term) outside an incorporated municipality in any manner that interferes with the safe and efficient movement of people or property on the facility. Any such use is a *prohibited use.* Prohibited uses include, but are not limited to, the free distribution or display of any goods or property; solicitation for charitable purposes; and the display of advertising of any sort. Fla. Stat. § 337.406(1).

Although no party in this action seeks a declaration that Fla. Stat. § 337.406 is unconstitutional, our analysis of § **316**.**2045** is aided by identifying the conduct that § 337.406 criminalizes. Again, the firefighter collecting money in a boot and the ninth grader hoping to entice cars into a car wash are each subject to arrest and a jail term of up to two months if they interfere with the safe and efficient movement of cars. Indeed, § 337.406 not only omits the § 501(c)(3) exemption found in § **316**.**2045**(2), but expressly criminalizes "solicitation for charitable purposes." Furthermore, § 337.406 not only omits the "political campaigning" exemption found in § **316**.**2045**(4), but expressly criminalizes "the display of advertising of any sort." Florida legislators and state judges advertising for re-election or retention along the roadway may join the firefighters and ninth graders in jail.

Section 337.406(1) does provide for permits: "any portion of a state transportation facility may be used for an art festival, parade, fair, or other special event if permitted by the appropriate local governmental entity." The term "other special event" is not defined, and the "appropriate" local governmental entity (*i.e.,* the county, an unincorporated municipality) is not specified. Section 337.406(1) confers on incorporated municipalities special authority to issue permits of limited duration for the temporary use of the right-of-way "*for any of these prohibited uses* if it is determined that the use will not interfere with the safe and efficient movement of traffic and the use will cause no danger to the public." Fla. Stat. § 337.406(1) (emphasis supplied).[18]

But § 337.406(1) is unclear as to whether the term "*these* prohibited uses" refers ***1255** only to uses "for an art festival, parade, fair or other special event." May municipalities also permit other uses prohibited by § 337.406(1), such as charitable solicitation that interferes with traffic movement? The answer may be important not only to someone seeking a permit for soliciting in a municipality, but also to someone who simply wants to avoid using a state road for a purpose specified in Fla. Stat. § 337.406—*i.e.,* a person who has no permit but wants to avoid violating § **316**.**2045**(2). The statute provides no answer. This level of detail in the analysis is necessary because the Florida Legislature chose to make the criminality of a person's conduct under § **316**.**2045**(2) dependent on the "purposes" set forth in § 337.406.

On its face, § **316**.**2045**(2)–(3) seems to decriminalize conduct by a permit holder, but the permit exemptions are illusory. Although forewarned that the Court would inquire about permitting at oral argument, Docket No. 88 at 2, neither Sheriff Aycock nor the Attorney General of the State of Florida could point to a description in the record (or otherwise describe) how one might obtain the permits referred to in Fla. Stat. § **316**.**2045**(2)–(3) (permits for state-maintained and non-state-maintained roads, or other "proper authorization") and § 337.406(1)–(2) (permits for use of state transportation facilities by the appropriate local governmental entity, both outside and within incorporated municipalities, including roads on the State Highway System).

Although Sheriff Aycock and the Attorney General agreed that the intersection of Irlo Bronson Memorial Highway and Old Vineland Road was in unincorporated Osceola County, they could not identify the appropriate local government entity to issue a permit for that location. Also, they were unable to determine whether the intersection was or was not state-maintained.[19] Counsel for the Attorney General was unable to point the Court to any written procedures for obtaining permits, although she orally described what little a

colleague had learned about the State of Florida's permitting practice.

According to the Attorney General, a permit seeker would first go to the local government, in this case the Osceola County Sheriff's Office, to request a permit. If a permitting process existed at all in Osceola County, then the Osceola County Sheriff's Office would have the applicant fill out a permit application. Someone at the Osceola County Sheriff's Office would decide "what their interests are in granting or denying the permit." If the Osceola County Sheriff's Office wanted to grant the permit, then the Sheriff's Office would forward the application to an unspecified person at the Florida Department of Transportation, Maintenance Department (location unavailable, although counsel believed that the Maintenance Division had an office in Orange County). Counsel for the Attorney General was uncertain whether someone in the Maintenance Department would then review, grant, or deny the application, and was uncertain whether further review of an adverse decision was possible. The Attorney General could point to no time limits imposed at any stage of the permitting procedure. If ***1256** no local permitting procedure existed in a particular county or municipality, then there would be no permitting available at the state level. Sheriff Aycock read into the record a letter stating that Osceola County had no procedure for permitting.[20] Docket No. 98 at 191.

3. *Fla. Stat. § 316.2045 Is Content–Based and Vague*

On its face, § **316**.**2045** regulates speech on the basis of the ideas expressed even though § **316**.**2045** says nothing about pro-homosexual or anti-homosexual speech, and nothing about pro-Disney or anti-Disney speech. Rather, section **316**.**2045** selectively proscribes protected First Amendment activity—*i.e.,* it impermissibly prefers speech by § 501(c)(3) charities and by persons who are engaged in "political campaigning" over all other activity that retards traffic, without any showing that the latter is more disruptive than the former. *See Carey,* 447 U.S. at 459–60, 465, 100 S.Ct. 2286; *Mosley,* 408 U.S. at 100, 92 S.Ct. 2286.

Section **316**.**2045** makes the legality of conduct that retards traffic depend solely on the nature of the message being conveyed. Said differently, the Florida statute facially prefers the viewpoints expressed by registered charities and political campaigners by allowing ubiquitous and free dissemination of their views, but restricts discussion of all other issues and subjects. Section **316**.**2045** of the Florida Statutes, therefore, is presumptively invalid under the Equal Protection Clause and the First Amendment of the United States Constitution because it imposes content-based restrictions on speech in a traditional public forum.

Furthermore, § **316**.**2045** does not sufficiently define the conduct that it proscribes when measured by common understanding and practices. As is evident from the above facial analysis, persons of common intelligence (including Osceola County Sheriff's Deputies and the Attorney General of the State of Florida) must necessarily guess at its meaning and differ as to its application. Section one is ambiguous as to whether it is unlawful for an individual to wilfully obstruct the free use of a road simply "by standing," or whether she must do so by standing on the road. The undefined terms "solicit" and "political campaigning" contribute to the indefiniteness of § **316**.**2045**, as does section two's reference to and partial incorporation of the opaque and undecipherable permit provisions of another criminal statute, § 337.406. It is equally problematic that section two creates a different permit scheme from the permit scheme in section three, and that the permit scheme in section two actually seems to criminalize *additional* conduct that would otherwise be exempted under section two, *i.e.,* § 501(c)(3) solicitation and political campaigning. Section **316**.**2045** therefore is void for vagueness.

4. *Section 316.2045 Is Not Narrowly Tailored to Meet a Compelling State Interest, But Rather Is Overbroad*

Because Fla. Stat. § **316**.**2045** is content-based, it is only valid if narrowly tailored to meet a compelling state interest. *Perry,* 460 U.S. at 45, 103 S.Ct. 948. Determining ***1257** whether a statute is narrowly tailored is similar, if not identical, to determining overbreadth. Defendants assert that Fla. Stat. § **316**.**2045** is designed to protect the safety of both motorists and pedestrians. Section **316**.**2045** supports defendants' assertion. Section **316**.**2045**(2) refers to and adopts the licensing provisions in Fla. Stat. § 337.406. That statute states the legislature's intent:

> Failure to prohibit the use of right-of-way in this manner will endanger the health, safety, and general welfare of the public by causing distractions to motorists, unsafe pedestrian movement within travel lanes, sudden stoppage or slowdown of traffic, rapid lane changing and other dangerous traffic movement, increased vehicular accidents, and motorist injuries and fatalities.

Fla. Stat. § 337.406(1).

The Florida legislature has also stated its interest in uniformity from county to county. Section 316.2045 is part of the Florida Uniform Traffic Control Law. Fla. Stat. § 316.001. The Florida legislature's intent in adopting the Florida Uniform Traffic Control Law was "to make uniform traffic laws to apply throughout the state and its several counties and uniform traffic ordinances to apply in all municipalities." Fla. Stat. § 316.002 (purpose); *accord,* Fla. Stat. § 316.007 (the "provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein ..."). The Florida legislature's intent in decriminalizing the pedestrian violations in Fla. Stat. §§ 316.2045(1) and 316.2055 is "facilitating the implementation of a more uniform and expeditious system for the disposition of traffic infractions." Fla. Stat. § 318.12 (Florida Uniform Disposition of Traffic Infractions Act).

Florida's interest in protecting the safety of persons using a public forum is at least a "significant" governmental objective. *See Heffron,* 452 U.S. at 650, 101 S.Ct. 2559 (content-neutral restriction of speech to rented booths met a significant government interest in maintaining the orderly movement of crowds at a state fairground). The Court assumes without deciding that Florida's desire to protect public safety on the roads is also a "compelling" government interest. Therefore, the Court proceeds to determine whether Fla. Stat. § 316.2045 is narrowly tailored to meet Florida's stated objectives. It is not.

Nothing in the § 316.2045's content-based charity-noncharity distinction or political-nonpolitical distinction has any bearing whatsoever on road safety or uniformity. Speech by a § 501(c)(3) charity and speech by a politician is no more deserving of First Amendment protection than is a public protest over other issues, particularly the economic, social, and political subjects about which the parties before the Court wish to demonstrate. Traffic accidents or backups caused by political campaigners or duly-licensed charitable organizations are no less problematic than traffic accidents or backups caused by other political speakers or non-licensed charitable organizations. *See Krafchow,* 62 F.Supp.2d at 710. These groups' differing political messages are entirely irrelevant to Defendants' stated goal of pedestrian and motorist safety. Furthermore, there are less restrictive alternatives available. Florida could allow all political speech regardless of message on the state's roads, while continuing the prohibition on solicitation. 62 F.Supp.2d at 711, *citing Boos v. Barry,* 485 U.S. 312, 326–27, 108 S.Ct. 1157, 99 L.Ed.2d 333 (1988) (finding the law at issue not narrowly tailored because ***1258** "a less restrictive alternative was readily available.").

The language of Fla. Stat. § 316.2045 does nothing to promote Florida's interest in uniform traffic laws and dispositions. The statute's permitting procedure varies as one travels along a given road from county to county, municipality to municipality, and also as one enters and then leaves parts of the road that the Florida Department of Transportation's Maintenance Division maintains. If the Attorney General of the State of Florida was unable to determine whether the intersection in question is state-maintained when the issue is relevant in a federal action, and was unable to identify the proper person to contact for a permit, no law-abiding citizen likely can. The undefined terms "solicit" and "political campaigning," which transform handbilling from a civil pedestrian infraction into a crime, will also encourage varying on-the-spot interpretations by the arresting deputies, not uniformity.[21]

Therefore, Fla. Stat. § 316.2045 is an invalid content-based statute. Section 316.2045 sweeps unnecessarily broadly, and invades the area of protected freedoms. There is a realistic danger that section 316.2045 will significantly compromise recognized First Amendment protections of parties not before the Court. Section 316.2045, therefore, is content-based and substantially overbroad. Persons whose expression is constitutionally protected—whether firemen, ninth-graders, politicians, or judges—may well refrain from exercising their rights for fear of arrest and incarceration.

Section 316.2045 also imposes a prior restraint on speech by restricting speech without a permit. A prior restraint exists because the governments of Florida and of each county can deny access to a forum for expression, the borders of Florida's roads, before the expression occurs. The permitting scheme established by § 316.2045 lacks the procedural safeguards necessary to ensure against undue suppression of protected speech. Neither this Court, nor any citizen wishing to engage in legal speech on a Florida road, can determine whether a particular permitting procedure applies to a given stretch of road; whether a particular agency or person has been designated to accept and grant or deny applications; whether any substantive constraints are placed on that person's discretion to deny a license;[22] whether prompt judicial review is available for a denial; and whether there is any time constraint on the issuance or denial of a license. From the face of the statute, it appears that the licensor has unlimited time within which to issue a license, so the risk

of ***1259** arbitrary suppression is as great as the provision of unbridled discretion. *Frandsen,* 212 F.3d at 1239.

5. *Facial Analysis of Fla. Stat. § 316.2055*

Plaintiffs contest the facial validity of Fla. Stat. § 316.2055 on three grounds. First, Plaintiffs contend Fla. Stat. § 316.2055 is an invalid time, place and manner restriction. Second, Plaintiffs argue Fla. Stat. § 316.2055 is void-for-vagueness because it criminalizes terms without defining them. Third, Plaintiffs allege that Fla. Stat. § 316.2055 is overly broad and applies to a wide range of protected First Amendment conduct.

Once again, a facial analysis of § 316.2055 begins with a close analysis of the language chosen by the legislature to determine the statute's scope. Section 316.2055 (captioned "Motor vehicles, throwing advertising material in") states, in pertinent part:

> It is unlawful for any person on a public street, highway, or sidewalk in the state to throw into, or attempt to throw into, any motor vehicle, or offer, or attempt to offer, to any occupant of any motor vehicle, whether standing or moving, or to place or throw into any motor vehicle any advertising or soliciting materials or to cause or secure any person or persons to do any one of such unlawful acts.

Fla. Stat. § 316.2055. A person violating § 316.2055 commits a non-criminal pedestrian violation or infraction punishable by a fifteen dollar fine. Fla. Stat. § 316.2055(1); Fla. Stat. § 316.655(1); Fla. Stat. § 318.13(3); Fla. Stat. § 318.18(1)(a); Fla. Stat. § 775.082(5).

Although § 316.2055 makes unlawful the dangerous practice of throwing advertising into a motor vehicle, the statute has a far broader impact on protected speech. The statute also makes it unlawful for any person on a sidewalk to offer soliciting materials to the occupant of a standing motor vehicle. The term "soliciting materials" is not defined. The term "standing" means "the halting of a vehicle, whether occupied or not, otherwise than temporarily, for the purpose of, and while actually engaged in, receiving or discharging passengers, as may be permitted by law ..." Fla. Stat. § 316.106(49).

6. *Section 316.2055 Is Not Narrowly Tailored to Meet a Significant State Interest, But Rather Is Overbroad*

Both parties agree that the intersection of Irlo Bronson Memorial Highway and Old Vineland Road is a traditional public forum, and that Fla. Stat. § 316.2055 is a content-neutral statute. Therefore, in order to be valid, Fla. Stat. § 316.2055 must be narrowly tailored to serve a significant government interest, and provide alternative channels of communication. *Grace,* 461 U.S. at 177, 103 S.Ct. 1702. While the safety interest asserted by Defendants is certainly a significant government interest, and alternative channels of communication unquestionably exist, the statute is not narrowly tailored.

Rather, Fla. Stat. § 316.2055 is a remarkably broad statute. Section 316.2055 makes it unlawful for a pedestrian on a sidewalk to hand an advertising leaflet to a willing recipient in a car that has stopped in a metered space or in a private driveway, even though such conduct has no effect on traffic or safety. The statute also makes it unlawful for someone on a roadside to hand "soliciting materials" to passengers in cars that have stopped at a light. Section 316.2055 requires no retarding ***1260** of traffic, and contains no exceptions for § 501(c)(3) charities, for "political campaigning," or for permitted activity. Because § 316.2055 makes political campaigning unlawful even from the sidewalk, the Florida legislators and state judges who choose to advertise for re-election or retention along Florida's sidewalks and roadways may join the firefighters and ninth graders in line when paying their $15 fines (or in the back of an Osceola County Sheriff's Office prisoner van should they be arrested despite the "sign-and-pay" provisions of Fla. Stat. § 318.14).

Section 316.2055 inhibits the speech of third parties not before the Court, and suppresses considerably more speech than is necessary to serve the stated government purpose of traffic safety and uniformity. It is therefore substantially overbroad, and not narrowly tailored to meet a significant state interest.

Section 316.2055 is also impermissibly vague. Section 316.2055 makes it unlawful to hand into a car any "advertising or soliciting materials." "Advertising or soliciting materials" is undefined. To some people, the term might include political campaign fund-raising materials; a road map containing service station advertisements; a matchbook embossed with the name of a hotel or candidate; a resume; an invitation to join a church or synagogue; a theme park ticket and brochure; or a coupon for a free hamburger at a local restaurant. Section 316.2055 does not provide sufficiently definite warning as to the conduct that it proscribes when measured by common understanding and practices. Persons of common intelligence (again including

the Osceola County Sheriff's Deputies and the Attorney General) must necessarily guess at its meaning and differ as to its application.

IV. *CONCLUSION*

For the above reasons, it is:

RECOMMENDED that Defendant Aycock's Motion to Dismiss against Plaintiffs [Doc. 79, filed January 9, 2002] be **DENIED**. It is

FURTHER RECOMMENDED that Defendant Butterworth's Motion to Dismiss against Plaintiffs [Doc. 81, filed January 29, 2002] be **DENIED**. It is

FURTHER RECOMMENDED that Plaintiffs be found to have standing to pursue their constitutional challenges to Fla. Stat. §§ **316.2045** and 316.2055. It is

FURTHER RECOMMENDED that Fla. Stat §§ **316.2045** and 316.2055 be found facially unconstitutional, and declared invalid.

Failure to file written objections to the proposed findings and recommendations in this report pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 6.02 within ten days of the date of its filing shall bar an aggrieved party from a *de novo* determination by the district court of issues covered in the report, and shall bar an aggrieved party from attacking the factual findings on appeal.

September 19, 2002.

All Citations

242 F.Supp.2d 1226, 17 Fla. L. Weekly Fed. D 98

Footnotes

1 Defendant Sheriff Aycock states in his Objection that "[t]he parties conceded at oral argument that Plaintiffs' as applied challenges were not ripe for summary judgment, and that no sovereign immunity or qualified immunity issues remained or existed." (Doc. 102 at 6).

The Court:	Does the State of Florida say that it could pass any statute no matter how strongly in violation of the U.S. Constitution and there could be no suit in federal court, but that the only federal review can occur after a full exhaustion of state remedies through the Florida Supreme Court and on the chance that the U.S. Supreme Court grants cert?
Ms. Becker[2]:	We understand that we have an obligation to defend the statute? ... So I was using this primarily to narrow the scope so that everybody understands the State of Florida and Attorney General are only in this case to defend that statute, but that if this broadens out to anything beyond that, that we can't be sued beyond that.
The Court:	So you don't contest that the State of Florida can be sued in federal court to determine the federal constitutionality of statutes in a declaratory judgment context?
Ms. Becker:	To the best of my knowledge, yes, your Honor, that's, yes, the state can come in for those purposes.
The Court:	And it doesn't impair that there are nominal damages sought.
Ms. Becker:	Well, the nominal damages cannot be sought against the state is what I'm getting at. So in other words, we can defend the statute, but that's it.

2 Ms. Becker is counsel for Defendants the State of Florida and Mr. Butterworth.

3 The "Defendant Sheriff in [his] Objection does not object to Magistrate Judge Glazebrook's ruling that the Plaintiffs have standing to bring their claims." (Doc. 102 at 8). All Defendants, however, concede that Mr. Spangle has standing to bring suit.

4 Section **316.2045** states:

> (1) It is unlawful for any person or persons willfully to obstruct the free, convenient and normal use of any public street, highway or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, by standing or approaching motor vehicles thereon, or by endangering the safe movement of vehicles or pedestrians

traveling thereon; and any person or persons who violate the provisions of this subsection, upon conviction, shall be cited for a pedestrian violation, punishable as provided in chapter 318.

(2) It is unlawful, without proper authorization or a lawful permit, for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by any of the means specified in subsection (1) in order to solicit. Any person who violates the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. Organizations qualified under § 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, or persons acting on their behalf are exempted from the provisions of this subsection by the state. Permits for the use of any portion of a state-maintained road or right-of-way shall be required only for those purposes and in the manner set out in § 337.406.

(3) Permits for the use of any street, road or right-of-way not maintained by the state may be issued by the appropriate local government.

(4) Nothing in this section shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity.

5 Section 316.2055 states:

It is unlawful for any person on a public street, highway, or sidewalk in the state to throw into, or attempt to throw into, any motor vehicle, or offer, or attempt to offer, to any occupant of any motor vehicle, whether standing or moving, or to place or throw into any motor vehicle any advertising or soliciting materials or to cause or secure any person or persons to do any one of such unlawful acts.

1 The Court converted Defendants' motions to dismiss to motions for summary judgment pursuant to Federal Rule of Civil Procedure 12(b)(6) because the parties presented matters outside the pleadings. Docket 87. The Court denied Plaintiffs' motion to set facial challenges for summary judgment to the extent it was inconsistent with this order. *Id.*

2 Plaintiff Seth Spangle was formerly known as Seth Marchke. He is referred to as Marchke in arrest reports, Spangle in pending motions, and both Marchke and Spangle at oral argument.

3 The Court looks primarily to the language of the statute, and also to the record. The Court's reading or construction of an ordinance, however, may find support in the representation of town counsel at oral argument. *See Frisby v. Schultz,* 487 U.S. 474, 483, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988) (majority opinion by Justice O'Connor); *but cf.,* 487 U.S. at 493 n. 3, 108 S.Ct. 2495 (questioned in Justice Brennan's dissent because town counsel's interpretations did not bind the state courts).

4 The municipality had revised the ordinance to omit an exception for labor picketing after reviewing *Carey v. Brown,* 447 U.S. 455, 100 S.Ct. 2286, 65 L.Ed.2d 263 (1980) (invalidating similar ordinance under the Equal Protection Clause). The individuals challenging the ordinance apparently conceded the law's facial content-neutrality, but argued that state law nevertheless implied an exception for labor picketing. *Frisby,* 487 U.S. at 481, 108 S.Ct. 2495.

5 The Supreme Court has stated that:

Vague laws offend several important values. First, because we assume man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute abuts upon sensitive areas of First Amendment freedoms, it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.

Grayned v. City of Rockford, 408 U.S. 104, 108–09, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972) (internal citations, marks, and footnotes omitted).

6 The Court held an evidentiary hearing on standing on August 27, 2002. At the hearing, both Bischoff and Stites testified about the events of December 29, 1997. Defendants cross-examined Bischoff and Stites and introduced in evidence: 1) a copy of the literature distributed by the protesters; 2) a videotape showing some of the events of December 29, 1997; and 3) arrest reports of Spangle, Benham and Bowman. Docket 95. Defendants offered no witnesses of their own. The Court admitted the evidence solely on the issue of standing. Therefore, the facts set forth in the above section on “Background Regarding Standing” may have no bearing on issues resolved as a matter of law in the rest of this report and recommendation.

7 Plaintiffs believe that Officer Crawford's real name was Officer Gens.

8 Plaintiffs presented no evidence demonstrating that any Osceola County Deputy Sheriffs acted unprofessionally or in a manner inconsistent with their difficult responsibility of enforcing thousands of state and federal statutes.

9 The "injury-in-fact" analysis is solely for the purposes of addressing standing to challenge the constitutionality of the Florida statutes allegedly affecting Plaintiffs' First Amendment rights. The Court makes no finding critical of Sheriff Aycock or the Osceola County Sheriff's Office.

10 As written, Fla. Stat. § **316**.**2045** criminalizes all activity that retards traffic. Therefore, any roadside speech—except for exempt § 501(c)(3) speech and political campaigning—whether political or solicitous, will violate the statute. The parties acknowledge that the Plaintiffs' action are more accurately described as "handbilling," an activity traditionally accorded more deference by the Supreme Court. *See United States v. Belsky,* 799 F.2d 1485, 1489 (11th Cir.1986) ("soliciting funds is an inherently more intrusive and complicated activity than is distributing literature"). Nevertheless, the activity may well be considered "solicitation" for the purposes of Fla. Stat. § **316**.**2045**(2)–(4). Indeed, the Attorney General argued at the hearing that Plaintiff Spangle's arrest record shows that he was arrested for solicitation, even though the protesters' activities bore none of the traditional hallmarks of solicitation. *Heffron,* 452 U.S. at 653, 665, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981) (Blackmun, J., concurring in part and dissenting in part) ("The distribution of literature does not require that the recipient stop in order to receive the message the speaker wishes to convey; instead, the recipient is free to read the message at a later time... [S]ales and the collection of solicited funds not only require the fairgoer to stop, but also 'engender additional confusion ... because they involve acts of exchanging articles for money, fumbling for and dropping money, making change, etc.' ").

11 The Florida Legislature adopted the Florida Uniform Disposition of Traffic Infractions Act in order to decriminalize certain violations of Chapter 316, the Florida Uniform Traffic Control Law, thereby facilitating the implementation of a more uniform and expeditious system for the disposition of traffic infractions. Fla. Stat. § 318.12. A person charged with a non-criminal infraction simply signs the citation, and promises to appear. Fla. Stat. § 318.14(2). A person who does not elect to appear, may pay the fine by mail or in person, and is deemed to have admitted the infraction. Fla. Stat. § 318.14(4). Such admission shall not be used as evidence in any other proceeding. *Id.* There is no right to a trial by jury or a right to court-appointed counsel for a non-criminal infraction. Fla. Stat. § 318.13(3).

12 All protesters nevertheless may be subject to non-criminal pedestrian violations under section one, which contains no § 501(c)(3) exemption. Persons who are engaged in "political campaigning," however, are exempt from both pedestrian and criminal violations under sections one and two. *See* Fla. Stat. § **316**.**2045**(4).

13 Defendants contend that the term "political campaigning" has a "clear meaning traditionally and commonly understood to refer to urging the election of a candidate to office." Docket No. 91 at 7. But the traditional and common understanding may be broader. Political campaigning may include urging the election of a slate of candidates; urging support for a political party; urging the defeat of an opposing candidate; urging the defeat of a proposition or initiative on the ballot; or urging a party-line vote on a political issue.

14 Under defendant's understanding of "political campaigning," the Osceola County Sheriff's Office must arrest the group on one side of the street holding "Impeach Clinton" posters, while the group on the other side of the street holding "Re–Elect Clinton" signs would be allowed to remain and wilfully retard traffic.

15 Section 337.406 of the Florida Statutes makes it lawful to use a state transportation facility right-of-way in a manner that interferes with traffic movement where the use is "otherwise authorized" by the rules of the Florida Department of Transportation. No such rules appear in the record.

16 There may nevertheless be a pedestrian violation. Section one contains no permitting exception.

17 Once again, there may nevertheless be a pedestrian violation. Section one contains no permitting exception.

18 Section two of Fla. Stat. § 337.406 also permits sales by persons "holding valid peddlers' licenses issued by appropriate governmental entities."

19 The Florida Department of Transportation designates roads as state-maintained roads. *See* Fla. Stat. § 316.106(50). Jurisdiction to control traffic on state roads is vested in the Florida Department of Transportation. Fla. Stat. § 316.006(1). Chartered municipalities have jurisdiction over all non-state roads in their boundaries, while counties have jurisdiction over all roads within their boundaries that do not fall under state or municipal jurisdiction. Fla. Stat. § 316.006(2)–(3).

20 Apparently some counties and some municipalities have permitting procedures, and others do not. A person's ability to obtain a permit for otherwise criminal conduct may vary from county to county, even along the same road.

21 Section one of Fla. Stat. § **316**.**2045** does not, standing alone, have the problems created by the preferences in § **316**.**2045**(2)–(4) for § 501(c)(3) speech, for "political campaigning," and for licensed speech. Standing alone, Fla. Stat. § **316**.**2045**(1) appears to be facially content-neutral. But the Florida legislature chose to include the specified exceptions

as important parts of the statute. Absent an express direction as to the legislature's intent, this Court will not sever the unconstitutional parts, and leave section one standing alone. That is a decision for the legislature.

22 The statute provides little guidance even for a permit for the use of a state-maintained road or right-of-way that is within an incorporated municipality. An unspecified local government entity "may" issue a limited and temporary permit for certain ambiguously specified uses if the entity determines that "the use will not interfere with the safe and efficient movement of traffic and the use will cause no danger to the public." Fla Stat. §§ **316**.**2045**(2) and 337.406(1).

End of Document

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice & Public Safety Subcommittee

Start Date and Time:	Wednesday, January 27, 2021 04:00 pm
End Date and Time:	Wednesday, January 27, 2021 06:00 pm
Location:	Webster Hall (212 Knott)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 1 Combating Public Disorder by Fernandez-Barquin

The Chair requests that all amendments should be filed by 6 p.m. on Tuesday, January 26, 2021, including amendments filed by Members of the Subcommittee.

This meeting will be live-streamed on https://thefloridachannel.org/. Audience seating will be socially distanced and limited to the press and those persons wishing to provide substantive testimony on the filed bills or draft legislation. Seating will be available on a first-come, first-served basis. Persons who wish to attend must register at www.myfloridahouse.gov, and pick up a pass at the Legislative Welcome Center on the 4th Floor of the Capitol beginning two hours before the start of the meeting. Registration closes three hours before the meeting starts.

NOTICE FINALIZED on 01/20/2021 4:16PM by Collins.Lindsey

HB 1 Combating Public Disorder
Rep. Fernandez-Barquin
Criminal Justice & Public Safety Subcommittee- Jan. 27, 2021

HB 1 combats public disorder and protects public safety in Florida by:

Criminal Protections

- Defining the existing crimes of **rioting** and **inciting a riot** (**F3**).

- Creating new crimes of **aggravated rioting** and **aggravated inciting a riot** (**F2**) and enhancing penalties when a person riots or incites a riot and in doing so:
    - Causes great bodily harm to another person not rioting,
    - Causes significant property damage (over $5,000),
    - Uses or gives another person a deadly weapon to be used in the riot,
    - Endangers vehicles traveling on the road by using or threatening force, or
    - Riots with 9 or more people thereby causing greater risk of injury or property damage.

- Reclassifying penalties for an **assault** (**M1**) or **battery** (**F3**) committed in furtherance of a riot and specified **thefts** and **burglaries** committed during a riot and facilitated by the condition of the riot.

- Increasing the minimum permissible sentence by increasing the **offense severity ranking** for specified felonies committed in furtherance of a riot including destroying a tomb or monument, disturbing the contents of a grave, and aggravated assault or battery.

- Protecting law enforcement officers attempting to quell a riot by requiring a **6-month minimum mandatory** sentence for **battery on a law enforcement** officer in furtherance a riot (**F3**).

- Creating new offenses to protect all historical **monuments** from being **destroyed** (**F2**), **vandalized**, or **graffiti** (**F3**).

- Protecting a person from being victimized by a group of people forcefully compelling him or her to do any act or assume or abandon a particular viewpoint by prohibiting **mob intimidation** (**M1**).

- Protecting victims from **cyberintimidation ("doxing")** through the publication of personal identification information meant to be used by the publisher, or a third party, to threaten, intimidate, or harass the victim, or incite violence or the commission of a crime against the victim (**M1**).

- Requiring persons arrested for offenses related to rioting including rioting, aggravated rioting, inciting a riot, aggravated inciting a riot, unlawful assembly, burglary or theft committed during a riot and facilitated by conditions of the riot, or mob intimidation to remain in custody until appearing for first appearance and having a judge determine bond.

Civil Protections

- Giving a resident of a municipality the opportunity challenge a reduction to the budget of a municipal law enforcement agency and allowing the Administration Commission (Gov. and Cabinet) to review and modify the budget as necessary to protect public safety.

- Corrects constitutional issues that have prohibited the current law against obstructing streets by impeding traffic from being enforced (**pedestrian violation**).

- Waives sovereign immunity and creates a cause of action allowing a person who suffers injury or property damage to sue a municipality if the municipality intentionally obstructed or interfered with the municipal law enforcement agency's ability to provide reasonable police protection during a riot or unlawful assembly, if such failure is the proximate cause of the plaintiff's injury or damages.

- Provides an affirmative defense for a person who is sued for civil damages for injuries that were sustained by a plaintiff who participated in a riot or unlawful assembly.

FICTION/FACT HB1

COMBATING PUBLIC DISORDER

FICTION: It Values Monuments Over People!

FACT: HB 1 is about protecting Floridians' lives. Along with protecting people, the bill also includes protections for property. The bill protects all memorials dedicated to preserving U.S. and Florida history, and makes no distinction based on the type or viewpoint of the memorial. For property, the focus is on destroying a monument without permission of the owner. If the owner chooses to remove or destroy the memorial, it may do so.

FICTION: It is Dangerous!

FACT: No one has a right to riot. The bill is solely focused on preventing violence and rioting. All Americans have the right to protest, but no American has the right to destroy others' property, no American has the right to physically endanger others. HB 1 does not target communities of color. This bill actually protects peaceful protesters from bad actors that want to perpetrate violence.

FICTION: It is Unnecessary!

FACT: Thankfully, there wasn't the kind of violence we saw around the country over the summer and in January in Florida. Government's first priority is protecting the public. We need to send a message that we intend to keep Florida safe - HB 1 gives the justice system additional tools to keep peaceful protests safe from those trying to abuse a movement.

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FICTION: It Silences Protest!

- **FACT:** The bill does not impact the ability of local governments to give a permit for public demonstrations.

FICTION: It Takes Away Local Control!

- **FACT:** HB 1 only allows the Administration Commission (the Governor and cabinet) to review local budgets if a resident of that community files an appeal by petition. This builds on an existing process of law; it's not brand new. Government's first priority is protecting the public – we won't stand for defunding the police.

FICTION: It Protects the Guilty!

- **FACT:** HB 1 would not stop someone from assisting law enforcement in identifying criminals. HB 1 only prevents persons from posting personal identification information with the intent to, or with the intent the information will be used by another to, threaten, intimidate, harass, incite violence, or commit a crime against a person, or place a person in reasonable fear of death or great bodily harm.

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Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Criminal Justice & Public Safety Subcommittee

Representative Chambliss offered the following:

Amendment (with title amendment)

Remove line 379 and insert:

admittance to bail in accordance with chapter 903. This subsection does not apply when the available facilities to house arrestees are filled to 75 percent of their capacity or greater.

T I T L E A M E N D M E N T

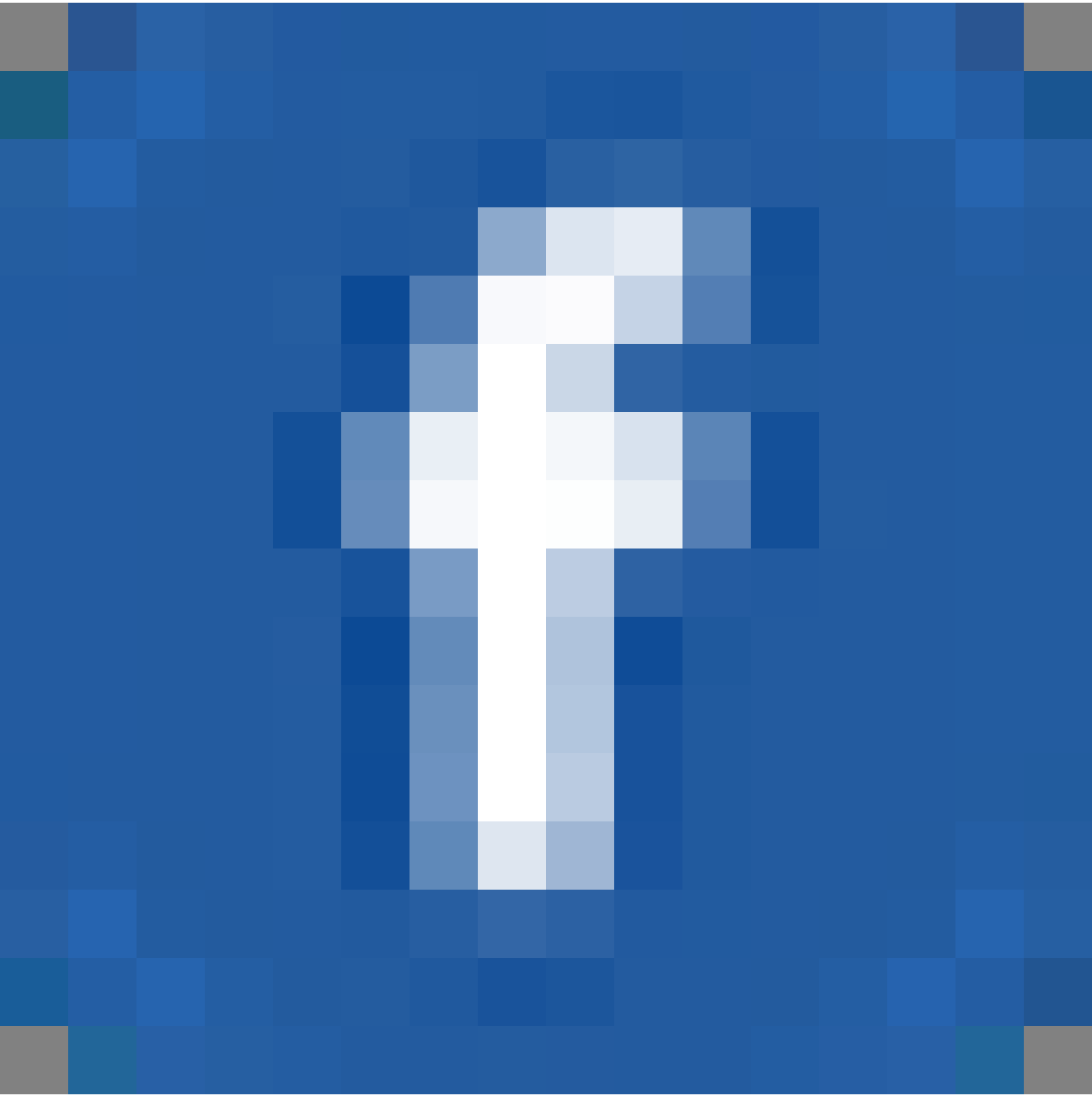
Remove line 41 and insert:

first appearance; providing an exception; amending s. 784.07, F.S.; requiring

SUN CITY STRATEGIES

SUN CITY
STRATEGIES


AMERICAN
OVERSIGHT



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HB 1: Combating Public Disorder Crimes

Section	Statute	Crime	Offense Degree	Offense Severity Ranking	FAR?
2	316.2045	Obstructing public street, highway, and road	Noncriminal pedestrian violation	NA	NA
4	784.011(3)	Assault in furtherance of a riot or aggravated riot	M1	NA	No
5	784.021(3)	Aggravated assault in furtherance of a riot or aggravated riot	F3	Level 7	No
6	784.03(3)	Battery in furtherance of a riot or aggravated riot	F3	Level 2	No
7	784.045(3)	Aggravated battery in furtherance of a riot or aggravated riot	F2	Level 8	No
8	784.0495	Mob intimidation	M1	NA	Yes
9	784.07	Assault or *battery on LEO in furtherance of a riot or aggravated riot*	Varies *6 month min man*	Assault (NA), Battery (Level 5), Agg. Assault (Level 7), Agg. Battery (Level 8)	No
10	806.13	Criminal mischief of memorial, over $200 damages	F3	Level 2	No
11	806.135	Destroying or demolishing a memorial	F2	Level 4	No
12	810.02(3)	Burglary in the second degree during a riot or aggravated riot	F1	Occupied dwelling; unoccupied dwelling; occupied conveyance; or authorized emergency vehicle (Offender not armed; no assault or battery)(Level 8) Occupied structure (Offender not armed; no assault or battery) (Level 7)	Yes
12	810.02(4)	Burglary during a riot or aggravated riot	F2	Unoccupied structure; unoccupied conveyance (Offender not armed; no assault or battery) (Level 5)	Yes
13	812.014 (2)(b)	Grand theft in the second degree during a riot or aggravated riot	F1	$20k < $100k (Level 7) Cargo valued at < $50k; $300+ of emergency medical equipment or law enforcement equipment taken from an authorized emergency vehicle (Level 8)	Yes
13	812.014 (2)(c)	Grand theft in the third degree during a riot or aggravated riot	F2	$750 < $5k (Level 3) $5k < $10k (Level 4) $10k < $20k (Level 5) Will, codicil, firearm, fire extinguisher, etc. (Level 5)	Yes
14	836.115	Cyberintimidation by Publication (Doxing)	M1	NA	No
15	870.01(1)	Affray	M1	NA	No
15	870.01(2)	Riot	F3	Level 3	Yes
15	870.01(3)	Aggravated Rioting	F2	Level 4	Yes
15	870.01(4)	Inciting or Encouraging a Riot	F3	Level 3	Yes
15	870.01(5)	Aggravated Inciting or Encouraging a Riot	F2	Level 4	Yes
16	870.02	Unlawful Assemblies	M2	NA	Yes
17	870.03	Riots and Routs	F3	Unranked- Level 1	Yes
19	872.02(3)	Injuring or Removing tomb or monument in furtherance of a riot or aggravated riot	F3- Destroy, mutilate, deface, injure, remove a tomb/ monument/ gravestone etc. F2- Remove or disturb contents of a grave/tomb	F3 Violation (Level 2) F2 Violation (Level 5)	No

New Crime CF/MM Degree Reclassification Offense Severity Ranking Level Increase

PEACEFUL PROTEST PROTECTION ACT

WHEREAS, Floridians have the right to engage in peaceful assembly and protests, and many peaceful protests and demonstrations have occurred across Florida; and

WHEREAS, the rights to free speech and assembly are guaranteed under the First Amendment to the United States Constitution and the Florida State Constitution, and such peaceful protests and lawful demonstrations should always be protected activity; and

WHEREAS some protests and demonstrations have resulted in physical attacks on and injury to first responders, as well as injury to innocent bystanders and participants; and

WHEREAS persons who abuse these fundamental liberties by committing violent or destructive acts endanger the safety and well-being of those who exercise that right to affect positive change in public policy; and

WHEREAS, this legislation is needed to establish a uniform framework of laws that will protect the rights of all Floridians to peacefully demonstrate, and is not intended to interfere with these rights but rather, is narrowly tailored to protect the safety of participants, bystanders and first responders; now, therefore,

BE IT ENACTED BY THE FLORIDA HOUSE OF REPRESENTATIVES/SENATE:

FLORIDA STATUTES CHAPTER 870.01 shall be amended to add the following new language as a new subdivision:

(3) A law enforcement officer may lawfully confiscate any and every weapon, stick, laser, firework, chemical, mask, helmet, shield, bat, rock, leaf blower, or any other item or piece of equipment that may be used as a weapon or to thwart or attempt to thwart law enforcement action whether located or brought by any individual within one-half mile of a protest, demonstration or riot. Such items may be held in law enforcement possession for up to ninety (90) days following confiscation, or maintained as long as needed if evidence of a crime.

(a) Any individual bringing such an item within one-half mile of a then-occurring protest, demonstration or riot, with the intent that the item be used as a weapon or to thwart or attempt to thwart law enforcement action, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082(4)(b) with up to a maximum of 60 days in jail and fines pursuant to s.775.083(1)(e) in an amount not to exceed $500.00.

(b) Any individual that conceals, attempts to conceal, or refuses to cooperate with the confiscation of such items within one-half mile of a then-occurring protest, demonstration or riot shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082(4)(a) with up to 1 year in prison and a fine pursuant to s. 775.083(1)(d) in an amount not to exceed $1,000.00.

(c) Any individual who attends a protest, demonstration or riot and displays, brandishes or threatens to use or uses any one or more of the items described in paragraph (3) above, in connection with any other criminal violation, shall be guilty of a felony in the third degree, punishable as provided in s. 775.081(e) with up to 5 years in prison and a fine pursuant to s. 775.083(1)(c) in an amount not to exceed $5,000.00.

Note: *Felony 3 for inciting is s. 775.081(e) up to 5 years and s. 775.083(1)(c) for up to a $5000 fine.*

2020 WL 6020484
Only the Westlaw citation is currently available.
United States District Court, M.D. Florida,
Jacksonville Division.

Peter VIGUE, Plaintiff,

v.

David B. SHOAR, in his official capacity as Sheriff of St. Johns County, Defendant.

Case No. 3:19-cv-186-J-32JBT
|
Signed 10/12/2020

West Codenotes

Held Unconstitutional
Fla. Stat. Ann. §§ 316.2045, 337.406(1)

Attorneys and Law Firms

Jodi Lynn Siegel, Kirsten Anderson, Southern Legal Counsel, Inc., Gainesville, FL, Tristia Bauman, Pro Hac Vice, National Law Center on Homelessness & Poverty, Washington, DC, for Plaintiff.

Bruce R. Bogan, Hilyard, Bogan & Palmer, PA, Orlando, FL, Melissa Jean Sydow, Tampa, FL, for Defendant.

ORDER

TIMOTHY J. CORRIGAN, United States District Judge

***1** Peter Vigue is a homeless resident of St. Johns County who stands on public roadways and holds signs to solicit charitable donations from passersby. Mr. Vigue's signs often bear messages like "God Bless, Be Safe" or "Please Care." In busy areas of town, Mr. Vigue may see up to ten thousand people per day.

Two Florida laws, FLA. STAT. §§ 316.2045 and 337.406 (2019), prohibit individuals from soliciting charity on roadways in Florida without a permit issued by a local government. Sections 316.2045(2)–(4) contain exceptions to the permitting requirement for Internal Revenue Code § 501(c)(3) registered organizations and for political campaigning. Mr. Vigue claims that St. Johns County Sheriff David B. Shoar enforces §§ 316.2045 and 337.406 against homeless individuals to forbid them from soliciting charitable donations in public spaces, including sidewalks and roadways. In this 42 U.S.C. § 1983 action, he contends these statutes are facially unconstitutional.

This case is before the Court on cross-motions for summary judgment. (Docs. 59, 60). The Court held oral argument on June 2, 2020, the record of which is incorporated by reference. (Doc. 75).

I. FACTS AND PROCEDURAL HISTORY

A. Preliminary Injunction

On May 6, 2019, the Court entered a preliminary injunction enjoining both Sheriff Shoar and Gene Spaulding, in his official capacity as Director of the Florida Highway Patrol ("FHP"), from enforcing § 316.2045 against Mr. Vigue during the pendency of this case. (Doc. 32). In so doing, the Court relied on the decisions of two other district courts in the Eleventh Circuit that found § 316.2045 unconstitutional and issued preliminary and permanent injunctions, as well as on the Florida Attorney General's opinion that subsequent amendments have not cured the statute's constitutional infirmities. Id. at 3–5. The Court declined, however, to extend the preliminary injunction to § 337.406 because at that time, Mr. Vigue had "not sufficiently shown he ha[d] standing to obtain an injunction against enforcement of a statute under which he ha[d] not been cited." Id. at 3 n.1. The Court limited injunctive relief to Mr. Vigue only. Id. at 7.

On August 16, 2019, in response to the preliminary injunction (Doc. 32), Sheriff Shoar enacted Policy 41.39 for the St. Johns County Sheriff's Office ("SJSO") which states that officers are not to enforce § 316.2045(2)–(4), are to limit enforcement of §§ 316.2045(1) and 337.406, and are to receive training regarding the policy change.[1] (Doc. 59-16). The policy is a response to litigation and may be changed depending on the outcome of this case. (Docs. 59-16; 59-8 at 17:1–16, 59:1–19, 61:19–20). Additionally, Sheriff's deputies were told not to arrest, cite, or stop Mr. Vigue for violations of either statute unless he was committing other crimes. (Docs. 59-8 at 81–98; 59-10 at 21:24–22:19; 59-5 at 33:8–15; 59-4 at 28:11–25; 59-6 at 43:6–15; 59-11 at 36:19–25).

B. Florida Highway Patrol Settlement

***2** Mr. Vigue originally brought this lawsuit against both Sheriff Shoar and FHP. (See Doc. 1). The Office of the Florida Attorney General represented FHP. (Doc. 15). The Court anticipated that the Attorney General, charged with defending Florida laws, would provide a comprehensive argument regarding the constitutionality of §§ 316.2045 and 337.406, and that Sheriff Shoar would be important, though not primary, to that discussion.

However, on October 28, 2019, FHP settled with Mr. Vigue. (Docs. 45, 45-1). Almost identical to the language of Sheriff Shoar's Policy 41.39, FHP agreed to prohibit enforcement of § 316.2045(2)–(4), limit its enforcement of § 316.2045(1) and § 337.406, provide FHP officers with related training, and circulate a bulletin regarding its new enforcement scheme.[2] (Doc. 45-1). The Florida Department of Highway Safety and Motor Vehicles, of which FHP is one component, agreed to remove § 316.2045(2)–(4) from the Uniform Traffic Citations, communicate its enforcement policy to various law enforcement entities, include edited versions of the statutes at issue in its annual package of requested legislation, and provide Mr. Vigue's counsel with a report of arrests and citations under the statutes. Id. The agreeement also stated that Mr. Vigue would continue litigation against Sheriff Shoar, seeking an order to permanently enjoin enforcement of §§ 316.2045 and 337.406, and that the Florida Attorney General retained authority to intervene to defend the statutes, though she has not done so.[3] Id. Thus, FHP has agreed not to enforce the statutes at issue and is no longer a party to this lawsuit, while Sheriff Shoar has decided to continue to defend the case. The Court proceeds in that context.

C. Enforcement of §§ 316.2045 and 337.406 Prior to Preliminary Injunction

Before this lawsuit, Sheriff Shoar had not issued formal written guidance, policies, or directives regarding how to enforce §§ 316.2045 or 337.406. (Doc. 59-8 at 48:13–20, 50:8–20). From 2016 to 2019, deputies used their own discretion to issue citations and warnings to Mr. Vigue under §§ 316.2045 and 337.406. (Docs. 59-5 at 10:8–11:3; 59-9 at 20:24–21:6; 59-6 at 49:11–16; 59-10 at 20:23– 21:14). Between January 17, 2017 and July 29, 2019, the SJSO states that it received fifty-four calls for assistance related to Vigue standing in roadways. (Doc. 66 at 3). Mr. Vigue, for his part, says that he has felt harassed by Sheriff's deputies and does not try to cause any traffic issues when he holds his sign requesting charitable donations.[4] (Doc. 60-9). The Court enumerates the relevant warnings, citations, and arrests that Mr. Vigue has received under each of the statutes below.

i. Mr. Vigue has been cited under § 316.2045.

***3** Section 316.2045(1) prohibits obstructing the use of public streets, highways, and roads. Violations of § 316.2045(1) may result in noncriminal traffic citations. § 316.2045(1). Section 316.2045(1) states:

> It is unlawful for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, by standing or approaching motor vehicles thereon, or by endangering the safe movement of vehicles or pedestrians traveling thereon; and any person or persons who violate the provisions of this subsection, upon conviction, shall be cited for a pedestrian violation, punishable as provided in chapter 318.

§ 316.2045(1).

Sheriff's deputies have issued warnings or citations to Mr. Vigue under § 316.2045(1) six times:

- June 28, 2016 – Guilty, paid fine on December 21, 2016. (Docs. 2-7 at 2–3; 60-1).
- October 2, 2018 – Dismissed on December 27, 2018. (Docs. 2-7 at 14–15; 60-4).
- October 28, 2018 – Issued written traffic warning. (Doc. 59-2 at 1).
- January 8, 2019 – Dismissed on January 10, 2019. (Doc. 2-7 at 23– 24).
- March 7, 2019 – Dismissed on May 17, 2019. (Doc. 23 at 6; 59-1 at 1).
- March 11, 2019 – Dismissed on May 9, 2019. (Doc. 23 at 7; 59-1 at 1).

Violations of § 316.2045(2) are more serious and may result in second-degree misdemeanor charges. Like § 316.2045(1), § 316.2045(2) prohibits obstructing the use of public streets,

highways, and roads, but § 316.2045(2) specifically disallows individuals from obstructing roads to solicit when they have no permit. Section 316.2045(2) grants an exception to the permit requirement for 501(c)(3) organizations and their representatives on streets and roads not maintained by the state, and the statute cross-references the other law that Mr. Vigue claims is unconstitutional, § 337.406. Section 316.2045(2) provides that:

> It is unlawful, without proper authorization or a lawful permit, for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by any of the means specified in subsection (1) in order to solicit. Any person who violates the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Organizations qualified under s. 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, or persons or organizations acting on their behalf are exempted from the provisions of this subsection for activities on streets or roads not maintained by the state. Permits for the use of any portion of a state-maintained road or right-of-way shall be required only for those purposes and in the manner set out in s. 337.406.

§ 316.2045(2).

Sheriff's deputies have cited or arrested Mr. Vigue under § 316.2045(2) seven times:

- April 18, 2017 – Nolle prossed on June 2, 2017. (Docs. 2-7 at 4–5; 60-2; 59-1 at 1).
- November 25, 2017 – No information on disposition. (Docs. 2-7 at 11–13; 60-3; 59-1 at 1).
- November 13, 2018 – Arrested and booked into St. Johns County Jail; nolle prossed on December 2, 2018. (Docs. 2-7 at 16–22; 60-5; 59-1 at 1).

*4 • January 8, 2019 – Arrested and booked into St. Johns County Jail; nolle prossed on January 15, 2019. (Docs. 2-7 at 25–31; 60-7; 59-1 at 1).

- January 13, 2019 – Arrested and booked into St. Johns County Jail; nolle prossed on February 11, 2019.[5] (Doc. 2-7 at 32–36; 59-1 at 1).
- February 13, 2019 – Nolle prossed on April 26, 2019. (Doc. 23 at 3; 59-1 at 9).
- February 22, 2019 – Nolle prossed on March 12, 2019. (Doc. 23 at 4–5; 59-1 at 1).

Section 316.2045(3) elaborates on the conditions under which 501(c)(3) organizations may be exempt from the requirement to obtain a permit from a local government for the use of streets, roads, or rights-of-way not maintained by the state.[6] Finally, § 316.2045(4) clarifies that no part of the law "shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity." Thus, representatives of political campaigns may also lawfully solicit donations without a permit.

ii. Mr. Vigue has been warned under § 337.406 and other statutes.

Violation of § 337.406 is a second-degree misdemeanor offense. § 337.406(5). Like § 316.2045, § 337.406(1) prohibits solicitation without a permit, but it applies to rights-of-way of state transportation facilities and lists various prohibited uses of those rights-of-way in addition to solicitation. Section 337.406(1) provides:

> *5 Except when leased as provided in s. 337.25(5) or otherwise authorized by the rules of the department, it is unlawful to make any use of the right-of-way of any state transportation facility, including appendages thereto, outside of an incorporated municipality in any manner that interferes with the safe and efficient movement of people and property from place to place on the transportation facility. Failure to prohibit the use of right-of-way in this manner will endanger the health, safety, and general welfare of the public by causing distractions to motorists, unsafe pedestrian movement within travel lanes, sudden stoppage or slowdown of traffic, rapid lane changing and other dangerous traffic movement, increased vehicular accidents, and motorist injuries and fatalities. Such prohibited uses include, but are not limited to, the free distribution or sale, or display or solicitation for free distribution or sale, of any merchandise, goods, property or services; the solicitation for charitable purposes; the servicing or repairing of any vehicle, except the rendering of emergency service; the storage of vehicles being serviced or repaired on abutting property or elsewhere; and the display of advertising of any sort, except that any portion of a state transportation facility may be used for an art festival, parade, fair, or other special event if

> permitted by the appropriate local governmental entity. Local government entities may issue permits of limited duration for the temporary use of the right-of-way of a state transportation facility for any of these prohibited uses if it is determined that the use will not interfere with the safe and efficient movement of traffic and the use will cause no danger to the public. The permitting authority granted in this subsection shall be exercised by the municipality within incorporated municipalities and by the county outside an incorporated municipality. Before a road on the State Highway System may be temporarily closed for a special event, the local governmental entity which permits the special event to take place must determine that the temporary closure of the road is necessary and must obtain the prior written approval for the temporary road closure from the department. Nothing in this subsection shall be construed to authorize such activities on any limited access highway. Local governmental entities may, within their respective jurisdictions, initiate enforcement action by the appropriate code enforcement authority or law enforcement authority for a violation of this section.

Sheriff's deputies have warned Mr. Vigue twice under § 337.406:

***6** • December 7, 2015 – Written traffic warning. (Doc. 59-2 at 5).

• December 31, 2017 – Verbal warning.[7] (Doc. 59-2 at 9).

Mr. Vigue has not been cited or arrested under § 337.406. (See Doc. 59-2). Deputies' reports reflect that Mr. Vigue received verbal warnings in three other instances:

- August 11, 2015 – Verbal warning for violation of unspecified statutes. (Doc. 59-2 at 3).
- December 7, 2016 – Verbal warning for violation of unspecified statutes. (Doc. 59-2 at 7).
- April 1, 2019 — Verbal warning for soliciting charitable donations in an intersection.[8] (Doc. 59-2 at 13).

Following the Court's preliminary injunction (Doc. 32), pending prosecutions against Mr. Vigue were dismissed. (Docs. 59-1). All but one of the prosecutions against Mr. Vigue under § 316.2045 were dismissed or nolle prossed, and Mr. Vigue was never found guilty of the other charges. (Docs. 59-1, 2–7, 23).

D. History of Florida Non-Solicitation Statutes

This Court is not the first to address the constitutionality of §§ 316.2045 or 337.406. In this District in 2003, the Honorable John Antoon II issued a permanent injunction against enforcement of § 316.2045, declaring the statute facially unconstitutional. Bischoff v. Florida, 242 F. Supp. 2d 1226 (M.D. Fla. 2003). In 2006, the Honorable Stephan P. Mickle in the Northern District of Florida issued a preliminary injunction as to both statutes at issue here. Chase v. City of Gainesville, No. 1:06-CV-044-SPM/AK, 2006 WL 2620260 (N.D. Fla. Sept. 11, 2006). Subsequently, the parties in Chase agreed to have the court permanently enjoin enforcement of §§ 316.2045 and 337.406 and find both statutes facially unconstitutional. Chase v. City of Gainesville, No. 1:06-CV-44-SPM/AK, 2006 WL 3826983 (N.D. Fla. Dec. 28, 2006).

***7** In 2007, the Florida Legislature amended § 316.2045(3) to exempt certain 501(c)(3) organizations from the permit requirements for charitable solicitation and to establish conditions with which the organizations must comply to take advantage of that exemption. Fla. Att'y Gen. Op. 2007-50 (2007). On November 7, 2007, Florida Attorney General Bill McCollum issued an opinion that the amendments did not address the constitutional infirmities identified in Bischoff and recommended that the Florida Legislature address those issues. Id.[9] To date, the Legislature has not done so.

Both §§ 316.2045 and 337.406 reference a permitting scheme. However, there is not (and never has been) a permit process established in St. Johns County, St. Augustine, or the state of Florida for Mr. Vigue or other individuals wishing to engage in charitable solicitation on public streets, highways, or roads. (Doc. 59-3 at 1–3). Thus, Mr. Vigue does not have such a permit, and Sheriff Shoar does not point to any avenue through which he may obtain one to solicit donations lawfully. Id. Mr. Vigue is not alone in soliciting charity on St. Johns County roadways, and authorities have questioned other individuals about whether they possessed appropriate permits. (Docs. 59-9 at 27:14–28:2, 59-10 at 15:15–25, 59-4 at 35:24–36:15, 59-14 at 18:17–19:1). Authorities have enforced §§ 316.2045 and 337.406 against others through citations, arrests, and warnings. (Docs. 2-4, 59-15, 59-11 at 13:14–14:8, 59-4 at 36:2–15, 59-10 at 19:12–14).

E. Procedural Posture

The parties filed cross-motions for summary judgment (Docs. 59, 60), and the Court received responses to both motions (Docs. 65, 66). There are no disputed issues of material fact.[10] Though Mr. Vigue asserts that the statutes are unconstitutional facially and as-applied, he confirmed through counsel at the hearing that he now asks for a ruling only as to the facial challenge. (Doc. 75 at 50). Mr. Vigue requests that the Court enter a declaratory judgment that both statutes are facially unconstitutional in violation of the First and Fourteenth Amendments; that the Court enter a permanent injunction prohibiting Sheriff Shoar from enforcing both statutes; and that the Court enter judgment in favor of Mr. Vigue, finding Sheriff Shoar liable for damages for past enforcement of the statutes against Mr. Vigue, in an amount to be determined at trial. (Doc. 59 at 4). Sheriff Shoar claims that the evidence "does not support the existence of the alleged official policy, practice and/or custom of the Sheriff." (Doc. 60 at 2). He also maintains that Mr. Vigue's challenge to § 337.406 should be denied for lack of standing and asks that the permanent injunction be denied in its entirety. Id.

II. DISCUSSION

Section 1983 establishes a cause of action against state officials who violate constitutional rights while acting under color of state law. 42 U.S.C. § 1983 (2018). Mr. Vigue mounts a facial challenge as to both statutes at issue. (Docs. 59, 75). "A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." United States v. Salerno, 481 U.S. 739, 745 (1987). In contrast to an as-applied challenge, a facial challenge "seeks to invalidate a statute or regulation itself." United States v. Frandsen, 212 F.3d 1231, 1235 (11th Cir. 2000). Here, Mr. Vigue challenges the constitutionality of §§ 316.2045 and 337.406 as content-based, overbroad, vague prior restraints on speech, and adds that § 316.2045 unconstitutionally favors 501(c)(3) organizations and campaign speech. (Doc. 59).

A. Standing to Challenge §§ 316.2045 and 337.406

***8** For constitutional standing to challenge the statutes, Mr. Vigue must show (1) that he suffered an injury in fact, or invasion of a legally protected interest, that is concrete and particularized as well as actual and imminent; (2) that there is a causal connection between that injury and the alleged conduct, traceable to the action of the Defendant; and (3) that it is likely and not merely speculative that the injury will be redressed by a favorable decision in this case. Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992). When a lawsuit challenges the legality of government action or inaction:

> [T]he nature and extent of facts that must be averred (at the summary judgment stage)...in order to establish standing depends considerably upon whether the Plaintiff is himself an object of the action (or foregone action) at issue. If he is, there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it.

Id. at 561–62.

Soliciting charity is constitutionally protected expression. See Vill. of Schaumburg v. Citizens for a Better Env't, 444 U.S. 620, 632 (1980) ("[C]haritable appeals for funds, on the street or door to door, involve a variety of speech interests —communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes —that are within the protection of the First Amendment."); Smith v. City of Fort Lauderdale, 177 F.3d 954, 956 (11thCir. 1999) ("Like other charitable solicitation, begging is speech entitled to First Amendment protection."). Mr. Vigue gained a legally cognizable interest in challenging § 316.2045 when St. Johns County law enforcement took concrete action against him with a combined twelve arrests and citations under § 316.2045. (Docs. 2-7, 23, 59-1). Those citations demonstrate that Mr. Vigue was the object of government action under the statute. There is "little question" that action under the statute caused him injury, and a judgment permanently preventing the enforcement of § 316.2045 would directly redress that injury. Thus, Mr. Vigue has standing to bring this § 1983 action challenging § 316.2045.

Mr. Vigue also has standing to challenge § 337.406 even though he has not been cited or arrested under the statute. Threats of arrest for engaging in free speech activities are evidence of "an actual and concrete injury wholly adequate to satisfy the injury in fact requirement of standing." Bischoff v. Osceola Cty., 222 F.3d 874, 884 (11th Cir. 2000). When there is a credible threat of prosecution, a plaintiff is not required to expose himself to actual arrest and prosecution to have standing to challenge statutory provisions. Steffel v. Thompson, 415 U.S. 452, 459 (1974) (finding that plaintiff had standing to challenge constitutionality of trespass statute after he was warned twice to stop handbilling and told he

would be arrested if he repeated such conduct); see also Wilson v. State Bar of Ga., 132 F.3d 1422, 1428 (11th Cir. 1998) ("[S]tanding exists at the summary judgment stage when the plaintiff has submitted evidence indicating an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution." (internal quotation omitted)).

Bischoff sheds light on this issue. The case went to the Eleventh Circuit in 2000 on the issue of standing prior to the ultimate ruling from Judge Antoon in 2003. Plaintiffs Bischoff and Stites were not actually arrested during the relevant demonstration, but other protesters were arrested. Bischoff, 222 F.3d at 877. The Eleventh Circuit reasoned that the threat of arrest under the challenged statutes was adequate to show injury in fact to establish standing. Id. at 884. Thus, Bischoff and Stites were ultimately found to have standing when "[b]oth Plaintiffs testified that they were threatened with arrest for engaging in the same handbilling conduct that resulted in the arrest and charge under the challenged statutes of [other protesters]." 222 F.3d at 885.

***9** Similarly, Mr. Vigue received one written traffic warning in 2015 and one verbal warning in 2017 under § 337.406 but was never arrested or cited under the statute. (Doc. 59-2). On December 31, 2017, when Mr. Vigue was threatened with arrest under § 337.406, an officer informed Mr. Vigue that he was "acting contrary to FS 337.406" and "would be documented and appropriate law enforcement action would follow" if Mr. Vigue violated the statute again. (Doc. 59-2 at 9). Mr. Vigue ultimately satisfies the requirement for standing and need not expose himself to further threats to challenge the constitutionality of § 337.406. As in Bischoff, "it is clear that a decision in [Mr. Vigue's] favor declaring [§ 337.406] unconstitutional, either on [its] face or as applied to [Mr. Vigue], would redress the injury of being threatened with arrest for engaging in constitutionally protected activity." 222 F.3d at 885.

B. Sheriff's Liability Under 42 U.S.C. § 1983 in his Official Capacity

Sheriff Shoar makes little effort to defend the facial constitutionality of the statutes. (Docs. 60; 75). Instead, his primary argument is that Mr. Vigue may not hold him liable under 42 U.S.C. § 1983 because he has not established a custom, policy, or practice of enforcing the statutes at issue. Id.

Local governments may be held liable under § 1983 only when a constitutional deprivation arises from a governmental policy or custom. Monell v. Dep't of Soc. Servs. of New York, 436 U.S. 658, 694 (1978). "A policy is a decision that is officially adopted by the municipality, or created by an official of such rank that he or she could be said to be acting on behalf of the municipality....A custom is a practice that is so settled and permanent that it takes on theforce of law." Cooper v. Dillon, 403 F.3d 1208, 1221 (11th Cir. 2005) (quoting Sewell v. Town of Lake Hamilton, 117 F.3d 488, 489 (11th Cir. 1997)). "[I]t is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." Monell, 436 U.S. at 694. The government's official policy or custom must be the "moving force" behind the constitutional violation. Id.; see also Bd. of Cty. Comm'rs of Bryan Cty. v. Brown, 520 U.S. 397, 404 (1997) (stating that a municipality, through its deliberate conduct, must be the "moving force" behind an alleged injury for § 1983 liability).

In Cooper, the Eleventh Circuit answered the question of whether a police chief enforcing a state law may subject a municipality to liability under § 1983. Cooper, 403 F.3d at 1223. The Court determined that a police chief's decision to enforce a Florida statute constituted the adoption of a policy sufficient to trigger municipal liability under § 1983. Id. at 1221. Chief Dillon, like Sheriff Shoar, argued that enforcement of a state law could not subject him to liability. Id. The Eleventh Circuit disagreed, stating:

> Dillon was clothed with final policymaking authority for law enforcement matters in Key West and in this capacity he chose to enforce the statute against Cooper. While the unconstitutional statute authorized Dillon to act, it was his deliberate decision to enforce the statute that ultimately deprived Cooper of constitutional rights and therefore triggered municipal liability. Thus, Dillon's choice to enforce an unconstitutional statute against Cooper constituted a deliberate choice to follow a course of action...made from among various alternatives by the official or officials responsible for establishing final policy. Accordingly, we find that the City of Key West, through the actions of Dillon, adopted a policy that caused the deprivation of Cooper's constitutional rights which rendered the municipality liable under § 1983.

*10 Id. at 1223 (internal citations and quotations omitted).

Cooper bears a striking resemblance to this case. Chief Dillon oversaw enforcement of the state statute on only one occasion and was held liable, while Sheriff Shoar has overseen repeated instances of enforcing § 316.2045 and § 337.406 over a four-year period.[11] (Docs. 2-7, 23). Like Mr. Vigue, Cooper argued that the statute improperly abridged First Amendment freedom. Cooper, 403 F.3d at 1213. The Court ultimately found that the statute was "a content-based restriction that chill[ed] the exercise of fundamental First Amendment rights without a compelling justification for doing so and accordingly [was] unconstitutional." Id. at 1223.

The Court does not overlook that Sheriff Shoar's role derives from Art. VIII, § 1(d), FLA. CONST., a different constitutional provision than those regarding municipalities and city police. "Whether an official has final policymaking authority is a question of state law." Church v. City of Huntsville, 30 F.3d 1332, 1342 (11th Cir. 1994). Courts have consistently held that "police chiefs in Florida have final policymaking authority in their respective municipalities for law enforcement matters" under state and local law. See, e.g., Cooper, 403 F.3d at 1222 (citing various statutes); Davis v. City of Apopka, 734 Fed. App'x 616, 619 (11th Cir. 2018) (citing to the Florida Constitution, local ordinances, and Cooper to determine that a city's police chief was a final policymaker); Rojas v. City of Ocala, 315 F. Supp. 3d 1256, 1288 (M.D. Fla. 2018) (analyzing the Florida Constitution, state law, and local ordinances to conclude that a police chief had authority that could subject a city to liability). Similarly, under the Florida Constitution, sheriffs are elected constitutional officers who can exercise final policymaking authority regarding law enforcement in their counties. Art. VIII, § 1(d), FLA. CONST. They have "absolute control over the selection and retention of deputies in order that law enforcement be centralized in the county, and in order that the people be able to place responsibility upon a particular officer for failure of law enforcement." Szell v. Lamar, 414 So.2d 276, 277 (Fla. 5th DCA 1982) (citing § 30.53, FLA. STAT. (1981)). Said another way, "[i]t is essential to law enforcement in the various counties of the State that the people shall be able to place responsibility upon a particular individual, the sheriff." Blackburn v. Brorein, 70 So. 2d 293, 298 (Fla. 1954).

*11 "[C]ases on the liability of local governments under § 1983 instruct us to ask whether governmental officials are final policymakers for the local government in a particular area, or on a particular issue." McMillian v. Monroe Cty., 520 U.S. 781, 785 (1997). Under Florida law, Sheriff Shoar is a final policymaker in St. Johns County for the enforcement of the two statutes at issue here. His position as a final policymaker for the St. Johns County is directly analogous to Chief Dillon's position as a final policymaker for Key West in Cooper.

Sheriff Shoar claims that a review of the relevant testimony reveals that "there was no promulgated policy to enforce these particular statutes."[12] (Doc. 66 at 8). However, local government liability attaches where a "deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." Pembaur v. City of Cincinnati, 475 U.S. 469, 470 (1986). "[I]f a municipality decides to enforce a statute that it is authorized, but not required, to enforce, it may have created a municipal policy." Vives v. City of New York, 524 F.3d 346, 353 (2d Cir. 2008). The statutes being challenged here authorized Sheriff Shoar to act, but that is not the issue; the issue is whether Sheriff Shoar made a deliberate decision to enforce the statutes that ultimately deprived Mr. Vigue of his constitutional rights.

St. Johns County Sheriff's deputies arrested, cited, and warned Mr. Vigue from 2016 to 2019 under § 316.2045 and § 337.406 on at least fifteen occasions. (Docs. 2-7, 23). In doing so, they acted within SJSO unwritten policy from before this litigation. (Doc. 59-8 at 97: 4–13). Sheriff Shoar, as the final authority in SJSO, has the authority to decide whether to enforce a Florida statute as a matter of interpretation and enforcement discretion. Id. at 28:15–19. The record demonstrates that Sheriff Shoar made the deliberate decision (even following Bischoff, Chase, and the Attorney General's criticism of the 2007 amendment) to enforce the statutes. That the "on the street" decisions to warn, cite, and arrest Mr. Vigue were made by his deputies instead of the Sheriff himself does not matter. Quoting Cooper: "[Sheriff Shoar] was clothed with final policymaking authority for law enforcement matters in [St. Johns County] and in this capacity he chose to enforce the statute against [Mr. Vigue]." 403 F.3d at 1223.

At the hearing, Sheriff Shoar's counsel argued that it was not the Sheriff's role to justify the language of the statute because he did not draft or enact it. (Doc. 75 at 19:19–27:3). As a result, he claimed, Sheriff Shoar should be insulated from legal exposure. Id. But in the wake of Cooper, and with Sheriff

Shoar's deliberate decision to repeatedly enforce §§ 316.2045 and 337.406, Sheriff Shoar may be held liable under § 1983 in his official capacity.

C. The Constitutionality of § 316.2045

The Court's role in deciding whether a state law is constitutional is summarized well by Judge Antoon in Bischoff:

> Federal courts are courts of limited jurisdiction. The courts do not reach out to reform or rewrite state statutes that seem to require some improvement. Neither do the federal courts strike down valid laws of which they disapprove. It is the state legislature's duty to enact valid laws, and the Court's duty to declare what the law is, and how the law applies to the facts. The federal courts do not substitute laws they prefer for the will of the elected state legislature. But where parties in a controversy ask a federal court to declare whether a state law violates the Constitution of the United States, the Court must not shrink from its duty to adjudicate the question presented.

***12** 242 F. Supp. 2d at 1241. Here, the Court is asked to declare whether § 316.2045 violates the First and Fourteenth Amendments.[13]

Every court previously asked to evaluate § 316.2045 has declared the statute unconstitutional. Judge Antoon provided an in-depth analysis of § 316.2045 and concluded that the statute was unconstitutional for multiple reasons under First and Fourteenth Amendment jurisprudence. Bischoff, 242 F. Supp. 2d. 1226. In 2006, Judge Mickle adopted the logic and rationale of the Bischoff decision to grant a preliminary injunction enjoining enforcement of § 316.2045, which was later converted to a permanent injunction through settlement, finding that the statute violated the First and Fourteenth Amendments. Chase, 2006 WL 3826983, at *1–2. Finally, the Honorable William Terrell Hodges found a similar panhandling ordinance unconstitutional in Booher v. Marion County, No. 5:07-CV-00282WTHGRJ, 2007 WL 9684182 (M.D. Fla. Sept. 21, 2007).

The Court sees no reason to depart from the analysis of those courts. Accordingly, the Court limits discussion here to recent case law and the ineffectiveness of the 2007 amendments.

i. Section 316.2045 remains an unconstitutional content-based prohibition on speech in public fora.

Content-based regulations of speech in public fora target speech based on its communicative content and "distinguish favored speech from disfavored speech on the basis of the ideas or viewpoints expressed." Cooper, 403 F.3d at 1215 (quoting Turner Broad. Sys., Inc. v. FCC, 512 U.S. 622, 643 (1994)); see also Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd., 502 U.S. 105, 115 (1991). Content-based regulations are subject to strict scrutiny. "Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." Reed v. Town of Gilbert, 576 U.S. 155, 163 (2015) (citations omitted). In Reed, the Supreme Court clarified that "a speech regulation targeted at specific subject matter is content-based even if it does not discriminate among viewpoints within that subject matter." Id. at 169 (finding town code to be content-based because the application of the code to public signs depended on the communicative content of the signs). Courts must:

> [C]onsider whether a regulation of speech "on its face" draws distinctions based on the message a speaker conveys. Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.

Id. at 163-64 (internal citation omitted).

Following Reed, multiple statutes that restrict charitable solicitation have been viewed as content-based and struck down because they cannot survive strict scrutiny. In this district, for example, the Honorable Steven D. Merryday permanently enjoined the City of Tampa from enforcing an ordinance that banned charitable solicitation in certain areas. Homeless Helping Homeless, Inc. v. City of Tampa, No. 8:15-CV-1219-T-23AAS, 2016 WL 4162882, at *5–6 (M.D. Fla. Aug. 5, 2016). Also applying Reed, the Seventh Circuit and a Massachusetts district court found that anti-panhandling statutes were content-based and violated free speech rights under the First Amendment. Norton v. City of Springfield, 806 F.3d 411 (7th Cir. 2015) (striking down statute as unconstitutional when it prohibited oral requests for

immediate payment of money but allowed signs requesting money and oral requests to send money later); Thayer v. City of Worcester, 576 U.S. 1048 (2015) (remanding case to district court for further consideration in light of Reed); Thayer v. City of Worcester, 144 F. Supp. 3d 218 (D. Mass. 2015) (concluding that statute prohibiting begging, panhandling, or soliciting in an aggressive manner was content-based, subject to strict scrutiny, and unconstitutional).

***13** Even before Reed, the court in Bischoff found that § 316.2045 regulated speech on the basis of ideas expressed and was therefore content-based.

> Section 316.2045 selectively proscribes protected First Amendment activity—i.e., it impermissibly prefers speech by § 501(c)(3) charities and by persons who are engaged in "political campaigning" over all other activity that retards traffic, without any showing that the latter is more disruptive than the former.
>
> Section 316.2045 makes the legality of conduct that retards traffic depend solely on the nature of the message being conveyed. Said differently, the Florida statute facially prefers the viewpoints expressed by registered charities and political campaigners by allowing ubiquitous and free dissemination of their views, but restricts discussion of all other issues and subjects. Section 316.2045 of the Florida Statutes, therefore, is presumptively invalid under the Equal Protection Clause and the First Amendment of the United States Constitution because it imposes content-based restrictions on speech in a traditional public forum.

242 F. Supp. 2d at 1256 (internal citations omitted). This analysis of § 316.2045 remains true for the current version of the statute. Most of the content-based restrictions that made the law facially unconstitutional in Bischoff remain in the current version of the law. In particular, § 316.2045(2) still exempts 501(c)(3) organizations, and persons or organizations acting on their behalf, from the permitting requirements for streets or roads not maintained by the state, and it still, confusingly, conditions the need for permits on state-maintained roads or rights-of-way "only for those purposes and in the manner set out in s. 337.406." (More about § 337.406 later.)

The language of § 316.2045(4) is identical to the 2003 version of the statute when Bischoff was decided: "[n]othing in this section shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity." § 316.2045(4). The law impermissibly favors organizational, campaign, and other group speech over other types of speech, like individual charitable solicitation. Thus, § 316.2045 remains a presumptively invalid content-based regulation on protected speech. See, e.g., R.A.V. v. City of St. Paul, 505 U.S. 377, 382 (1992) ("Content-based regulations are presumptively invalid.").[14] The Bischoff court further concluded that § 316.2045 could not survive strict scrutiny, as is required of content-based regulations of speech in public fora, because it was not narrowly tailored to meet a compelling state interest. 242 F. Supp. 2d at 1236-37, 1256-59.

ii. The Court adopts the reasoning of Bischoff.

***14** Bischoff identified additional constitutional infirmities in § 316.2045, deeming the statute content-based and vague, insufficiently tailored to serve the compelling interest of safety, overbroad, and an unconstitutional prior restraint on speech. 242 F. Supp. 2d at 1250–59. At the preliminary injunction stage, the Court relied on Bischoff and Chase to support its finding that Mr. Vigue had a substantial likelihood of success on the merits of his claim that § 316.2045 is unconstitutional. (Doc. 32). There has been no material change to the statute since Bischoff. Reed only strengthens Bischoff's holding. Thus, the Court adopts the reasoning in Bischoff regarding § 316.2045. Florida Statute § 316.2045 is facially unconstitutional.

D. The Constitutionality of § 337.406

Mr. Vigue contests the validity of § 337.406 on the grounds that it is unconstitutionally overbroad, vague, imposes an improper prior restraint on speech, and violates equal protection. (Doc. 59 at 19).

Section 337.406 has received some criticism in the courts, but it has not garnered as much attention as § 316.2045. The court in Bischoff commented that § 337.406 contained "opaque and undecipherable permit provisions," which have remained unchanged, but § 337.406 was not directly at issue in that case. 242 F. Supp. 2d at 1256.

In News & Sun-Sentinel Co. v. Cox, 702 F. Supp. 891 (S.D. Fla. 1988), a court in the Southern District of Florida found a prior version of § 337.406 unconstitutional. There, a newspaper publisher sued the City of Fort Lauderdale, the city commission, and the police chief for enforcing § 337.406, which prohibited the commercial use, including

the sale of newspapers, of state-maintained roads. Id. at 893–94. The Cox court found that the prior version of § 337.406 was a content-neutral regulation of speech in public fora that was not narrowly tailored to serve a significant government interest and was therefore unconstitutional. Id. at 900–03. At that time, § 337.406 targeted commercial activity, whereas now, it prohibits using state rights-of-way of state transportation facilities "in any manner that interferes with the safe and efficient movement of people and property from place to place on the transportation facility." § 337.406(1); see Sentinel Commc'ns Co. v. Watts, 936 F.2d 1189, 1191 n.1, 1195 n.6 (11th Cir. 1991).

In 2006, although the new version of § 337.406 was in use at the time, the Court in Chase found "no reason to depart from the thorough analys[is] undertaken" in Cox and granted a preliminary injunction, finding a substantial likelihood that § 337.406 was unconstitutional. Chase, 2006 WL 2620260, at *1. The Court analyzes the new version of the statute here.

i. Section 337.406(1) imposes an unconstitutional prior restraint.

A prior restraint on speech exists "when the government can deny access to a public forum before the expression occurs." United States v. Frandsen, 212 F.3d 1231, 1236–37 (11th Cir. 2000). Prior restraints "are not per se unconstitutional," but there is a "strong presumption against their constitutionality." Id. at 1237. Attempts to subject the exercise of First Amendment freedoms to the prior restraint of a license are unconstitutional when they lack narrow, objective, and definite standards to guide the licensing authority. Shuttlesworth v. Birmingham, 394 U.S. 147, 150–51 (1969). A permissible prior restraint must include "adequate procedural safeguards to avoid unconstitutional censorship." Frandsen, 212 F.3d at 1239 n.7. Facially valid prior restraints require: (1) the burden of going to court to suppress speech and of proof once in court rests upon the government; (2) any restraint prior to a judicial determination may only be for a specified brief period to preserve the status quo; and (3) an avenue for prompt judicial review of the censor's decision must be available. Id. at 1238; Freedman v. Maryland, 380 U.S. 51, 58–59 (1965).

***15** Section 337.406(1) articulates a prior restraint on speech because anyone who wishes to solicit charitable donations on state rights of way must first obtain a permit:

> Local government entities may issue permits of limited duration for the temporary use of the right-of-way of a state transportation facility for any of these prohibited uses [including solicitation for charitable purposes] if it is determined that the use will not interfere with the safe and efficient movement of traffic and the use will cause no danger to the public. The permitting authority granted in this subsection shall be exercised by the municipality within incorporated municipalities and by the county outside an incorporated municipality.

§ 337.406(1).

The permitting scheme described in § 337.406(1) does not include adequate procedural safeguards. It includes no explicit standards for issuance other than general safety, no time limits, and no review process for denials. Local governments seem to have unfettered discretion not only regarding who receives a permit, but also regarding whether and how to institute a permitting procedure in the first place. This is brought into sharp focus here because neither the State, St. Johns County, nor Sheriff Shoar have ever created a process by which a person can obtain a permit under § 337.406(1), and the statute does not require them to do so. Thus, there is literally no way for Mr. Vigue to comply with the permitting requirement, even if he wanted to.

Courts have routinely struck down permitting schemes with similar deficiencies. FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 225–26 (1990) (stating that "cases addressing prior restraints have identified two evils that will not be tolerated," including unbridled government discretion and lack of time constraints); Solantic, LLC v. City of Neptune Beach, 410 F.3d 1250, 1272 (11th Cir. 2005) (finding a sign code's permitting requirement to be "precisely the type of prior restraint on speech that the First Amendment will not bear" when it contained no time limit for decisions and vested officials with unbridled discretion); Frandsen, 212 F.3d at 1240 (finding that a permit requirement to hold meetings in public parks was an unconstitutional prior restraint because it did not provide time constraints); Lady J. Lingerie, Inc. v. City of Jacksonville, 176 F.3d 1358, 1363 (11th Cir. 1999) (finding that a zoning board licensing requirement for sexually oriented businesses was an unconstitutional prior restraint because it vested too much discretion in the zoning board). The permitting scheme in § 337.406(1) for charitable solicitation is an unconstitutional prior restraint on speech.[15]

ii. The prohibition on charitable solicitation in Section 337.406(1) is unconstitutional.

**16 Beyond the unconstitutional permitting scheme, § 337.406(1) is written in a somewhat confusing manner, so it is worth reiterating its provisions. First, § 337.406(1) bans certain conduct on rights-of-way of state transportation facilities and their appendages:

> Except when leased as provided in s. 337.25(5) or otherwise authorized by the rules of the department, it is unlawful to make any use of the right-of-way of any state transportation facility, including appendages thereto, outside of an incorporated municipality in any manner that interferes with the safe and efficient movement of people and property from place to place on the transportation facility.

§ 337.406(1). Next, it specifies the prohibition's purpose:

> Failure to prohibit the use of right-of-way in this manner will endanger the health, safety, and general welfare of the public by causing distractions to motorists, unsafe pedestrian movement within travel lanes, sudden stoppage or slowdown of traffic, rapid lane changing and other dangerous traffic movement, increased vehicular accidents, and motorist injuries and fatalities.

Id. Then, it gives examples of "prohibited uses:"

> Such prohibited uses include, but are not limited to, the free distribution or sale, or display or solicitation for free distribution or sale, of any merchandise, goods, property or services; the solicitation for charitable purposes; the servicing or repairing of any vehicle, except the rendering of emergency service; the storage of vehicles being serviced or repaired on abutting property or elsewhere; and the display of advertising of any sort, except that any portion of a state transportation facility may be used for an art festival, parade, fair, or other special event if permitted by the appropriate local governmental entity.

Id. (emphasis added).

Finally, the law imposes the previously discussed permitting scheme. Id.

Section 337.406(1) appears to provide a content-neutral, outright prohibition on activity that interferes with the flow of people and property, followed by content-based list of prohibited uses and an impermissible permit scheme. The statute's imprecision led Judge Antoon to comment on its "opaque and undecipherable permit provisions,"[16] led the Cox court to find an earlier version of the statute unconstitutional, 702 F. Supp. at 900-03, and led the Chase court to find the current version of the statute unconstitutional, 2006 WL 3826983, at *1–2. The Court concurs with those courts, and additionally, finds that the current version of § 337.406(1) is overbroad as it pertains to charitable solicitation.

**17 Here, without the impermissible and unavailable permitting scheme, the remainder of § 337.406(1) prohibits all "solicitation for charitable purposes" on rights of way of state transportation facilities and appendages thereto. An outright prohibition on charitable solicitation is overbroad. Even if the statute is considered content-neutral, it must survive intermediate scrutiny—that is, the regulation must be narrowly tailored to serve a significant government interest and must leave open alternative channels of communication. See, e.g., McCullen v. Coakley, 573 U.S. 464, 477 (2014); see also United States v. Grace, 461 U.S. 171, 177 (1983). It cannot "burden substantially more speech than is necessary to further the government's legitimate interests." McCullen, 573 U.S. at 486 (internal quotation omitted). A narrowly tailored statute "targets and eliminates no more than the exact source of the 'evil' it seeks to remedy." Cox, 702 F. Supp. at 900 (quoting Frisby v. Schultz, 487 U.S. 474, 475 (1988)).

The Cox court found that § 337.406 was not narrowly tailored because the statute banned "any commercial activity by anyone, at any time, at any place on a state-maintained road." 702 F. Supp. at 901. Thus, the court concluded, it was not carefully drawn to meet the City's interests, made no attempt to restrict activity to certain times, failed to distinguish between children and adults who may be more safety-conscious, and failed to take into account that traffic hazards may vary. Id. Today, the same reasoning applies to the statute's ban on all charitable solicitation. The statute prohibits more than the exact source of evil that it seeks to remedy—solicitation that poses a true traffic safety threat.

In First Amendment cases, there exists a serious concern that overbroad laws may lead to a chilling effect on protected expression. See Nat'l Endowment for the Arts v. Finley, 524 U.S. 569, 582 (1998); Dombrowski v. Pfister, 380 U.S. 479, 487 (1965). Thus, courts invalidate statutes when "persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions provided by a statute susceptible of application to protected expression." Gooding v. Wilson, 405 U.S. 518,

521 (1972). When a statute implicates First Amendment rights, it must be written clearly and narrowly drawn. Section 337.406(1)'s provisions concerning charitable solicitation are not and are therefore unconstitutional.

E. First Amendment Freedom and Traffic Safety

The Supreme Court's articulation of why public streets, sidewalks, and parks are critical to First Amendment freedom resonates strongly in this case:

> It is no accident that public streets and sidewalks have developed as venues for the exchange of ideas. Even today, they remain one of the few places where a speaker can be confident that he is not simply preaching to the choir. With respect to other means of communication, an individual confronted with an uncomfortable message can always turn the page, change the channel, or leave the Web site. Not so on public streets and sidewalks. There, a listener often encounters speech he might otherwise tune out. In light of the First Amendment's purpose "to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail," this aspect of traditional public fora is a virtue, not a vice.

McCullen, 573 U.S. at 476 (internal citation omitted).

Mr. Vigue's right to free speech is vital. But to be sure, the Court finding § 316.2045 and portions of § 337.406(1) unconstitutional does not give Mr. Vigue and others carte blanche to solicit charity on roadways however they wish. "It requires neither towering intellect nor an expensive 'expert' study to conclude that mixing pedestrians and temporarily stopped motor vehicles in the same space at the same time is dangerous." Cox, 702 F. Supp. at 900 (quoting Int'l Soc. For Krishna Consciousness of New Orleans, Inc. v. City of Baton Rouge, 668 F. Supp. 527, 530 (M.D. La. 1987), aff'd, 876 F.2d 494 (5th Cir. 1989)). Thus, the Legislature may legislate on these topics so long as it strikes the careful balance between upholding First Amendment rights and ensuring traffic safety. Unfortunately, neither § 316.2045 nor § 337.406(1) meet this test.

***18** It is essential that law enforcement is not left without recourse for traffic safety problems posed by people blocking traffic in streets, asking for money or otherwise. In Booher, Judge Hodges stated that "concerns about traffic safety during the pendency of the injunction [were] adequately addressed by [other] existing laws." 2007 WL 9684182, at *4. Similarly, Mr. Vigue asserts that "there are other laws in place that better address pedestrian and vehicular safety," such as § 316.130. (Doc. 59 at 16). Florida's legitimate interest in road safety "can be better served by measures less intrusive than a direct prohibition on solicitation." Schaumburg, 444 U.S. at 637.

F. Severability

Having found portions of both statutes to be unconstitutional, the Court now turns to the question of whether those portions are severable from the rest of the statute. Severability is a question of state law. Wollschlaeger v. Governor, Fla., 848 F.3d 1293, 1317 (11th Cir. 2017). When, as here, there is no severability clause, the "key determination is whether the overall legislative intent is still accomplished without the invalid provisions." State v. Catalano, 104 So. 2d 1069, 1080–81 (Fla. 2012) (refusing to sever prior version of § 316.2045(1)(a) when severance would expand statute's reach beyond what the legislature contemplated); Lawnwood Med. Ctr., Inc. v. Seeger, 990 So. 2d 503, 518 (Fla. 2008) (refusing to sever hospital governance law when act would not be complete with invalid portions severed to accomplish what the legislature intended).[17]

In § 316.2045, the unconstitutional provision is the crux of the statute. If §§ 316.2045(1)–(4) were to be severed from the small portion of the statute that remains, § 316.2045(5), the law would fail to serve the legislative intent of regulating traffic safety through prohibiting solicitation and establishing a permit scheme. Thus, the Court cannot sever the unconstitutional provisions of § 316.2045 and salvage the remaining section.

On the other hand, the Court has found only the portions of Section 337.406(1) that prohibit charitable solicitation to be unconstitutional. The rest of § 337.406(1) is not at issue here; Mr. Vigue has mounted a facial challenge only to the statute's prohibition on charitable solicitation. The Court does not reach the portions of §§ 337.406(1) that do not pertain to charitable solicitation, or §§ 337.406(2)–(5). Thus, the portions of § 337.406(1) pertaining to charitable solicitation are severed from the statute. The portions of § 337.406(1) unrelated to charitable solicitation and the entirety of §§ 337.406(2)–(5) remain unaffected.

G. Permanent Injunction

***19** For a permanent injunction to be issued, Mr. Vigue must: (1) show actual success on the merits of claims asserted in the complaint; (2) establish that irreparable harm will result from failure to provide injunctive relief; (3) establish that the balance of equities tips in his favor; and (4) demonstrate that an injunction is in the public interest. KH Outdoor, LLC v. City of Trussville, 458 F.3d 1261, 1268 (11th Cir. 2006). Permanent injunction requirements are the same as those for a preliminary injunction, except that Mr. Vigue must show actual success on the merits as opposed to likelihood of success on the merits of his claims. Id.

Mr. Vigue has succeeded in his claims that §§ 316.2045 and portions of 337.406(1) are unconstitutional. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 373 (1976). Here, Mr. Vigue has suffered and will continue to suffer denial of his First Amendment right to expression in the form of charitable solicitation. Arrest and incarceration pursuant to §§ 316.2045(1) and 316.2045(2), as well as warnings and threats of arrest pursuant to § 337.406, prohibit Mr. Vigue from engaging in protected speech. With these statutes in effect and no available permitting scheme with procedural safeguards in place, Sheriff Shoar retains unbridled discretion to enforce the statutes that bar Mr. Vigue's protected speech activity. "Because chilled speech cannot be compensated by monetary damages, an ongoing violation of the First Amendment constitutes irreparable injury." Univ. Books & Videos, Inc. v. Metro. Dade Cty., 33 F. Supp. 2d 1264, 1373 (S.D. Fla. 1999).

Injury to Mr. Vigue also outweighs any harm the injunction might cause Sheriff Shoar. Even without §§ 316.2045 and 337.406, Sheriff Shoar is still free to enforce all other state and local laws to maintain safe roadways throughout the county. Sheriff Shoar has already altered enforcement of these statutes through Policy 41.39, and makes no claim of increased difficulty maintaining safe roadways as a result of the new policy. Courts regularly find that injury to plaintiffs outweighs harm to defendants in First Amendment cases. See Baumann v. City of Cumming, No. 2:07-CV-0095-WCO, 2007 WL 9710767, at *7 (N.D. Ga. Nov. 2, 2007) ("[T]he temporary infringement of First Amendment rights constitutes a serious and substantial injury, and the city has no legitimate interest in enforcing an unconstitutional ordinance.").

Finally, "[t]he public interest is served by the maintenance of First Amendment freedoms and could not possibly be served by the enforcement of an unconstitutional ordinance." Howard v. City of Jacksonville, 109 F. Supp. 2d 1360, 1365 (M.D. Fla. 2000). While citizens certainly have an interest in remaining safe, and Sheriff Shoar has an interest in ensuring traffic safety, the "interest[ ] in remaining safe while walking or driving [is] served by other statutes and codes available to law enforcement officers." Chase, 2006 WL 2620260, at *3.

H. Damages

Mr. Vigue claims that Sheriff Shoar is liable for compensatory damages for violation of Mr. Vigue's constitutional rights, and that he should proceed to trial on the issue of damages. (Doc. 59 at 24). Mr. Vigue relies primarily on Memphis Cmty. Sch. Dist. v. Stachura, 477 U.S. 299 (1986) to argue that compensatory damages should be available.

For actions under § 1983, "the rules governing compensation for injuries caused by the deprivation of constitutional rights should be tailored to the interests protected by the particular right in question." Carey v. Piphus, 435 U.S. 247, 259 (1978). In reviewing the law, the Court understands that nominal damages are available in First Amendment cases. Pelphrey v. Cobb Cty., 547 F.3d 1263, 1282 (11th Cir. 2008) ("This Court has found that 'nominal damages are similarly appropriate in the context of a First Amendment violation.' "); Familias Unidas v. Briscoe, 619 F.2d 391, 402 (5th Cir. 1980) (holding that nominal damages are available for violations of the First Amendment); see also Gonzalez v. Sch. Bd. of Okeechobee Cty., 250 F.R.D. 565, 570 (S.D. Fla. 2008) (finding that nominal damages were available in a § 1983 action for violations of the First Amendment).[18] But the Court is uncertain regarding whether there also exists a legal and factual basis for compensatory damages in this case. Compare Carey, 435 U.S. at 264 (stating compensatory damages under § 1983 are available only when plaintiff shows actual injury); with Stachura, 477 U.S. at 310-11 ("When a plaintiff seeks compensation for an injury that is likely to have occurred but difficult to establish, some form of presumed damages may possibly be appropriate."); see also King v. Zamiara, 788 F.3d 207, 213 (6th Cir. 2015) (surveying cases where compensatory damages were permitted for deprivation of constitutional rights and concluding that compensatory damages were appropriate "for specific, actual injuries [plaintiff] suffered that cannot be easily quantified"); Celli v. City of St. Augustine, 214 F. Supp. 2d 1255, 1262 (M.D. Fla. 2000) (allowing jury to place monetary value on intangible free speech rights to determine damages in § 1983 action). If Mr. Vigue wishes to pursue more than nominal damages, the

Court directs him to submit a proffer of the legal and factual basis for compensatory damages.

III. CONCLUSION

***20** In ruling in favor of Mr. Vigue on the constitutionality of §§ 337.2045 and 337.406, the Court is following precedent and upholding important First Amendment and Equal Protection principles. Of course, as suggested by Florida's Attorney General in 2007, the Legislature is free to rewrite these statutes to try to alleviate the constitutional infirmities. For now, Sheriff Shoar has demonstrated through his Policy Directive 41.39 that he can abide by the Court's decision on an ongoing basis such that Mr. Vigue will be free to exercise his constitutional right to solicit. However, the Court also addresses Mr. Vigue: this decision is not a license to trespass on private property, interfere with traffic, station himself where he obstructs traffic or creates a safety hazard to himself or others. If he does so, there are other laws which can be brought to bear. The Court is confident that both Sheriff Shoar and his deputies and Mr. Vigue will exercise common sense and good judgment.

Accordingly, it is hereby

ORDERED:

1. Plaintiff Peter Vigue's Motion for Partial Summary Judgment (Doc. 59) is **GRANTED** for the reasons stated herein.

2. Defendant David B. Shoar's Motion for Summary Judgment (Doc. 60) is **DENIED** for the reasons stated herein.

3. Florida Statute § 316.2045 is found to be facially unconstitutional under the First and Fourteenth Amendments. Declaratory Judgment to that effect will be entered at the conclusion of the case.

4. The portions of Florida Statute § 337.406(1) pertaining to charitable solicitation are found to be facially unconstitutional under the First and Fourteenth Amendments. Declaratory Judgment to that effect will be entered at the conclusion of the case.

5. Defendant David B. Shoar, in his official capacity as Sheriff of St. Johns County, is hereby permanently **ENJOINED** from enforcing Florida Statutes §§ 316.2045 and 337.406(1), the latter insofar as it pertains to charitable solicitation. A final permanent injunction will be entered at the conclusion of the case.

6. If he wishes to pursue compensatory damages, Mr. Vigue is directed to submit a proffer of the legal and factual basis for a claim for damages no later than **November 19, 2020**, and Sheriff Shoar is directed to respond no later than **December 21, 2020**. The Court will then determine how to proceed.

7. Any claim for attorneys fees and costs will await the conclusion of the case.

DONE AND ORDERED in Jacksonville, Florida the 12th day of October, 2020.

All Citations

Slip Copy, 2020 WL 6020484

Footnotes

1 Regarding enforcement of §§ 316.2045(1) and 337.406, Policy 41.39 provides:
So long as a person does not impede the free, convenient, and normal use of the road, SJSO will not treat entering or leaving a roadway while traffic is stopped pursuant to a traffic light as a violation of Section 316.2045(1). SJSO will not use this provision to prohibit persons from engaging in lawful conduct, such as charitable solicitation adjacent to public streets, highways, or roads, so long as any incursion is during stopped traffic pursuant to a traffic light and does not impede the free, convenient, and normal use of the road. Additionally, SJSO will not enforce this provision against a person who has left the roadway by the time traffic is permitted to move, so long as the person does not impede the free, convenient, and normal use of the road.
(Doc. 59-16 at 2–3).

2 FHP agreed to limit its enforcement of § 316.2045(1) and 337.406 as follows:
So long as a person does not impede the free, convenient, and normal use of the road, FHP will no longer treat entering or leaving a roadway while traffic is stopped pursuant to a traffic control device as a violation of Section 316.2045(1) [or of Section 337.406]. And FHP will no longer use th[ese] provision[s] to prohibit persons from engaging in lawful conduct

such as charitable solicitation adjacent to public streets, highways, or roads, so long as any incursion is during stopped traffic pursuant to a control device and does not impede free, convenient, and normal use of the road. Additionally, FHP will not enforce th[ese] provision[s] against a person who has left the roadway by the time traffic is permitted to move and does not impede the free, convenient, and normal use of the road.

(Doc. 45-1 at 11).

3 The settlement agreement included various other deadlines, directives, and provisions, including a payment to Vigue for the costs, attorneys' fees, and expenses incurred in litigation. (Doc. 45-1 at 4).

4 Mr. Vigue has stated that he feels he has been harassed for holding his sign. (Doc. 60-9 at 142:9–13). "I'm not out to bother people or hurt people on any—whether you're in a car, vehicle, on foot or you have a business, I'm not out there to bother you or hurt you. I just want to see people smile. Put a smile on your face, and I'll go on my way. If you give me something, that's good. If you don't, that's fine." (Doc. 60-9 at 147:14–20).

5 The Offense Report from January 13, 2019, includes the following Probable Cause Narrative, alluding to Mr. Vigue's other offenses:

> I observed the defendant standing at State Road 312 and Tingle Court holding a sign and approaching vehicles with their windows down. The defendant does not have a permit to solicit on a state road. I knew the defendant to have been issued a citation for Soliciting without a permit on October 2, 2018. The defendant was also placed under arrest for the same offense on November 13, 2018 and January 8, 2019.

(Doc. 59-1 at 3–4).

6 The full text of § 316.2045(3) reads:

> Permits for the use of any street, road, or right-of-way not maintained by the state may be issued by the appropriate local government. An organization that is qualified under s. 501(c)(3) of the Internal Revenue Code and registered under chapter 496, or a person or organization acting on behalf of that organization, is exempt from local requirements for a permit issued under this subsection for charitable solicitation activities on or along streets or roads that are not maintained by the state under the following conditions:
>
> (a) The organization, or the person or organization acting on behalf of the organization, must provide all of the following to the local government:
>
> 1. No fewer than 14 calendar days prior to the proposed solicitation, the name and address of the person or organization that will perform the solicitation and the name and address of the organization that will receive funds from the solicitation.
>
> 2. For review and comment, a plan for the safety of all persons participating in the solicitation, as well as the motoring public, at the locations where the solicitation will take place.
>
> 3. Specific details of the location or locations of the proposed solicitation and the hours during which the solicitation activities will occur.
>
> 4. Proof of commercial general liability insurance against claims for bodily injury and property damage occurring on streets, roads, or rights-of-way or arising from the solicitor's activities or use of the streets, roads, or rights-of-way by the solicitor or the solicitor's agents, contractors, or employees. The insurance shall have a limit of not less than $1 million per occurrence for the general aggregate. The certificate of insurance shall name the local government as an additional insured and shall be filed with the local government no later than 72 hours before the date of the solicitation.
>
> 5. Proof of registration with the Department of Agriculture and Consumer Services pursuant to s. 496.405 or proof that the soliciting organization is exempt from the registration requirement.
>
> (b) Organizations or persons meeting the requirements of subparagraphs (a)1.-5. may solicit for a period not to exceed 10 cumulative days within 1 calendar year.
>
> (c) All solicitation shall occur during daylight hours only.
>
> (d) Solicitation activities shall not interfere with the safe and efficient movement of traffic and shall not cause danger to the participants or the public.
>
> (e) No person engaging in solicitation activities shall persist after solicitation has been denied, act in a demanding or harassing manner, or use any sound or voice-amplifying apparatus or device. (f) All persons participating in the solicitation shall be at least 18 years of age and shall possess picture identification.
>
> (g) Signage providing notice of the solicitation shall be posted at least 500 feet before the site of the solicitation.
>
> (h) The local government may stop solicitation activities if any conditions or requirements of this subsection are not met.

§ 316.2045(3).

7 A Sheriff's deputy described his encounter with Mr. Vigue on December 31, 2017 in a Field Interview Narrative:

Peter was standing with a cardboard sign just outside Cobblestone property in the grass between the sidewalk and curb of Old Moultrie Rd. I observed Peter enter the roadway of Jenkins St just outside the CBL property line to receive money from a motorist exiting the plaza.

I made Peter distinctly aware where he was standing was within the right-of-way of Old Moultrie Rd and he was (1) using the right- of-way to solicit for charitable purposes and (2) entered the roadway, interfering with the safe movement of vehicles, contrary to FS 337.406.

Peter acknowledged he understands where the CBL property line is at the Old Moultrie Rd entrance and now thoroughly understands where the right-of-way is. He was informed this warning would be documented and appropriate law enforcement action would follow if he is located, committing the same offense.

At the time, he was wearing a grey vest with long-sleeve orange shirt under it, jeans, and green gloves. His sign read, "God Bless, Be Safe."

(Doc. 59-2 at 9).

8 A Sheriff's deputy's "Suspicious Person" report from April 1, 2019 includes the following narrative:

Peter Vigue was standing in the intersection holding a hand written sign, which read "God Bless." Once Peter saw my patrol vehicle, he walked away from the intersection, leaving another hand written sign and plastic bottle on the ground. I advised Peter to collect his items or he would be ticketed. Peter said he wasn't leaving the area and he wasn't breaking the law. Advised him to stay out of the roadway or he would be subject to arrest. Peter assured me he would not walk or stand in the road way.

(Doc. 59-2 at 13).

9 "To read the amended statutory language to allow only charities and political campaigners to solicit could, arguably, subject the statute to federal constitutional challenge as violating First Amendment free speech rights and Fourteenth Amendment equal protection rights....I would strongly suggest that the Florida Legislature revisit this statute to consider the First Amendment problems raised by the Bischoff case." Fla. Att'y Gen. Op. 2007-50 (2007).

10 "The principles governing summary judgment do not change when the parties file cross-motions for summary judgment." T-Mobile S. LLC v. City of Jacksonville, 564 F. Supp. 2d 1337, 1340 (M.D. Fla. 2008).

11 The Court acknowledges that in Cooper, Chief Dillon personally swore an affidavit and obtained a warrant for Cooper's arrest under the challenged statute. 403 F.3d at 1212. Here, Sheriff Shoar has not personally arrested or sworn an affidavit for the arrest of Mr. Vigue. Still, Cooper's reasoning applies. The question in Cooper was "whether Dillon had final policymaking authority for the City of Key West in law enforcement matters and whether his decision to enforce FLA. STAT. ch. 112.533(4) against Cooper was an adoption of 'policy' sufficient to trigger 1983 liability." Id. at 1221. The Court concluded that enforcement of a state law by a police chief may subject a municipality to liability. Id. at 1223. That conclusion did not hinge on personal enforcement by the police chief himself. Moreover, "when an officer is sued under Section 1983 in his or her official capacity, the suit is simply another way of pleading an action against an entity of which an officer is an agent." Busby v. City of Orlando, 931 F.2d 764, 776 (11th Cir. 1991) (internal quotation omitted). The record shows that SJSO repeatedly and deliberately decided to enforce the challenged statutes against Mr. Vigue.

12 Sheriff Shoar focuses on cases regarding deliberate indifference under the Eighth Amendment, exhaustion of administrative remedies, and excessive force violations to support his contention that he had no policy that would trigger municipal liability under § 1983. (Doc. 66 at 7–8). However, those cases are readily distinguishable.

13 The First Amendment is applicable to the states through the Fourteenth Amendment. Elrod v. Burns, 427 U.S. 347, 357 n.10 (1976).

14 The distinction between individuals and charitable or political groups may also be understood as the law favoring certain speakers. The Supreme Court in Reed commented on why speaker distinctions may be problematic under the First Amendment and are often subject to strict scrutiny:

> In any case, the fact that a distinction is speaker based does not...automatically render the distinction content neutral. Because [s]peech restrictions based on the identity of the speaker are all too often simply a means to control content, we have insisted that laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference. Thus, a law limiting the content of newspapers, but only newspapers, could not evade strict scrutiny simply because it could be characterized as speaker based. Likewise, a content-based law that restricted the political speech of all corporations would not become content neutral just because it singled out corporations as a class of speakers. Characterizing a distinction as speaker based is only the beginning—not the end — of the inquiry.

Reed, 576 U.S. at 170 (internal citations and quotations omitted). Section 316.2045 reflects the Legislature's preference for organizational and campaign speakers over individual speakers. This is yet another reason the law is subject to strict scrutiny.

15 The permitting scheme in § 337.406 explicitly lists "the solicitation for charitable purposes" as a prohibited use of the roadway for which one must obtain a permit. For that reason, the permitting scheme appears to be content- based. See Reed, 576 U.S. at 163 ("Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea of message expressed.") However, even if the permitting scheme were content-neutral, it could not pass constitutional muster. Though the Supreme Court has "never required that a content-neutral permit scheme regulating speech in a public forum adhere to the procedural requirements set forth in Freedman," still, "[w]here the licensing official enjoys unduly broad discretion in determining whether to grant or deny a permit, there is a risk that he will favor or disfavor speech based on its content." Thomas v. Chicago Park Dist., 534 U.S. 316, 322–23 (2002). Thus, even a content-neutral permitting scheme must "contain adequate standards to guide the official's decision and render it subject to effective judicial review." Id. The permitting scheme in § 337.406 does not contain such standards.

16 In Bischoff, Judge Antoon pointed out ambiguity in the type of conduct prohibited without a permit and troublesome cross-referencing between § 337.406 and § 316.2045(2):

> But § 337.406(1) is unclear as to whether the term "these prohibited uses" refers only to uses "for an art festival, parade, fair or other special event." May municipalities also permit other uses prohibited by § 337.406(1), such as charitable solicitation that interferes with traffic movement? The answer may be important not only to someone seeking a permit for soliciting in a municipality, but also to someone who simply wants to avoid using a state road for a purpose specified in § 337.406—i.e., a person who has no permit but wants to avoid violating § 316.2045(2). The statute provides no answer. This level of detail in the analysis is necessary because the Florida Legislature chose to make the criminality of a person's conduct under § 316.2045(2) dependent on the "purposes" set forth in § 337.406.

242 F. Supp. 2d at 1254–55.

17 The Florida Supreme Court in Catalano laid out the purpose of the severability doctrine and the test for severability in Florida:

> Severability is a judicially created doctrine which recognizes a court's obligation to uphold the constitutionality of legislative enactments where it is possible to remove the unconstitutional portions. It is derived from the respect of the judiciary for the separation of powers, and is designed to show great deference to the legislative prerogative to enact laws. The portion of a statute that is declared unconstitutional will be severed if: (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.

Catalano, 104 So. 3d at 1080 (internal citations and quotations omitted).

18 Fifth Circuit precedent prior to October 1, 1981 is binding on the Eleventh Circuit. Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981).

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2020 WL 6020484
Only the Westlaw citation is currently available.
United States District Court, M.D. Florida,
Jacksonville Division.

Peter VIGUE, Plaintiff,

v.

David B. SHOAR, in his official capacity as Sheriff of St. Johns County, Defendant.

Case No. 3:19-cv-186-J-32JBT
|
Signed 10/12/2020

West Codenotes

Held Unconstitutional
Fla. Stat. Ann. §§ 316.2045, 337.406(1)

Attorneys and Law Firms

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Bruce R. Bogan, Hilyard, Bogan & Palmer, PA, Orlando, FL, Melissa Jean Sydow, Tampa, FL, for Defendant.

ORDER

TIMOTHY J. CORRIGAN, United States District Judge

***1** Peter Vigue is a homeless resident of St. Johns County who stands on public roadways and holds signs to solicit charitable donations from passersby. Mr. Vigue's signs often bear messages like "God Bless, Be Safe" or "Please Care." In busy areas of town, Mr. Vigue may see up to ten thousand people per day.

Two Florida laws, FLA. STAT. §§ 316.2045 and 337.406 (2019), prohibit individuals from soliciting charity on roadways in Florida without a permit issued by a local government. Sections 316.2045(2)–(4) contain exceptions to the permitting requirement for Internal Revenue Code § 501(c)(3) registered organizations and for political campaigning. Mr. Vigue claims that St. Johns County Sheriff David B. Shoar enforces §§ 316.2045 and 337.406 against homeless individuals to forbid them from soliciting charitable donations in public spaces, including sidewalks and roadways. In this 42 U.S.C. § 1983 action, he contends these statutes are facially unconstitutional.

This case is before the Court on cross-motions for summary judgment. (Docs. 59, 60). The Court held oral argument on June 2, 2020, the record of which is incorporated by reference. (Doc. 75).

I. FACTS AND PROCEDURAL HISTORY

A. Preliminary Injunction

On May 6, 2019, the Court entered a preliminary injunction enjoining both Sheriff Shoar and Gene Spaulding, in his official capacity as Director of the Florida Highway Patrol ("FHP"), from enforcing § 316.2045 against Mr. Vigue during the pendency of this case. (Doc. 32). In so doing, the Court relied on the decisions of two other district courts in the Eleventh Circuit that found § 316.2045 unconstitutional and issued preliminary and permanent injunctions, as well as on the Florida Attorney General's opinion that subsequent amendments have not cured the statute's constitutional infirmities. Id. at 3–5. The Court declined, however, to extend the preliminary injunction to § 337.406 because at that time, Mr. Vigue had "not sufficiently shown he ha[d] standing to obtain an injunction against enforcement of a statute under which he ha[d] not been cited." Id. at 3 n.1. The Court limited injunctive relief to Mr. Vigue only. Id. at 7.

On August 16, 2019, in response to the preliminary injunction (Doc. 32), Sheriff Shoar enacted Policy 41.39 for the St. Johns County Sheriff's Office ("SJSO") which states that officers are not to enforce § 316.2045(2)–(4), are to limit enforcement of §§ 316.2045(1) and 337.406, and are to receive training regarding the policy change.[1] (Doc. 59-16). The policy is a response to litigation and may be changed depending on the outcome of this case. (Docs. 59-16; 59-8 at 17:1–16, 59:1–19, 61:19–20). Additionally, Sheriff's deputies were told not to arrest, cite, or stop Mr. Vigue for violations of either statute unless he was committing other crimes. (Docs. 59-8 at 81–98; 59-10 at 21:24–22:19; 59-5 at 33:8–15; 59-4 at 28:11–25; 59-6 at 43:6–15; 59-11 at 36:19–25).

B. Florida Highway Patrol Settlement

***2** Mr. Vigue originally brought this lawsuit against both Sheriff Shoar and FHP. (See Doc. 1). The Office of the Florida Attorney General represented FHP. (Doc. 15). The Court anticipated that the Attorney General, charged with defending Florida laws, would provide a comprehensive argument regarding the constitutionality of §§ 316.2045 and 337.406, and that Sheriff Shoar would be important, though not primary, to that discussion.

However, on October 28, 2019, FHP settled with Mr. Vigue. (Docs. 45, 45-1). Almost identical to the language of Sheriff Shoar's Policy 41.39, FHP agreed to prohibit enforcement of § 316.2045(2)–(4), limit its enforcement of § 316.2045(1) and § 337.406, provide FHP officers with related training, and circulate a bulletin regarding its new enforcement scheme.[2] (Doc. 45-1). The Florida Department of Highway Safety and Motor Vehicles, of which FHP is one component, agreed to remove § 316.2045(2)–(4) from the Uniform Traffic Citations, communicate its enforcement policy to various law enforcement entities, include edited versions of the statutes at issue in its annual package of requested legislation, and provide Mr. Vigue's counsel with a report of arrests and citations under the statutes. Id. The agreeement also stated that Mr. Vigue would continue litigation against Sheriff Shoar, seeking an order to permanently enjoin enforcement of §§ 316.2045 and 337.406, and that the Florida Attorney General retained authority to intervene to defend the statutes, though she has not done so.[3] Id. Thus, FHP has agreed not to enforce the statutes at issue and is no longer a party to this lawsuit, while Sheriff Shoar has decided to continue to defend the case. The Court proceeds in that context.

C. Enforcement of §§ 316.2045 and 337.406 Prior to Preliminary Injunction

Before this lawsuit, Sheriff Shoar had not issued formal written guidance, policies, or directives regarding how to enforce §§ 316.2045 or 337.406. (Doc. 59-8 at 48:13–20, 50:8–20). From 2016 to 2019, deputies used their own discretion to issue citations and warnings to Mr. Vigue under §§ 316.2045 and 337.406. (Docs. 59-5 at 10:8–11:3; 59-9 at 20:24–21:6; 59-6 at 49:11–16; 59-10 at 20:23– 21:14). Between January 17, 2017 and July 29, 2019, the SJSO states that it received fifty-four calls for assistance related to Vigue standing in roadways. (Doc. 66 at 3). Mr. Vigue, for his part, says that he has felt harassed by Sheriff's deputies and does not try to cause any traffic issues when he holds his sign requesting charitable donations.[4] (Doc. 60-9). The Court enumerates the relevant warnings, citations, and arrests that Mr. Vigue has received under each of the statutes below.

i. Mr. Vigue has been cited under § 316.2045.

***3** Section 316.2045(1) prohibits obstructing the use of public streets, highways, and roads. Violations of § 316.2045(1) may result in noncriminal traffic citations. § 316.2045(1). Section 316.2045(1) states:

> It is unlawful for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, by standing or approaching motor vehicles thereon, or by endangering the safe movement of vehicles or pedestrians traveling thereon; and any person or persons who violate the provisions of this subsection, upon conviction, shall be cited for a pedestrian violation, punishable as provided in chapter 318.

§ 316.2045(1).

Sheriff's deputies have issued warnings or citations to Mr. Vigue under § 316.2045(1) six times:

- June 28, 2016 – Guilty, paid fine on December 21, 2016. (Docs. 2-7 at 2–3; 60-1).
- October 2, 2018 – Dismissed on December 27, 2018. (Docs. 2-7 at 14–15; 60-4).
- October 28, 2018 – Issued written traffic warning. (Doc. 59-2 at 1).
- January 8, 2019 – Dismissed on January 10, 2019. (Doc. 2-7 at 23– 24).
- March 7, 2019 – Dismissed on May 17, 2019. (Doc. 23 at 6; 59-1 at 1).
- March 11, 2019 – Dismissed on May 9, 2019. (Doc. 23 at 7; 59-1 at 1).

Violations of § 316.2045(2) are more serious and may result in second-degree misdemeanor charges. Like § 316.2045(1), § 316.2045(2) prohibits obstructing the use of public streets,

highways, and roads, but § 316.2045(2) specifically disallows individuals from obstructing roads to solicit when they have no permit. Section 316.2045(2) grants an exception to the permit requirement for 501(c)(3) organizations and their representatives on streets and roads not maintained by the state, and the statute cross-references the other law that Mr. Vigue claims is unconstitutional, § 337.406. Section 316.2045(2) provides that:

> It is unlawful, without proper authorization or a lawful permit, for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by any of the means specified in subsection (1) in order to solicit. Any person who violates the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Organizations qualified under s. 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, or persons or organizations acting on their behalf are exempted from the provisions of this subsection for activities on streets or roads not maintained by the state. Permits for the use of any portion of a state-maintained road or right-of-way shall be required only for those purposes and in the manner set out in s. 337.406.

§ 316.2045(2).

Sheriff's deputies have cited or arrested Mr. Vigue under § 316.2045(2) seven times:

- April 18, 2017 – Nolle prossed on June 2, 2017. (Docs. 2-7 at 4–5; 60-2; 59-1 at 1).
- November 25, 2017 – No information on disposition. (Docs. 2-7 at 11–13; 60-3; 59-1 at 1).
- November 13, 2018 – Arrested and booked into St. Johns County Jail; nolle prossed on December 2, 2018. (Docs. 2-7 at 16–22; 60-5; 59-1 at 1).

*4 • January 8, 2019 – Arrested and booked into St. Johns County Jail; nolle prossed on January 15, 2019. (Docs. 2-7 at 25–31; 60-7; 59-1 at 1).

- January 13, 2019 – Arrested and booked into St. Johns County Jail; nolle prossed on February 11, 2019.[5] (Doc. 2-7 at 32–36; 59-1 at 1).
- February 13, 2019 – Nolle prossed on April 26, 2019. (Doc. 23 at 3; 59-1 at 9).
- February 22, 2019 – Nolle prossed on March 12, 2019. (Doc. 23 at 4–5; 59-1 at 1).

Section 316.2045(3) elaborates on the conditions under which 501(c)(3) organizations may be exempt from the requirement to obtain a permit from a local government for the use of streets, roads, or rights-of-way not maintained by the state.[6] Finally, § 316.2045(4) clarifies that no part of the law "shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity." Thus, representatives of political campaigns may also lawfully solicit donations without a permit.

ii. Mr. Vigue has been warned under § 337.406 and other statutes.

Violation of § 337.406 is a second-degree misdemeanor offense. § 337.406(5). Like § 316.2045, § 337.406(1) prohibits solicitation without a permit, but it applies to rights-of-way of state transportation facilities and lists various prohibited uses of those rights-of-way in addition to solicitation. Section 337.406(1) provides:

> *5 Except when leased as provided in s. 337.25(5) or otherwise authorized by the rules of the department, it is unlawful to make any use of the right-of-way of any state transportation facility, including appendages thereto, outside of an incorporated municipality in any manner that interferes with the safe and efficient movement of people and property from place to place on the transportation facility. Failure to prohibit the use of right-of-way in this manner will endanger the health, safety, and general welfare of the public by causing distractions to motorists, unsafe pedestrian movement within travel lanes, sudden stoppage or slowdown of traffic, rapid lane changing and other dangerous traffic movement, increased vehicular accidents, and motorist injuries and fatalities. Such prohibited uses include, but are not limited to, the free distribution or sale, or display or solicitation for free distribution or sale, of any merchandise, goods, property or services; the solicitation for charitable purposes; the servicing or repairing of any vehicle, except the rendering of emergency service; the storage of vehicles being serviced or repaired on abutting property or elsewhere; and the display of advertising of any sort, except that any portion of a state transportation facility may be used for an art festival, parade, fair, or other special event if

> permitted by the appropriate local governmental entity. Local government entities may issue permits of limited duration for the temporary use of the right-of-way of a state transportation facility for any of these prohibited uses if it is determined that the use will not interfere with the safe and efficient movement of traffic and the use will cause no danger to the public. The permitting authority granted in this subsection shall be exercised by the municipality within incorporated municipalities and by the county outside an incorporated municipality. Before a road on the State Highway System may be temporarily closed for a special event, the local governmental entity which permits the special event to take place must determine that the temporary closure of the road is necessary and must obtain the prior written approval for the temporary road closure from the department. Nothing in this subsection shall be construed to authorize such activities on any limited access highway. Local governmental entities may, within their respective jurisdictions, initiate enforcement action by the appropriate code enforcement authority or law enforcement authority for a violation of this section.

Sheriff's deputies have warned Mr. Vigue twice under § 337.406:

***6** • December 7, 2015 – Written traffic warning. (Doc. 59-2 at 5).

• December 31, 2017 – Verbal warning.[7] (Doc. 59-2 at 9).

Mr. Vigue has not been cited or arrested under § 337.406. (See Doc. 59-2). Deputies' reports reflect that Mr. Vigue received verbal warnings in three other instances:

- August 11, 2015 – Verbal warning for violation of unspecified statutes. (Doc. 59-2 at 3).
- December 7, 2016 – Verbal warning for violation of unspecified statutes. (Doc. 59-2 at 7).
- April 1, 2019 — Verbal warning for soliciting charitable donations in an intersection.[8] (Doc. 59-2 at 13).

Following the Court's preliminary injunction (Doc. 32), pending prosecutions against Mr. Vigue were dismissed. (Docs. 59-1). All but one of the prosecutions against Mr. Vigue under § 316.2045 were dismissed or nolle prossed, and Mr. Vigue was never found guilty of the other charges. (Docs. 59-1, 2–7, 23).

D. History of Florida Non-Solicitation Statutes

This Court is not the first to address the constitutionality of §§ 316.2045 or 337.406. In this District in 2003, the Honorable John Antoon II issued a permanent injunction against enforcement of § 316.2045, declaring the statute facially unconstitutional. Bischoff v. Florida, 242 F. Supp. 2d 1226 (M.D. Fla. 2003). In 2006, the Honorable Stephan P. Mickle in the Northern District of Florida issued a preliminary injunction as to both statutes at issue here. Chase v. City of Gainesville, No. 1:06-CV-044-SPM/AK, 2006 WL 2620260 (N.D. Fla. Sept. 11, 2006). Subsequently, the parties in Chase agreed to have the court permanently enjoin enforcement of §§ 316.2045 and 337.406 and find both statutes facially unconstitutional. Chase v. City of Gainesville, No. 1:06-CV-44-SPM/AK, 2006 WL 3826983 (N.D. Fla. Dec. 28, 2006).

***7** In 2007, the Florida Legislature amended § 316.2045(3) to exempt certain 501(c)(3) organizations from the permit requirements for charitable solicitation and to establish conditions with which the organizations must comply to take advantage of that exemption. Fla. Att'y Gen. Op. 2007-50 (2007). On November 7, 2007, Florida Attorney General Bill McCollum issued an opinion that the amendments did not address the constitutional infirmities identified in Bischoff and recommended that the Florida Legislature address those issues. Id.[9] To date, the Legislature has not done so.

Both §§ 316.2045 and 337.406 reference a permitting scheme. However, there is not (and never has been) a permit process established in St. Johns County, St. Augustine, or the state of Florida for Mr. Vigue or other individuals wishing to engage in charitable solicitation on public streets, highways, or roads. (Doc. 59-3 at 1–3). Thus, Mr. Vigue does not have such a permit, and Sheriff Shoar does not point to any avenue through which he may obtain one to solicit donations lawfully. Id. Mr. Vigue is not alone in soliciting charity on St. Johns County roadways, and authorities have questioned other individuals about whether they possessed appropriate permits. (Docs. 59-9 at 27:14–28:2, 59-10 at 15:15–25, 59-4 at 35:24–36:15, 59-14 at 18:17–19:1). Authorities have enforced §§ 316.2045 and 337.406 against others through citations, arrests, and warnings. (Docs. 2-4, 59-15, 59-11 at 13:14–14:8, 59-4 at 36:2–15, 59-10 at 19:12–14).

E. Procedural Posture

The parties filed cross-motions for summary judgment (Docs. 59, 60), and the Court received responses to both motions (Docs. 65, 66). There are no disputed issues of material fact.[10] Though Mr. Vigue asserts that the statutes are unconstitutional facially and as-applied, he confirmed through counsel at the hearing that he now asks for a ruling only as to the facial challenge. (Doc. 75 at 50). Mr. Vigue requests that the Court enter a declaratory judgment that both statutes are facially unconstitutional in violation of the First and Fourteenth Amendments; that the Court enter a permanent injunction prohibiting Sheriff Shoar from enforcing both statutes; and that the Court enter judgment in favor of Mr. Vigue, finding Sheriff Shoar liable for damages for past enforcement of the statutes against Mr. Vigue, in an amount to be determined at trial. (Doc. 59 at 4). Sheriff Shoar claims that the evidence "does not support the existence of the alleged official policy, practice and/or custom of the Sheriff." (Doc. 60 at 2). He also maintains that Mr. Vigue's challenge to § 337.406 should be denied for lack of standing and asks that the permanent injunction be denied in its entirety. Id.

II. DISCUSSION

Section 1983 establishes a cause of action against state officials who violate constitutional rights while acting under color of state law. 42 U.S.C. § 1983 (2018). Mr. Vigue mounts a facial challenge as to both statutes at issue. (Docs. 59, 75). "A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." United States v. Salerno, 481 U.S. 739, 745 (1987). In contrast to an as-applied challenge, a facial challenge "seeks to invalidate a statute or regulation itself." United States v. Frandsen, 212 F.3d 1231, 1235 (11th Cir. 2000). Here, Mr. Vigue challenges the constitutionality of §§ 316.2045 and 337.406 as content-based, overbroad, vague prior restraints on speech, and adds that § 316.2045 unconstitutionally favors 501(c)(3) organizations and campaign speech. (Doc. 59).

A. Standing to Challenge §§ 316.2045 and 337.406

***8** For constitutional standing to challenge the statutes, Mr. Vigue must show (1) that he suffered an injury in fact, or invasion of a legally protected interest, that is concrete and particularized as well as actual and imminent; (2) that there is a causal connection between that injury and the alleged conduct, traceable to the action of the Defendant; and (3) that it is likely and not merely speculative that the injury will be redressed by a favorable decision in this case. Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992). When a lawsuit challenges the legality of government action or inaction:

> [T]he nature and extent of facts that must be averred (at the summary judgment stage)...in order to establish standing depends considerably upon whether the Plaintiff is himself an object of the action (or foregone action) at issue. If he is, there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it.

Id. at 561–62.

Soliciting charity is constitutionally protected expression. See Vill. of Schaumburg v. Citizens for a Better Env't, 444 U.S. 620, 632 (1980) ("[C]haritable appeals for funds, on the street or door to door, involve a variety of speech interests —communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes —that are within the protection of the First Amendment."); Smith v. City of Fort Lauderdale, 177 F.3d 954, 956 (11thCir. 1999) ("Like other charitable solicitation, begging is speech entitled to First Amendment protection."). Mr. Vigue gained a legally cognizable interest in challenging § 316.2045 when St. Johns County law enforcement took concrete action against him with a combined twelve arrests and citations under § 316.2045. (Docs. 2-7, 23, 59-1). Those citations demonstrate that Mr. Vigue was the object of government action under the statute. There is "little question" that action under the statute caused him injury, and a judgment permanently preventing the enforcement of § 316.2045 would directly redress that injury. Thus, Mr. Vigue has standing to bring this § 1983 action challenging § 316.2045.

Mr. Vigue also has standing to challenge § 337.406 even though he has not been cited or arrested under the statute. Threats of arrest for engaging in free speech activities are evidence of "an actual and concrete injury wholly adequate to satisfy the injury in fact requirement of standing." Bischoff v. Osceola Cty., 222 F.3d 874, 884 (11th Cir. 2000). When there is a credible threat of prosecution, a plaintiff is not required to expose himself to actual arrest and prosecution to have standing to challenge statutory provisions. Steffel v. Thompson, 415 U.S. 452, 459 (1974) (finding that plaintiff had standing to challenge constitutionality of trespass statute after he was warned twice to stop handbilling and told he

would be arrested if he repeated such conduct); see also Wilson v. State Bar of Ga., 132 F.3d 1422, 1428 (11th Cir. 1998) ("[S]tanding exists at the summary judgment stage when the plaintiff has submitted evidence indicating an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution." (internal quotation omitted)).

Bischoff sheds light on this issue. The case went to the Eleventh Circuit in 2000 on the issue of standing prior to the ultimate ruling from Judge Antoon in 2003. Plaintiffs Bischoff and Stites were not actually arrested during the relevant demonstration, but other protesters were arrested. Bischoff, 222 F.3d at 877. The Eleventh Circuit reasoned that the threat of arrest under the challenged statutes was adequate to show injury in fact to establish standing. Id. at 884. Thus, Bischoff and Stites were ultimately found to have standing when "[b]oth Plaintiffs testified that they were threatened with arrest for engaging in the same handbilling conduct that resulted in the arrest and charge under the challenged statutes of [other protesters]." 222 F.3d at 885.

***9** Similarly, Mr. Vigue received one written traffic warning in 2015 and one verbal warning in 2017 under § 337.406 but was never arrested or cited under the statute. (Doc. 59-2). On December 31, 2017, when Mr. Vigue was threatened with arrest under § 337.406, an officer informed Mr. Vigue that he was "acting contrary to FS 337.406" and "would be documented and appropriate law enforcement action would follow" if Mr. Vigue violated the statute again. (Doc. 59-2 at 9). Mr. Vigue ultimately satisfies the requirement for standing and need not expose himself to further threats to challenge the constitutionality of § 337.406. As in Bischoff, "it is clear that a decision in [Mr. Vigue's] favor declaring [§ 337.406] unconstitutional, either on [its] face or as applied to [Mr. Vigue], would redress the injury of being threatened with arrest for engaging in constitutionally protected activity." 222 F.3d at 885.

B. Sheriff's Liability Under 42 U.S.C. § 1983 in his Official Capacity

Sheriff Shoar makes little effort to defend the facial constitutionality of the statutes. (Docs. 60; 75). Instead, his primary argument is that Mr. Vigue may not hold him liable under 42 U.S.C. § 1983 because he has not established a custom, policy, or practice of enforcing the statutes at issue. Id.

Local governments may be held liable under § 1983 only when a constitutional deprivation arises from a governmental policy or custom. Monell v. Dep't of Soc. Servs. of New York, 436 U.S. 658, 694 (1978). "A policy is a decision that is officially adopted by the municipality, or created by an official of such rank that he or she could be said to be acting on behalf of the municipality....A custom is a practice that is so settled and permanent that it takes on theforce of law." Cooper v. Dillon, 403 F.3d 1208, 1221 (11th Cir. 2005) (quoting Sewell v. Town of Lake Hamilton, 117 F.3d 488, 489 (11th Cir. 1997)). "[I]t is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." Monell, 436 U.S. at 694. The government's official policy or custom must be the "moving force" behind the constitutional violation. Id.; see also Bd. of Cty. Comm'rs of Bryan Cty. v. Brown, 520 U.S. 397, 404 (1997) (stating that a municipality, through its deliberate conduct, must be the "moving force" behind an alleged injury for § 1983 liability).

In Cooper, the Eleventh Circuit answered the question of whether a police chief enforcing a state law may subject a municipality to liability under § 1983. Cooper, 403 F.3d at 1223. The Court determined that a police chief's decision to enforce a Florida statute constituted the adoption of a policy sufficient to trigger municipal liability under § 1983. Id. at 1221. Chief Dillon, like Sheriff Shoar, argued that enforcement of a state law could not subject him to liability. Id. The Eleventh Circuit disagreed, stating:

> Dillon was clothed with final policymaking authority for law enforcement matters in Key West and in this capacity he chose to enforce the statute against Cooper. While the unconstitutional statute authorized Dillon to act, it was his deliberate decision to enforce the statute that ultimately deprived Cooper of constitutional rights and therefore triggered municipal liability. Thus, Dillon's choice to enforce an unconstitutional statute against Cooper constituted a deliberate choice to follow a course of action...made from among various alternatives by the official or officials responsible for establishing final policy. Accordingly, we find that the City of Key West, through the actions of Dillon, adopted a policy that caused the deprivation of Cooper's constitutional rights which rendered the municipality liable under § 1983.

*10 Id. at 1223 (internal citations and quotations omitted).

Cooper bears a striking resemblance to this case. Chief Dillon oversaw enforcement of the state statute on only one occasion and was held liable, while Sheriff Shoar has overseen repeated instances of enforcing § 316.2045 and § 337.406 over a four-year period.[11] (Docs. 2-7, 23). Like Mr. Vigue, Cooper argued that the statute improperly abridged First Amendment freedom. Cooper, 403 F.3d at 1213. The Court ultimately found that the statute was "a content-based restriction that chill[ed] the exercise of fundamental First Amendment rights without a compelling justification for doing so and accordingly [was] unconstitutional." Id. at 1223.

The Court does not overlook that Sheriff Shoar's role derives from Art. VIII, § 1(d), FLA. CONST., a different constitutional provision than those regarding municipalities and city police. "Whether an official has final policymaking authority is a question of state law." Church v. City of Huntsville, 30 F.3d 1332, 1342 (11th Cir. 1994). Courts have consistently held that "police chiefs in Florida have final policymaking authority in their respective municipalities for law enforcement matters" under state and local law. See, e.g., Cooper, 403 F.3d at 1222 (citing various statutes); Davis v. City of Apopka, 734 Fed. App'x 616, 619 (11th Cir. 2018) (citing to the Florida Constitution, local ordinances, and Cooper to determine that a city's police chief was a final policymaker); Rojas v. City of Ocala, 315 F. Supp. 3d 1256, 1288 (M.D. Fla. 2018) (analyzing the Florida Constitution, state law, and local ordinances to conclude that a police chief had authority that could subject a city to liability). Similarly, under the Florida Constitution, sheriffs are elected constitutional officers who can exercise final policymaking authority regarding law enforcement in their counties. Art. VIII, § 1(d), FLA. CONST. They have "absolute control over the selection and retention of deputies in order that law enforcement be centralized in the county, and in order that the people be able to place responsibility upon a particular officer for failure of law enforcement." Szell v. Lamar, 414 So.2d 276, 277 (Fla. 5th DCA 1982) (citing § 30.53, FLA. STAT. (1981)). Said another way, "[i]t is essential to law enforcement in the various counties of the State that the people shall be able to place responsibility upon a particular individual, the sheriff." Blackburn v. Brorein, 70 So. 2d 293, 298 (Fla. 1954).

*11 "[C]ases on the liability of local governments under § 1983 instruct us to ask whether governmental officials are final policymakers for the local government in a particular area, or on a particular issue." McMillian v. Monroe Cty., 520 U.S. 781, 785 (1997). Under Florida law, Sheriff Shoar is a final policymaker in St. Johns County for the enforcement of the two statutes at issue here. His position as a final policymaker for the St. Johns County is directly analogous to Chief Dillon's position as a final policymaker for Key West in Cooper.

Sheriff Shoar claims that a review of the relevant testimony reveals that "there was no promulgated policy to enforce these particular statutes."[12] (Doc. 66 at 8). However, local government liability attaches where a "deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." Pembaur v. City of Cincinnati, 475 U.S. 469, 470 (1986). "[I]f a municipality decides to enforce a statute that it is authorized, but not required, to enforce, it may have created a municipal policy." Vives v. City of New York, 524 F.3d 346, 353 (2d Cir. 2008). The statutes being challenged here authorized Sheriff Shoar to act, but that is not the issue; the issue is whether Sheriff Shoar made a deliberate decision to enforce the statutes that ultimately deprived Mr. Vigue of his constitutional rights.

St. Johns County Sheriff's deputies arrested, cited, and warned Mr. Vigue from 2016 to 2019 under § 316.2045 and § 337.406 on at least fifteen occasions. (Docs. 2-7, 23). In doing so, they acted within SJSO unwritten policy from before this litigation. (Doc. 59-8 at 97: 4–13). Sheriff Shoar, as the final authority in SJSO, has the authority to decide whether to enforce a Florida statute as a matter of interpretation and enforcement discretion. Id. at 28:15–19. The record demonstrates that Sheriff Shoar made the deliberate decision (even following Bischoff, Chase, and the Attorney General's criticism of the 2007 amendment) to enforce the statutes. That the "on the street" decisions to warn, cite, and arrest Mr. Vigue were made by his deputies instead of the Sheriff himself does not matter. Quoting Cooper: "[Sheriff Shoar] was clothed with final policymaking authority for law enforcement matters in [St. Johns County] and in this capacity he chose to enforce the statute against [Mr. Vigue]." 403 F.3d at 1223.

At the hearing, Sheriff Shoar's counsel argued that it was not the Sheriff's role to justify the language of the statute because he did not draft or enact it. (Doc. 75 at 19:19–27:3). As a result, he claimed, Sheriff Shoar should be insulated from legal exposure. Id. But in the wake of Cooper, and with Sheriff

Shoar's deliberate decision to repeatedly enforce §§ 316.2045 and 337.406, Sheriff Shoar may be held liable under § 1983 in his official capacity.

C. The Constitutionality of § 316.2045

The Court's role in deciding whether a state law is constitutional is summarized well by Judge Antoon in Bischoff:

> Federal courts are courts of limited jurisdiction. The courts do not reach out to reform or rewrite state statutes that seem to require some improvement. Neither do the federal courts strike down valid laws of which they disapprove. It is the state legislature's duty to enact valid laws, and the Court's duty to declare what the law is, and how the law applies to the facts. The federal courts do not substitute laws they prefer for the will of the elected state legislature. But where parties in a controversy ask a federal court to declare whether a state law violates the Constitution of the United States, the Court must not shrink from its duty to adjudicate the question presented.

***12** 242 F. Supp. 2d at 1241. Here, the Court is asked to declare whether § 316.2045 violates the First and Fourteenth Amendments.[13]

Every court previously asked to evaluate § 316.2045 has declared the statute unconstitutional. Judge Antoon provided an in-depth analysis of § 316.2045 and concluded that the statute was unconstitutional for multiple reasons under First and Fourteenth Amendment jurisprudence. Bischoff, 242 F. Supp. 2d. 1226. In 2006, Judge Mickle adopted the logic and rationale of the Bischoff decision to grant a preliminary injunction enjoining enforcement of § 316.2045, which was later converted to a permanent injunction through settlement, finding that the statute violated the First and Fourteenth Amendments. Chase, 2006 WL 3826983, at *1–2. Finally, the Honorable William Terrell Hodges found a similar panhandling ordinance unconstitutional in Booher v. Marion County, No. 5:07-CV-00282WTHGRJ, 2007 WL 9684182 (M.D. Fla. Sept. 21, 2007).

The Court sees no reason to depart from the analysis of those courts. Accordingly, the Court limits discussion here to recent case law and the ineffectiveness of the 2007 amendments.

i. Section 316.2045 remains an unconstitutional content-based prohibition on speech in public fora.

Content-based regulations of speech in public fora target speech based on its communicative content and "distinguish favored speech from disfavored speech on the basis of the ideas or viewpoints expressed." Cooper, 403 F.3d at 1215 (quoting Turner Broad. Sys., Inc. v. FCC, 512 U.S. 622, 643 (1994)); see also Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd., 502 U.S. 105, 115 (1991). Content-based regulations are subject to strict scrutiny. "Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." Reed v. Town of Gilbert, 576 U.S. 155, 163 (2015) (citations omitted). In Reed, the Supreme Court clarified that "a speech regulation targeted at specific subject matter is content-based even if it does not discriminate among viewpoints within that subject matter." Id. at 169 (finding town code to be content-based because the application of the code to public signs depended on the communicative content of the signs). Courts must:

> [C]onsider whether a regulation of speech "on its face" draws distinctions based on the message a speaker conveys. Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.

Id. at 163-64 (internal citation omitted).

Following Reed, multiple statutes that restrict charitable solicitation have been viewed as content-based and struck down because they cannot survive strict scrutiny. In this district, for example, the Honorable Steven D. Merryday permanently enjoined the City of Tampa from enforcing an ordinance that banned charitable solicitation in certain areas. Homeless Helping Homeless, Inc. v. City of Tampa, No. 8:15-CV-1219-T-23AAS, 2016 WL 4162882, at *5–6 (M.D. Fla. Aug. 5, 2016). Also applying Reed, the Seventh Circuit and a Massachusetts district court found that anti-panhandling statutes were content-based and violated free speech rights under the First Amendment. Norton v. City of Springfield, 806 F.3d 411 (7th Cir. 2015) (striking down statute as unconstitutional when it prohibited oral requests for

immediate payment of money but allowed signs requesting money and oral requests to send money later); Thayer v. City of Worcester, 576 U.S. 1048 (2015) (remanding case to district court for further consideration in light of Reed); Thayer v. City of Worcester, 144 F. Supp. 3d 218 (D. Mass. 2015) (concluding that statute prohibiting begging, panhandling, or soliciting in an aggressive manner was content-based, subject to strict scrutiny, and unconstitutional).

***13** Even before Reed, the court in Bischoff found that § 316.2045 regulated speech on the basis of ideas expressed and was therefore content-based.

> Section 316.2045 selectively proscribes protected First Amendment activity—i.e., it impermissibly prefers speech by § 501(c)(3) charities and by persons who are engaged in "political campaigning" over all other activity that retards traffic, without any showing that the latter is more disruptive than the former.
>
> Section 316.2045 makes the legality of conduct that retards traffic depend solely on the nature of the message being conveyed. Said differently, the Florida statute facially prefers the viewpoints expressed by registered charities and political campaigners by allowing ubiquitous and free dissemination of their views, but restricts discussion of all other issues and subjects. Section 316.2045 of the Florida Statutes, therefore, is presumptively invalid under the Equal Protection Clause and the First Amendment of the United States Constitution because it imposes content-based restrictions on speech in a traditional public forum.

242 F. Supp. 2d at 1256 (internal citations omitted). This analysis of § 316.2045 remains true for the current version of the statute. Most of the content-based restrictions that made the law facially unconstitutional in Bischoff remain in the current version of the law. In particular, § 316.2045(2) still exempts 501(c)(3) organizations, and persons or organizations acting on their behalf, from the permitting requirements for streets or roads not maintained by the state, and it still, confusingly, conditions the need for permits on state-maintained roads or rights-of-way "only for those purposes and in the manner set out in s. 337.406." (More about § 337.406 later.)

The language of § 316.2045(4) is identical to the 2003 version of the statute when Bischoff was decided: "[n]othing in this section shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity." § 316.2045(4). The law impermissibly favors organizational, campaign, and other group speech over other types of speech, like individual charitable solicitation. Thus, § 316.2045 remains a presumptively invalid content-based regulation on protected speech. See, e.g., R.A.V. v. City of St. Paul, 505 U.S. 377, 382 (1992) ("Content-based regulations are presumptively invalid.").[14] The Bischoff court further concluded that § 316.2045 could not survive strict scrutiny, as is required of content-based regulations of speech in public fora, because it was not narrowly tailored to meet a compelling state interest. 242 F. Supp. 2d at 1236-37, 1256-59.

ii. The Court adopts the reasoning of Bischoff.

***14** Bischoff identified additional constitutional infirmities in § 316.2045, deeming the statute content-based and vague, insufficiently tailored to serve the compelling interest of safety, overbroad, and an unconstitutional prior restraint on speech. 242 F. Supp. 2d at 1250–59. At the preliminary injunction stage, the Court relied on Bischoff and Chase to support its finding that Mr. Vigue had a substantial likelihood of success on the merits of his claim that § 316.2045 is unconstitutional. (Doc. 32). There has been no material change to the statute since Bischoff. Reed only strengthens Bischoff's holding. Thus, the Court adopts the reasoning in Bischoff regarding § 316.2045. Florida Statute § 316.2045 is facially unconstitutional.

D. The Constitutionality of § 337.406

Mr. Vigue contests the validity of § 337.406 on the grounds that it is unconstitutionally overbroad, vague, imposes an improper prior restraint on speech, and violates equal protection. (Doc. 59 at 19).

Section 337.406 has received some criticism in the courts, but it has not garnered as much attention as § 316.2045. The court in Bischoff commented that § 337.406 contained "opaque and undecipherable permit provisions," which have remained unchanged, but § 337.406 was not directly at issue in that case. 242 F. Supp. 2d at 1256.

In News & Sun-Sentinel Co. v. Cox, 702 F. Supp. 891 (S.D. Fla. 1988), a court in the Southern District of Florida found a prior version of § 337.406 unconstitutional. There, a newspaper publisher sued the City of Fort Lauderdale, the city commission, and the police chief for enforcing § 337.406, which prohibited the commercial use, including

the sale of newspapers, of state-maintained roads. Id. at 893–94. The Cox court found that the prior version of § 337.406 was a content-neutral regulation of speech in public fora that was not narrowly tailored to serve a significant government interest and was therefore unconstitutional. Id. at 900–03. At that time, § 337.406 targeted commercial activity, whereas now, it prohibits using state rights-of-way of state transportation facilities "in any manner that interferes with the safe and efficient movement of people and property from place to place on the transportation facility." § 337.406(1); see Sentinel Commc'ns Co. v. Watts, 936 F.2d 1189, 1191 n.1, 1195 n.6 (11th Cir. 1991).

In 2006, although the new version of § 337.406 was in use at the time, the Court in Chase found "no reason to depart from the thorough analys[is] undertaken" in Cox and granted a preliminary injunction, finding a substantial likelihood that § 337.406 was unconstitutional. Chase, 2006 WL 2620260, at *1. The Court analyzes the new version of the statute here.

i. Section 337.406(1) imposes an unconstitutional prior restraint.

A prior restraint on speech exists "when the government can deny access to a public forum before the expression occurs." United States v. Frandsen, 212 F.3d 1231, 1236–37 (11th Cir. 2000). Prior restraints "are not per se unconstitutional," but there is a "strong presumption against their constitutionality." Id. at 1237. Attempts to subject the exercise of First Amendment freedoms to the prior restraint of a license are unconstitutional when they lack narrow, objective, and definite standards to guide the licensing authority. Shuttlesworth v. Birmingham, 394 U.S. 147, 150–51 (1969). A permissible prior restraint must include "adequate procedural safeguards to avoid unconstitutional censorship." Frandsen, 212 F.3d at 1239 n.7. Facially valid prior restraints require: (1) the burden of going to court to suppress speech and of proof once in court rests upon the government; (2) any restraint prior to a judicial determination may only be for a specified brief period to preserve the status quo; and (3) an avenue for prompt judicial review of the censor's decision must be available. Id. at 1238; Freedman v. Maryland, 380 U.S. 51, 58–59 (1965).

***15** Section 337.406(1) articulates a prior restraint on speech because anyone who wishes to solicit charitable donations on state rights of way must first obtain a permit:

> Local government entities may issue permits of limited duration for the temporary use of the right-of-way of a state transportation facility for any of these prohibited uses [including solicitation for charitable purposes] if it is determined that the use will not interfere with the safe and efficient movement of traffic and the use will cause no danger to the public. The permitting authority granted in this subsection shall be exercised by the municipality within incorporated municipalities and by the county outside an incorporated municipality.

§ 337.406(1).

The permitting scheme described in § 337.406(1) does not include adequate procedural safeguards. It includes no explicit standards for issuance other than general safety, no time limits, and no review process for denials. Local governments seem to have unfettered discretion not only regarding who receives a permit, but also regarding whether and how to institute a permitting procedure in the first place. This is brought into sharp focus here because neither the State, St. Johns County, nor Sheriff Shoar have ever created a process by which a person can obtain a permit under § 337.406(1), and the statute does not require them to do so. Thus, there is literally no way for Mr. Vigue to comply with the permitting requirement, even if he wanted to.

Courts have routinely struck down permitting schemes with similar deficiencies. FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 225–26 (1990) (stating that "cases addressing prior restraints have identified two evils that will not be tolerated," including unbridled government discretion and lack of time constraints); Solantic, LLC v. City of Neptune Beach, 410 F.3d 1250, 1272 (11th Cir. 2005) (finding a sign code's permitting requirement to be "precisely the type of prior restraint on speech that the First Amendment will not bear" when it contained no time limit for decisions and vested officials with unbridled discretion); Frandsen, 212 F.3d at 1240 (finding that a permit requirement to hold meetings in public parks was an unconstitutional prior restraint because it did not provide time constraints); Lady J. Lingerie, Inc. v. City of Jacksonville, 176 F.3d 1358, 1363 (11th Cir. 1999) (finding that a zoning board licensing requirement for sexually oriented businesses was an unconstitutional prior restraint because it vested too much discretion in the zoning board). The permitting scheme in § 337.406(1) for charitable solicitation is an unconstitutional prior restraint on speech.[15]

ii. The prohibition on charitable solicitation in Section 337.406(1) is unconstitutional.

**16 Beyond the unconstitutional permitting scheme, § 337.406(1) is written in a somewhat confusing manner, so it is worth reiterating its provisions. First, § 337.406(1) bans certain conduct on rights-of-way of state transportation facilities and their appendages:

> Except when leased as provided in s. 337.25(5) or otherwise authorized by the rules of the department, it is unlawful to make any use of the right-of-way of any state transportation facility, including appendages thereto, outside of an incorporated municipality in any manner that interferes with the safe and efficient movement of people and property from place to place on the transportation facility.

§ 337.406(1). Next, it specifies the prohibition's purpose:

> Failure to prohibit the use of right-of-way in this manner will endanger the health, safety, and general welfare of the public by causing distractions to motorists, unsafe pedestrian movement within travel lanes, sudden stoppage or slowdown of traffic, rapid lane changing and other dangerous traffic movement, increased vehicular accidents, and motorist injuries and fatalities.

Id. Then, it gives examples of "prohibited uses:"

> Such prohibited uses include, but are not limited to, the free distribution or sale, or display or solicitation for free distribution or sale, of any merchandise, goods, property or services; the solicitation for charitable purposes; the servicing or repairing of any vehicle, except the rendering of emergency service; the storage of vehicles being serviced or repaired on abutting property or elsewhere; and the display of advertising of any sort, except that any portion of a state transportation facility may be used for an art festival, parade, fair, or other special event if permitted by the appropriate local governmental entity.

Id. (emphasis added).

Finally, the law imposes the previously discussed permitting scheme. Id.

Section 337.406(1) appears to provide a content-neutral, outright prohibition on activity that interferes with the flow of people and property, followed by content-based list of prohibited uses and an impermissible permit scheme. The statute's imprecision led Judge Antoon to comment on its "opaque and undecipherable permit provisions,"[16] led the Cox court to find an earlier version of the statute unconstitutional, 702 F. Supp. at 900-03, and led the Chase court to find the current version of the statute unconstitutional, 2006 WL 3826983, at *1–2. The Court concurs with those courts, and additionally, finds that the current version of § 337.406(1) is overbroad as it pertains to charitable solicitation.

**17 Here, without the impermissible and unavailable permitting scheme, the remainder of § 337.406(1) prohibits all "solicitation for charitable purposes" on rights of way of state transportation facilities and appendages thereto. An outright prohibition on charitable solicitation is overbroad. Even if the statute is considered content-neutral, it must survive intermediate scrutiny—that is, the regulation must be narrowly tailored to serve a significant government interest and must leave open alternative channels of communication. See, e.g., McCullen v. Coakley, 573 U.S. 464, 477 (2014); see also United States v. Grace, 461 U.S. 171, 177 (1983). It cannot "burden substantially more speech than is necessary to further the government's legitimate interests." McCullen, 573 U.S. at 486 (internal quotation omitted). A narrowly tailored statute "targets and eliminates no more than the exact source of the 'evil' it seeks to remedy." Cox, 702 F. Supp. at 900 (quoting Frisby v. Schultz, 487 U.S. 474, 475 (1988)).

The Cox court found that § 337.406 was not narrowly tailored because the statute banned "any commercial activity by anyone, at any time, at any place on a state-maintained road." 702 F. Supp. at 901. Thus, the court concluded, it was not carefully drawn to meet the City's interests, made no attempt to restrict activity to certain times, failed to distinguish between children and adults who may be more safety-conscious, and failed to take into account that traffic hazards may vary. Id. Today, the same reasoning applies to the statute's ban on all charitable solicitation. The statute prohibits more than the exact source of evil that it seeks to remedy—solicitation that poses a true traffic safety threat.

In First Amendment cases, there exists a serious concern that overbroad laws may lead to a chilling effect on protected expression. See Nat'l Endowment for the Arts v. Finley, 524 U.S. 569, 582 (1998); Dombrowski v. Pfister, 380 U.S. 479, 487 (1965). Thus, courts invalidate statutes when "persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions provided by a statute susceptible of application to protected expression." Gooding v. Wilson, 405 U.S. 518,

521 (1972). When a statute implicates First Amendment rights, it must be written clearly and narrowly drawn. Section 337.406(1)'s provisions concerning charitable solicitation are not and are therefore unconstitutional.

E. First Amendment Freedom and Traffic Safety

The Supreme Court's articulation of why public streets, sidewalks, and parks are critical to First Amendment freedom resonates strongly in this case:

> It is no accident that public streets and sidewalks have developed as venues for the exchange of ideas. Even today, they remain one of the few places where a speaker can be confident that he is not simply preaching to the choir. With respect to other means of communication, an individual confronted with an uncomfortable message can always turn the page, change the channel, or leave the Web site. Not so on public streets and sidewalks. There, a listener often encounters speech he might otherwise tune out. In light of the First Amendment's purpose "to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail," this aspect of traditional public fora is a virtue, not a vice.

McCullen, 573 U.S. at 476 (internal citation omitted).

Mr. Vigue's right to free speech is vital. But to be sure, the Court finding § 316.2045 and portions of § 337.406(1) unconstitutional does not give Mr. Vigue and others carte blanche to solicit charity on roadways however they wish. "It requires neither towering intellect nor an expensive 'expert' study to conclude that mixing pedestrians and temporarily stopped motor vehicles in the same space at the same time is dangerous." Cox, 702 F. Supp. at 900 (quoting Int'l Soc. For Krishna Consciousness of New Orleans, Inc. v. City of Baton Rouge, 668 F. Supp. 527, 530 (M.D. La. 1987), aff'd, 876 F.2d 494 (5th Cir. 1989)). Thus, the Legislature may legislate on these topics so long as it strikes the careful balance between upholding First Amendment rights and ensuring traffic safety. Unfortunately, neither § 316.2045 nor § 337.406(1) meet this test.

***18** It is essential that law enforcement is not left without recourse for traffic safety problems posed by people blocking traffic in streets, asking for money or otherwise. In Booher, Judge Hodges stated that "concerns about traffic safety during the pendency of the injunction [were] adequately addressed by [other] existing laws." 2007 WL 9684182, at *4. Similarly, Mr. Vigue asserts that "there are other laws in place that better address pedestrian and vehicular safety," such as § 316.130. (Doc. 59 at 16). Florida's legitimate interest in road safety "can be better served by measures less intrusive than a direct prohibition on solicitation." Schaumburg, 444 U.S. at 637.

F. Severability

Having found portions of both statutes to be unconstitutional, the Court now turns to the question of whether those portions are severable from the rest of the statute. Severability is a question of state law. Wollschlaeger v. Governor, Fla., 848 F.3d 1293, 1317 (11th Cir. 2017). When, as here, there is no severability clause, the "key determination is whether the overall legislative intent is still accomplished without the invalid provisions." State v. Catalano, 104 So. 2d 1069, 1080–81 (Fla. 2012) (refusing to sever prior version of § 316.2045(1)(a) when severance would expand statute's reach beyond what the legislature contemplated); Lawnwood Med. Ctr., Inc. v. Seeger, 990 So. 2d 503, 518 (Fla. 2008) (refusing to sever hospital governance law when act would not be complete with invalid portions severed to accomplish what the legislature intended).[17]

In § 316.2045, the unconstitutional provision is the crux of the statute. If §§ 316.2045(1)–(4) were to be severed from the small portion of the statute that remains, § 316.2045(5), the law would fail to serve the legislative intent of regulating traffic safety through prohibiting solicitation and establishing a permit scheme. Thus, the Court cannot sever the unconstitutional provisions of § 316.2045 and salvage the remaining section.

On the other hand, the Court has found only the portions of Section 337.406(1) that prohibit charitable solicitation to be unconstitutional. The rest of § 337.406(1) is not at issue here; Mr. Vigue has mounted a facial challenge only to the statute's prohibition on charitable solicitation. The Court does not reach the portions of §§ 337.406(1) that do not pertain to charitable solicitation, or §§ 337.406(2)–(5). Thus, the portions of § 337.406(1) pertaining to charitable solicitation are severed from the statute. The portions of § 337.406(1) unrelated to charitable solicitation and the entirety of §§ 337.406(2)–(5) remain unaffected.

G. Permanent Injunction

***19** For a permanent injunction to be issued, Mr. Vigue must: (1) show actual success on the merits of claims asserted in the complaint; (2) establish that irreparable harm will result from failure to provide injunctive relief; (3) establish that the balance of equities tips in his favor; and (4) demonstrate that an injunction is in the public interest. KH Outdoor, LLC v. City of Trussville, 458 F.3d 1261, 1268 (11th Cir. 2006). Permanent injunction requirements are the same as those for a preliminary injunction, except that Mr. Vigue must show actual success on the merits as opposed to likelihood of success on the merits of his claims. Id.

Mr. Vigue has succeeded in his claims that §§ 316.2045 and portions of 337.406(1) are unconstitutional. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 373 (1976). Here, Mr. Vigue has suffered and will continue to suffer denial of his First Amendment right to expression in the form of charitable solicitation. Arrest and incarceration pursuant to §§ 316.2045(1) and 316.2045(2), as well as warnings and threats of arrest pursuant to § 337.406, prohibit Mr. Vigue from engaging in protected speech. With these statutes in effect and no available permitting scheme with procedural safeguards in place, Sheriff Shoar retains unbridled discretion to enforce the statutes that bar Mr. Vigue's protected speech activity. "Because chilled speech cannot be compensated by monetary damages, an ongoing violation of the First Amendment constitutes irreparable injury." Univ. Books & Videos, Inc. v. Metro. Dade Cty., 33 F. Supp. 2d 1264, 1373 (S.D. Fla. 1999).

Injury to Mr. Vigue also outweighs any harm the injunction might cause Sheriff Shoar. Even without §§ 316.2045 and 337.406, Sheriff Shoar is still free to enforce all other state and local laws to maintain safe roadways throughout the county. Sheriff Shoar has already altered enforcement of these statutes through Policy 41.39, and makes no claim of increased difficulty maintaining safe roadways as a result of the new policy. Courts regularly find that injury to plaintiffs outweighs harm to defendants in First Amendment cases. See Baumann v. City of Cumming, No. 2:07-CV-0095-WCO, 2007 WL 9710767, at *7 (N.D. Ga. Nov. 2, 2007) ("[T]he temporary infringement of First Amendment rights constitutes a serious and substantial injury, and the city has no legitimate interest in enforcing an unconstitutional ordinance.").

Finally, "[t]he public interest is served by the maintenance of First Amendment freedoms and could not possibly be served by the enforcement of an unconstitutional ordinance." Howard v. City of Jacksonville, 109 F. Supp. 2d 1360, 1365 (M.D. Fla. 2000). While citizens certainly have an interest in remaining safe, and Sheriff Shoar has an interest in ensuring traffic safety, the "interest[ ] in remaining safe while walking or driving [is] served by other statutes and codes available to law enforcement officers." Chase, 2006 WL 2620260, at *3.

H. Damages

Mr. Vigue claims that Sheriff Shoar is liable for compensatory damages for violation of Mr. Vigue's constitutional rights, and that he should proceed to trial on the issue of damages. (Doc. 59 at 24). Mr. Vigue relies primarily on Memphis Cmty. Sch. Dist. v. Stachura, 477 U.S. 299 (1986) to argue that compensatory damages should be available.

For actions under § 1983, "the rules governing compensation for injuries caused by the deprivation of constitutional rights should be tailored to the interests protected by the particular right in question." Carey v. Piphus, 435 U.S. 247, 259 (1978). In reviewing the law, the Court understands that nominal damages are available in First Amendment cases. Pelphrey v. Cobb Cty., 547 F.3d 1263, 1282 (11th Cir. 2008) ("This Court has found that 'nominal damages are similarly appropriate in the context of a First Amendment violation.' "); Familias Unidas v. Briscoe, 619 F.2d 391, 402 (5th Cir. 1980) (holding that nominal damages are available for violations of the First Amendment); see also Gonzalez v. Sch. Bd. of Okeechobee Cty., 250 F.R.D. 565, 570 (S.D. Fla. 2008) (finding that nominal damages were available in a § 1983 action for violations of the First Amendment).[18] But the Court is uncertain regarding whether there also exists a legal and factual basis for compensatory damages in this case. Compare Carey, 435 U.S. at 264 (stating compensatory damages under § 1983 are available only when plaintiff shows actual injury); with Stachura, 477 U.S. at 310-11 ("When a plaintiff seeks compensation for an injury that is likely to have occurred but difficult to establish, some form of presumed damages may possibly be appropriate."); see also King v. Zamiara, 788 F.3d 207, 213 (6th Cir. 2015) (surveying cases where compensatory damages were permitted for deprivation of constitutional rights and concluding that compensatory damages were appropriate "for specific, actual injuries [plaintiff] suffered that cannot be easily quantified"); Celli v. City of St. Augustine, 214 F. Supp. 2d 1255, 1262 (M.D. Fla. 2000) (allowing jury to place monetary value on intangible free speech rights to determine damages in § 1983 action). If Mr. Vigue wishes to pursue more than nominal damages, the

Court directs him to submit a proffer of the legal and factual basis for compensatory damages.

III. CONCLUSION

***20** In ruling in favor of Mr. Vigue on the constitutionality of §§ 337.2045 and 337.406, the Court is following precedent and upholding important First Amendment and Equal Protection principles. Of course, as suggested by Florida's Attorney General in 2007, the Legislature is free to rewrite these statutes to try to alleviate the constitutional infirmities. For now, Sheriff Shoar has demonstrated through his Policy Directive 41.39 that he can abide by the Court's decision on an ongoing basis such that Mr. Vigue will be free to exercise his constitutional right to solicit. However, the Court also addresses Mr. Vigue: this decision is not a license to trespass on private property, interfere with traffic, station himself where he obstructs traffic or creates a safety hazard to himself or others. If he does so, there are other laws which can be brought to bear. The Court is confident that both Sheriff Shoar and his deputies and Mr. Vigue will exercise common sense and good judgment.

Accordingly, it is hereby

ORDERED:

1. Plaintiff Peter Vigue's Motion for Partial Summary Judgment (Doc. 59) is **GRANTED** for the reasons stated herein.

2. Defendant David B. Shoar's Motion for Summary Judgment (Doc. 60) is **DENIED** for the reasons stated herein.

3. Florida Statute § 316.2045 is found to be facially unconstitutional under the First and Fourteenth Amendments. Declaratory Judgment to that effect will be entered at the conclusion of the case.

4. The portions of Florida Statute § 337.406(1) pertaining to charitable solicitation are found to be facially unconstitutional under the First and Fourteenth Amendments. Declaratory Judgment to that effect will be entered at the conclusion of the case.

5. Defendant David B. Shoar, in his official capacity as Sheriff of St. Johns County, is hereby permanently **ENJOINED** from enforcing Florida Statutes §§ 316.2045 and 337.406(1), the latter insofar as it pertains to charitable solicitation. A final permanent injunction will be entered at the conclusion of the case.

6. If he wishes to pursue compensatory damages, Mr. Vigue is directed to submit a proffer of the legal and factual basis for a claim for damages no later than **November 19, 2020**, and Sheriff Shoar is directed to respond no later than **December 21, 2020**. The Court will then determine how to proceed.

7. Any claim for attorneys fees and costs will await the conclusion of the case.

DONE AND ORDERED in Jacksonville, Florida the 12th day of October, 2020.

All Citations

Slip Copy, 2020 WL 6020484

Footnotes

1 Regarding enforcement of §§ 316.2045(1) and 337.406, Policy 41.39 provides:
So long as a person does not impede the free, convenient, and normal use of the road, SJSO will not treat entering or leaving a roadway while traffic is stopped pursuant to a traffic light as a violation of Section 316.2045(1). SJSO will not use this provision to prohibit persons from engaging in lawful conduct, such as charitable solicitation adjacent to public streets, highways, or roads, so long as any incursion is during stopped traffic pursuant to a traffic light and does not impede the free, convenient, and normal use of the road. Additionally, SJSO will not enforce this provision against a person who has left the roadway by the time traffic is permitted to move, so long as the person does not impede the free, convenient, and normal use of the road.
(Doc. 59-16 at 2–3).

2 FHP agreed to limit its enforcement of § 316.2045(1) and 337.406 as follows:
So long as a person does not impede the free, convenient, and normal use of the road, FHP will no longer treat entering or leaving a roadway while traffic is stopped pursuant to a traffic control device as a violation of Section 316.2045(1) [or of Section 337.406]. And FHP will no longer use th[ese] provision[s] to prohibit persons from engaging in lawful conduct

such as charitable solicitation adjacent to public streets, highways, or roads, so long as any incursion is during stopped traffic pursuant to a control device and does not impede free, convenient, and normal use of the road. Additionally, FHP will not enforce th[ese] provision[s] against a person who has left the roadway by the time traffic is permitted to move and does not impede the free, convenient, and normal use of the road.

(Doc. 45-1 at 11).

3 The settlement agreement included various other deadlines, directives, and provisions, including a payment to Vigue for the costs, attorneys' fees, and expenses incurred in litigation. (Doc. 45-1 at 4).

4 Mr. Vigue has stated that he feels he has been harassed for holding his sign. (Doc. 60-9 at 142:9–13). "I'm not out to bother people or hurt people on any—whether you're in a car, vehicle, on foot or you have a business, I'm not out there to bother you or hurt you. I just want to see people smile. Put a smile on your face, and I'll go on my way. If you give me something, that's good. If you don't, that's fine." (Doc. 60-9 at 147:14–20).

5 The Offense Report from January 13, 2019, includes the following Probable Cause Narrative, alluding to Mr. Vigue's other offenses:

> I observed the defendant standing at State Road 312 and Tingle Court holding a sign and approaching vehicles with their windows down. The defendant does not have a permit to solicit on a state road. I knew the defendant to have been issued a citation for Soliciting without a permit on October 2, 2018. The defendant was also placed under arrest for the same offense on November 13, 2018 and January 8, 2019.

(Doc. 59-1 at 3–4).

6 The full text of § 316.2045(3) reads:

> Permits for the use of any street, road, or right-of-way not maintained by the state may be issued by the appropriate local government. An organization that is qualified under s. 501(c)(3) of the Internal Revenue Code and registered under chapter 496, or a person or organization acting on behalf of that organization, is exempt from local requirements for a permit issued under this subsection for charitable solicitation activities on or along streets or roads that are not maintained by the state under the following conditions:
>
> (a) The organization, or the person or organization acting on behalf of the organization, must provide all of the following to the local government:
>
> 1. No fewer than 14 calendar days prior to the proposed solicitation, the name and address of the person or organization that will perform the solicitation and the name and address of the organization that will receive funds from the solicitation.
>
> 2. For review and comment, a plan for the safety of all persons participating in the solicitation, as well as the motoring public, at the locations where the solicitation will take place.
>
> 3. Specific details of the location or locations of the proposed solicitation and the hours during which the solicitation activities will occur.
>
> 4. Proof of commercial general liability insurance against claims for bodily injury and property damage occurring on streets, roads, or rights-of-way or arising from the solicitor's activities or use of the streets, roads, or rights-of-way by the solicitor or the solicitor's agents, contractors, or employees. The insurance shall have a limit of not less than $1 million per occurrence for the general aggregate. The certificate of insurance shall name the local government as an additional insured and shall be filed with the local government no later than 72 hours before the date of the solicitation.
>
> 5. Proof of registration with the Department of Agriculture and Consumer Services pursuant to s. 496.405 or proof that the soliciting organization is exempt from the registration requirement.
>
> (b) Organizations or persons meeting the requirements of subparagraphs (a)1.-5. may solicit for a period not to exceed 10 cumulative days within 1 calendar year.
>
> (c) All solicitation shall occur during daylight hours only.
>
> (d) Solicitation activities shall not interfere with the safe and efficient movement of traffic and shall not cause danger to the participants or the public.
>
> (e) No person engaging in solicitation activities shall persist after solicitation has been denied, act in a demanding or harassing manner, or use any sound or voice-amplifying apparatus or device. (f) All persons participating in the solicitation shall be at least 18 years of age and shall possess picture identification.
>
> (g) Signage providing notice of the solicitation shall be posted at least 500 feet before the site of the solicitation.
>
> (h) The local government may stop solicitation activities if any conditions or requirements of this subsection are not met.

§ 316.2045(3).

7 A Sheriff's deputy described his encounter with Mr. Vigue on December 31, 2017 in a Field Interview Narrative:

Peter was standing with a cardboard sign just outside Cobblestone property in the grass between the sidewalk and curb of Old Moultrie Rd. I observed Peter enter the roadway of Jenkins St just outside the CBL property line to receive money from a motorist exiting the plaza.

I made Peter distinctly aware where he was standing was within the right-of-way of Old Moultrie Rd and he was (1) using the right- of-way to solicit for charitable purposes and (2) entered the roadway, interfering with the safe movement of vehicles, contrary to FS 337.406.

Peter acknowledged he understands where the CBL property line is at the Old Moultrie Rd entrance and now thoroughly understands where the right-of-way is. He was informed this warning would be documented and appropriate law enforcement action would follow if he is located, committing the same offense.

At the time, he was wearing a grey vest with long-sleeve orange shirt under it, jeans, and green gloves. His sign read, "God Bless, Be Safe."

(Doc. 59-2 at 9).

8 A Sheriff's deputy's "Suspicious Person" report from April 1, 2019 includes the following narrative:

Peter Vigue was standing in the intersection holding a hand written sign, which read "God Bless." Once Peter saw my patrol vehicle, he walked away from the intersection, leaving another hand written sign and plastic bottle on the ground. I advised Peter to collect his items or he would be ticketed. Peter said he wasn't leaving the area and he wasn't breaking the law. Advised him to stay out of the roadway or he would be subject to arrest. Peter assured me he would not walk or stand in the road way.

(Doc. 59-2 at 13).

9 "To read the amended statutory language to allow only charities and political campaigners to solicit could, arguably, subject the statute to federal constitutional challenge as violating First Amendment free speech rights and Fourteenth Amendment equal protection rights....I would strongly suggest that the Florida Legislature revisit this statute to consider the First Amendment problems raised by the Bischoff case." Fla. Att'y Gen. Op. 2007-50 (2007).

10 "The principles governing summary judgment do not change when the parties file cross-motions for summary judgment." T-Mobile S. LLC v. City of Jacksonville, 564 F. Supp. 2d 1337, 1340 (M.D. Fla. 2008).

11 The Court acknowledges that in Cooper, Chief Dillon personally swore an affidavit and obtained a warrant for Cooper's arrest under the challenged statute. 403 F.3d at 1212. Here, Sheriff Shoar has not personally arrested or sworn an affidavit for the arrest of Mr. Vigue. Still, Cooper's reasoning applies. The question in Cooper was "whether Dillon had final policymaking authority for the City of Key West in law enforcement matters and whether his decision to enforce FLA. STAT. ch. 112.533(4) against Cooper was an adoption of 'policy' sufficient to trigger 1983 liability." Id. at 1221. The Court concluded that enforcement of a state law by a police chief may subject a municipality to liability. Id. at 1223. That conclusion did not hinge on personal enforcement by the police chief himself. Moreover, "when an officer is sued under Section 1983 in his or her official capacity, the suit is simply another way of pleading an action against an entity of which an officer is an agent." Busby v. City of Orlando, 931 F.2d 764, 776 (11th Cir. 1991) (internal quotation omitted). The record shows that SJSO repeatedly and deliberately decided to enforce the challenged statutes against Mr. Vigue.

12 Sheriff Shoar focuses on cases regarding deliberate indifference under the Eighth Amendment, exhaustion of administrative remedies, and excessive force violations to support his contention that he had no policy that would trigger municipal liability under § 1983. (Doc. 66 at 7–8). However, those cases are readily distinguishable.

13 The First Amendment is applicable to the states through the Fourteenth Amendment. Elrod v. Burns, 427 U.S. 347, 357 n.10 (1976).

14 The distinction between individuals and charitable or political groups may also be understood as the law favoring certain speakers. The Supreme Court in Reed commented on why speaker distinctions may be problematic under the First Amendment and are often subject to strict scrutiny:

> In any case, the fact that a distinction is speaker based does not...automatically render the distinction content neutral. Because [s]peech restrictions based on the identity of the speaker are all too often simply a means to control content, we have insisted that laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference. Thus, a law limiting the content of newspapers, but only newspapers, could not evade strict scrutiny simply because it could be characterized as speaker based. Likewise, a content-based law that restricted the political speech of all corporations would not become content neutral just because it singled out corporations as a class of speakers. Characterizing a distinction as speaker based is only the beginning—not the end — of the inquiry.

Reed, 576 U.S. at 170 (internal citations and quotations omitted). Section 316.2045 reflects the Legislature's preference for organizational and campaign speakers over individual speakers. This is yet another reason the law is subject to strict scrutiny.

15 The permitting scheme in § 337.406 explicitly lists "the solicitation for charitable purposes" as a prohibited use of the roadway for which one must obtain a permit. For that reason, the permitting scheme appears to be content- based. See Reed, 576 U.S. at 163 ("Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea of message expressed.") However, even if the permitting scheme were content-neutral, it could not pass constitutional muster. Though the Supreme Court has "never required that a content-neutral permit scheme regulating speech in a public forum adhere to the procedural requirements set forth in Freedman," still, "[w]here the licensing official enjoys unduly broad discretion in determining whether to grant or deny a permit, there is a risk that he will favor or disfavor speech based on its content." Thomas v. Chicago Park Dist., 534 U.S. 316, 322–23 (2002). Thus, even a content-neutral permitting scheme must "contain adequate standards to guide the official's decision and render it subject to effective judicial review." Id. The permitting scheme in § 337.406 does not contain such standards.

16 In Bischoff, Judge Antoon pointed out ambiguity in the type of conduct prohibited without a permit and troublesome cross-referencing between § 337.406 and § 316.2045(2):

> But § 337.406(1) is unclear as to whether the term "these prohibited uses" refers only to uses "for an art festival, parade, fair or other special event." May municipalities also permit other uses prohibited by § 337.406(1), such as charitable solicitation that interferes with traffic movement? The answer may be important not only to someone seeking a permit for soliciting in a municipality, but also to someone who simply wants to avoid using a state road for a purpose specified in § 337.406—i.e., a person who has no permit but wants to avoid violating § 316.2045(2). The statute provides no answer. This level of detail in the analysis is necessary because the Florida Legislature chose to make the criminality of a person's conduct under § 316.2045(2) dependent on the "purposes" set forth in § 337.406.

242 F. Supp. 2d at 1254–55.

17 The Florida Supreme Court in Catalano laid out the purpose of the severability doctrine and the test for severability in Florida:

> Severability is a judicially created doctrine which recognizes a court's obligation to uphold the constitutionality of legislative enactments where it is possible to remove the unconstitutional portions. It is derived from the respect of the judiciary for the separation of powers, and is designed to show great deference to the legislative prerogative to enact laws. The portion of a statute that is declared unconstitutional will be severed if: (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.

Catalano, 104 So. 3d at 1080 (internal citations and quotations omitted).

18 Fifth Circuit precedent prior to October 1, 1981 is binding on the Eleventh Circuit. Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981).

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From: Munero, Armando
To: "Juan Fernandez-Barquin"
Subject: FW: PRR # 24 Bennett (Fernandez-Barquin)
Date: Tuesday, January 26, 2021 4:59:48 PM
Attachments: PRR # 24 Response.pdf
PRR # 24 Response Exempt.pdf

-----Original Message-----
From: Office of Open Government <opengovernment@myfloridahouse.gov>
Sent: Monday, January 25, 2021 9:14 PM
To: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Subject: PRR #24 Bennett (Fernandez-Barquin)

Hi Armando...

The House received the request below for certain public records that are maintained by the House on Representative Fernandez-Barquin's behalf. Attached are the responsive records that IT found in the Representative's accounts on the House server. Bill drafts and requests for bill drafts have been redacted. I am simply sending the records to you as a "heads up" before I send them to the requester. You do not need to do anything other than let me know if you or the Representative have any questions. I'll send the records to the requester in the next day or two after I review them one last time.

Kind regards,

Karen Camechis, Director
Office of Open Government
Florida House of Representatives
850-717-5650

Please Note: The Florida Constitution requires disclosure of public records unless a Florida Statute exempts the records from the disclosure requirement. Therefore, the contents of your email and your email address are subject to public disclosure unless a specific statute exempts them from the Constitution's disclosure requirements. Most emails to and from House members and staff that were sent or received in connection with the transaction of legislative business are public records that will be made available to the public and media upon request.

-----Original Message-----
From: Office of Open Government
Sent: Friday, January 15, 2021 10:53 AM
To: 'anthony.john.bennett@gmail.com' <anthony.john.bennett@gmail.com>
Subject: PRR #24 Bennett (Fernandez-Barquin)

The Office of Open Government received the request below. Representative Fernandez-Barquin's House email account and document drives, which are maintained by the House on the House server, will be searched for public records that meet the criteria of the request. If any such records are located, copies will be provided to you in accordance with Article 1, Section 24(c) of the Florida Constitution; section 11.0431, Florida Statutes; and House Rules 14.1 and 14.2. For your information, chapter 119, Florida Statutes, does not apply to the legislative or judicial branches of Florida's state government.

Pursuant to House Rule 14.2, members are the custodians of records located in their offices or held by them personally. Therefore, requests for public records that are maintained by a member must be submitted directly to the member.

Kind regards,

Office of Open Government
Florida House of Representatives

-----Original Message-----
From: anthony.john.bennett@gmail.com <anthony.john.bennett@gmail.com>
Sent: Thursday, January 14, 2021 5:20 PM
To: Office of Open Government <opengovernment@myfloridahouse.gov>
Subject: From 'Public Records Request' Form

Anthony
Bennett
12783 Longview Dr W
Jacksonville,FL 32223-
(850) 240-3234

01/14/21 5:19 PM

Anthony Bennett
12783 Longview Dr W
Jacksonville, FL 32223

January 14, 2021

Dear Public Records Manager:
Pursuant to Article I, section 24 of the Florida Constitution, and chapter 119, F.S., I am requesting an opportunity to inspect or obtain copies of public records of:

* Any and all communications of Representative Juan Alfonso Fernandez-Barquin pertaining to the drafting of Senate Bill 484/ House Bill 1 (Combating Public Disorder)

* Any and all communications of Representative Fernandez-Barquin regarding Governor DeSantis's proposed Combating Violence, Disorder and Looting and Law Enforcement Protection Act

* The minutes of any and all meetings at which Representative Fernandez-Barquin was present wherein SB 484/HB 1 and/or the governor's proposal were discussed.

I request a waiver of all fees for this request since the disclosure of the information I seek is not primarily in my commercial interest, and is likely to contribute significantly to public understanding of the operations or activities of the government, making the disclosure a matter of public interest. SB 484/HB 1 do not contain significant elements of the Governor's proposal, notably including a permanent ban on state employment or benefits. These records will provide crucial context as to these edits. Should you deny my request, or any part of the request, please state in writing the basis for the denial, including the exact statutory citation authorizing the denial as required by s. 119.07(1)(d), F.S.

I will contact your office within 48 hours to discuss when I may expect fulfillment of my request, and payment of any statutorily prescribed fees. If you have any questions in the interim, you may contact me at (850) 240-3234 or at this email address.

Thank you,
Anthony Bennett
anthony.john.bennett@gmail.com
(850) 240-3234

From: Munero, Armando
To: "Juan Fernandez-Barquin"
Subject: FW: PRR # 24 Bennett (Fernandez-Barquin)
Date: Tuesday, January 26, 2021 4:59:48 PM
Attachments: PRR # 24 Response.pdf
PRR # 24 Response Exempt.pdf

-----Original Message-----
From: Office of Open Government <opengovernment@myfloridahouse.gov>
Sent: Monday, January 25, 2021 9:14 PM
To: Munero, Armando <Armando.Munero@myfloridahouse.gov>
Subject: PRR #24 Bennett (Fernandez-Barquin)

Hi Armando...

The House received the request below for certain public records that are maintained by the House on Representative Fernandez-Barquin's behalf. Attached are the responsive records that IT found in the Representative's accounts on the House server. Bill drafts and requests for bill drafts have been redacted. I am simply sending the records to you as a "heads up" before I send them to the requester. You do not need to do anything other than let me know if you or the Representative have any questions. I'll send the records to the requester in the next day or two after I review them one last time.

Kind regards,

Karen Camechis, Director
Office of Open Government
Florida House of Representatives
850-717-5650

Please Note: The Florida Constitution requires disclosure of public records unless a Florida Statute exempts the records from the disclosure requirement. Therefore, the contents of your email and your email address are subject to public disclosure unless a specific statute exempts them from the Constitution's disclosure requirements. Most emails to and from House members and staff that were sent or received in connection with the transaction of legislative business are public records that will be made available to the public and media upon request.

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From: Office of Open Government
Sent: Friday, January 15, 2021 10:53 AM
To: 'anthony.john.bennett@gmail.com' <anthony.john.bennett@gmail.com>
Subject: PRR #24 Bennett (Fernandez-Barquin)

The Office of Open Government received the request below. Representative Fernandez-Barquin's House email account and document drives, which are maintained by the House on the House server, will be searched for public records that meet the criteria of the request. If any such records are located, copies will be provided to you in accordance with Article 1, Section 24(c) of the Florida Constitution; section 11.0431, Florida Statutes; and House Rules 14.1 and 14.2. For your information, chapter 119, Florida Statutes, does not apply to the legislative or judicial branches of Florida's state government.

Pursuant to House Rule 14.2, members are the custodians of records located in their offices or held by them personally. Therefore, requests for public records that are maintained by a member must be submitted directly to the member.

Kind regards,

Office of Open Government
Florida House of Representatives

-----Original Message-----
From: anthony.john.bennett@gmail.com <anthony.john.bennett@gmail.com>
Sent: Thursday, January 14, 2021 5:20 PM
To: Office of Open Government <opengovernment@myfloridahouse.gov>
Subject: From 'Public Records Request' Form

Anthony
Bennett
12783 Longview Dr W
Jacksonville,FL 32223-
(850) 240-3234

01/14/21 5:19 PM

Anthony Bennett
12783 Longview Dr W
Jacksonville, FL 32223

January 14, 2021

Dear Public Records Manager:
Pursuant to Article I, section 24 of the Florida Constitution, and chapter 119, F.S., I am requesting an opportunity to inspect or obtain copies of public records of:

* Any and all communications of Representative Juan Alfonso Fernandez-Barquin pertaining to the drafting of Senate Bill 484/ House Bill 1 (Combating Public Disorder)

* Any and all communications of Representative Fernandez-Barquin regarding Governor DeSantis's proposed Combating Violence, Disorder and Looting and Law Enforcement Protection Act

* The minutes of any and all meetings at which Representative Fernandez-Barquin was present wherein SB 484/HB 1 and/or the governor's proposal were discussed.

I request a waiver of all fees for this request since the disclosure of the information I seek is not primarily in my commercial interest, and is likely to contribute significantly to public understanding of the operations or activities of the government, making the disclosure a matter of public interest. SB 484/HB 1 do not contain significant elements of the Governor's proposal, notably including a permanent ban on state employment or benefits. These records will provide crucial context as to these edits. Should you deny my request, or any part of the request, please state in writing the basis for the denial, including the exact statutory citation authorizing the denial as required by s. 119.07(1)(d), F.S.

I will contact your office within 48 hours to discuss when I may expect fulfillment of my request, and payment of any statutorily prescribed fees. If you have any questions in the interim, you may contact me at (850) 240-3234 or at this email address.

Thank you,
Anthony Bennett
anthony.john.bennett@gmail.com
(850) 240-3234

From: Barquin, JuanF
To: Munero, Armando
Subject: Fw: Draft Request with Tracking Number 75370 submitted
Date: Monday, December 21, 2020 9:19:46 PM
Attachments: OutlookEmoji-1568727030772c00a8899-5e7c-4230-a21b-2102304f781e.png

[redacted]

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Leagis.notify@myfloridahouse.gov
Sent: Monday, December 21, 2020 2:11 PM
To: Barquin, JuanF
Subject: Draft Request with Tracking Number 75370 submitted

Draft Request Tracking #:75370
Draft Request Subject [redacted]
Draft Request Type :BILL

Made by user: FLHOUSE\Munero.Armando

Above referenced draft request was submitted.

From: Munero, Armando
To: Barquin, JuanF
Subject: RE: Draft Request with Tracking Number 75370 submitted
Date: Tuesday, December 22, 2020 3:14:29 PM
Attachments: image001.png

Juan,

[redacted]

Best,
Armando

From: Barquin, JuanF
Sent: Monday, December 21, 2020 9:20 PM
To: Munero, Armando
Subject: Fw: Draft Request with Tracking Number 75370 submitted

[redacted]

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

District Office:
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Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Leagis.notify@myfloridahouse.gov <Leagis.notify@myfloridahouse.gov>
Sent: Monday, December 21, 2020 2:11 PM
To: Barquin, JuanF
Subject: Draft Request with Tracking Number 75370 submitted

Draft Request Tracking #:75370
Draft Request Subject [redacted]
Draft Request Type :BILL

Made by user: FLHOUSE\Munero.Armando

Above referenced draft request was submitted.

From: Munero, Armando
To: Barquin, JuanF; "Juan Fernandez-Barquin"
Subject: Riot Bill Draft 1
Date: Thursday, December 31, 2020 12:19:27 PM
Attachments: [redacted]

Juan,

The [redacted] was released for approval, and I have attached the draft above. Let me know if it is ready to file, or if you want any changes made.

Best,

Armando

From: Munero, Armando
To: Barquin, JuanF; "Juan Fernandez-Barquin"
Subject: [redacted]
Date: Wednesday, January 06, 2021 4:53:28 PM
Attachments: [redacted]

Juan,
Let me know if you want me to file it.
Best,
Armando

From: shellyengland@mac.com
To: Barquin, JuanF
Subject: From "Write Your Representative" Website
Date: Thursday, January 07, 2021 5:39:01 PM

Rochelle England
5187 NW 57th DR
Coral Springs, FL 33067

01/07/21 5:39 PM

To the Honorable Juan Alfonso Fernandez-Barquin ;

I am very concerned with Governor DeSantis's purposed legislation on “Combatting Violence, Disorder and Looting and Law Enforcement Protection Act”.
My son was a peaceful protestor (I have the video) in downtown Miami and was herded along with 40 other protestors into the back of 20 patrol cars when police officers were instructed to "Start grabbing bodies!". They were thrown to the ground, handcuffed and held in the cars with out access to a bathroom or water for 6 hours while the question "What should we do with them?" was answered. They were subsequently taken to Turner Guilford Knight Correctional Center for processing. This process consisted disposing of (not processing) my sons personal items, which included his backpack, car and apartment keys, water thermos, safety gear and only after the police officer took the cash out of my son's wallet and put it in his own pocket, did he then throw the wallet and it's contents, in the trash can, as well. He was then stripped searched, put in an orange jump suit and booked. Just before sunrise, I had my son in my car and was driving him back to his apartment in Miami. My son is well educated, works full time and we have the means to have expedited the process. The next day he was back at the Torch of Friendship with his fist held high in the air fighting for Social Justice. I am writing because if this purposed legislation is signed into law, things would have looked very different for a young man exercising his First Amendment rights. My son was on the side walk when officers begin grabbing protestors, he was forced off the curb and into the street, he then was charge with "Obstruction of Traffic". If this law would have been in place at that time, in the component of New Criminal Offenses to Combat Rioting, Looting and Violence (#2), he would have been charge with a 3rd degree felony under "Prohibition on Obstructing Roadways" and if he was hit by a car, the driver would NOT have been liable.
This legislation is also attempting to punish the group for the actions of one by including RICO liability (#5) I certainly do not support destruction and violence, but collective punishment is simply a tactic used to scare citizens from exercising their constitutional rights.
The final point that I would like to discuss is in the component Citizen and Taxpayer Protection Measures, Bail (#4). As I mentioned, my son is a productive member of society. He was arrested on July 19, 2020 and his arraignment was scheduled Aug. 11, 2020. If he was held without bail until his first appearance in court, he not only would have lost a month of wages but most likely his job and it would have cost tax payers an exorbitant amount of money to house him during that time, especially considering the charge. In the end, all charges were dropped against my son.
I implore you to consider the ramifications of the wording and inclusiveness of this purposed legislation.
Sincerely,

Rochelle England

From: Leagis.notify@myfloridahouse.gov
To: Barquin, JuanF
Subject: Approval of cosponsorship for bill: HB 1
Date: Wednesday, January 13, 2021 10:21:54 AM

Approval of cosponsorship for bill: HB 1 Sent to: Scott Plakon, Made by user: FLHOUSE\Munero.Armando

Approval of cosponsorship for bill: HB 1 Sent to: Brad Drake, Made by user: FLHOUSE\Munero.Armando

Approval of cosponsorship for bill: HB 1 Sent to: Stan McClain, Made by user: FLHOUSE\Munero.Armando

Approval of cosponsorship for bill: HB 1 Sent to: Spencer Roach, Made by user: FLHOUSE\Munero.Armando

From: Leagis.notify@myfloridahouse.gov
To: Barquin, JuanF
Subject: Approval of cosponsorship for bill: HB 1
Date: Friday, January 15, 2021 11:56:55 AM

Approval of cosponsorship for bill: HB 1 Sent to: Mike Giallombardo, Made by user: FLHOUSE\Munero.Armando

From:	forrest.saunders@scripps.com
To:	Barquin, JuanF
Subject:	From "Write Your Representative" Website
Date:	Thursday, January 07, 2021 9:58:46 AM

Forrest Saunders
306 S Duval St
Tallahassee, FL 32301
(319)432-9722

01/07/21 9:58 AM

To the Honorable Juan Alfonso Fernandez-Barquin ;

Hey there!

Curious if the Rep. has a few moments to talk about HB1/SB484, filed last night. Looking for five/10 minutes via Zoom/FaceTime/Skype.

Let me know if that's possible and thank you!

-Forrest

Forrest Saunders
FLORIDA STATE CAPITOL REPORTER
WFTS / WPTV / WFTX / WTXL / WSFL
Email: Forrest.Saunders@scripps.com
Cell: 319.432.9722
Work: 850.510.2540
Twitter: @ForrestSaundersNews

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: The Florida Channel Interview
Date: Tuesday, January 12, 2021 11:30:33 AM
Attachments: image001.png
OutlookEmoji-1568727030772c18586d8-2a43-49df-b277-76f667c0cca8.png

---

Juan,

Would you like me to set up a meeting for you to talk to this reporter about HB1?

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Javonni Hampton
Sent: Monday, January 11, 2021 10:50 PM
To: Barquin, JuanF
Subject: The Florida Channel Interview

Hello,
My name is Javonni Hampton, I am a reporter with the Florida Channel. Was wondering if it was possible to set up an interview with the Representative sometime tomorrow morning before committees to discuss his new proposed legislation HB1. Tuesday before 9am, does that work?
Best,
Javonni

Javonni Hampton
Reporter/Producer- Florida Channel Programming

The FLORIDA Channel | Office: 850-488-1281
Direct: 407-680-7606 | FAX: 850-488-4876
jhampton@fsu.edu www.TheFloridaChannel.org

From: Barquin, JuanF
To: Munero, Armando
Subject: HB 1
Date: Friday, January 08, 2021 1:02:28 PM
Attachments: OutlookEmoji-1568727030772906667ca-2c90-42ec-82b8-375db044e6e5.png

Please approve the people asking to co-sponsor HB 1. There is a difference between Prime Co-Sponsor and Co-Sponsor. Do NOT approve Prime Co-Sponsors.

JFB

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Jeff Kottkamp
To: Barquin, JuanF
Subject: HB 1
Date: Thursday, January 14, 2021 5:03:38 PM

Representative---thank you for taking the time to discuss HB 1. I fully support the bill and have some ideas to make it stronger. Below are some initial thoughts:

-After the bill becomes law it will almost certainly get challenged in Court. For that reason--you should add a **severability clause**.

-Would love to see a **citizen standing** provision---for citizens of the state and members of historical preservation organizations.
Here's some language to consider:
A public entity owning a monument, any resident of this state, or an entity whose purpose is historic preservation, shall have standing to seek enforcement of this Act through civil action in the circuit court in the county in which a memorial which has been damaged, defaced, destroyed or removed is located.
If the State of Florida or a political subdivision of the state accepts, or has accepted,
the donation of a memorial the donor of the monument, and any organization of the state
organized for the purpose of historic preservation, shall have a continuing interest in
the monument and shall have standing to bring a cause of action to protect and preserve
the donated monument.
Waiver of Sovereign Immunity-Notwithstanding the provisions of s.768.28 sovereign immunity is waived by the state and its subdivisions for purposes of
permitting a victim of a crime resulting from a violent or disorderly assembly
to file an action for damages against any subdivision of the state when that subdivision was grossly negligent in failing to protect persons and property from
harm.

-It would be great if the **Secretary of State had the ability to pull back funding or remove a historic district designation** if a local government removes historic monuments. Here's some possible language:
Florida Statute 265.705 is amended to read:
Section 7. A. State policy relative to historical properties.—The rich and

unique heritage of historical properties in this state, representing more than 10,000 years of human presence, is an important legacy to be valued and conserved for present and future generations. The destruction of these nonrenewable historical resources will engender a significant loss to the state's quality of life, economy, and cultural environment. It is therefore declared to be state policy to provide leadership in the preservation of the state's historical resources and to administer state-owned or state-controlled historical resources in a spirit of stewardship and trusteeship, and accordingly the Secretary of State is hereby authorized to take such action necessary or appropriate to protect
and preserve the historical resources of the state, including but not limited to criminal referrals to
the Attorney General of Florida
B. The Secretary of State shall have authority to de-certifiy a Historic District in the State of Florida when a historic resource is removed from a Historic District and make reduce or eliminate funding to any historic district in the state that has removed any historic resource that served as the basis for the creation of the Historic District.
C. The Secretary of State shall have standing to pursue any legal action necessary to protect and preserve historic property or historic resources in this state as defined in s. 265.7025 (4).

-How about appointing a **Domestic Terrorism Task Force**. It would provide an opportunity to really dive into the tactics being used by Anitifa and others to intimidate local elected officials and coerce them into removing historical monuments.

-On line 442 you may want to consider removing the phrase "without consent of the owner thereof"....it is often difficult to determine who actually owns some of the historical monuments.

-You may want to look at Chapter 876 "Criminal Anarchy, Treason, and Other Crimes Against Public Order"....there are a number of provisions that could easily be amended to add some teeth to the bill.

Thank you again for taking the time to discuss the bill. Please consider me a resource and sounding board. This is an important piece of legislation and I would like to help you get it across the finish line.

Jeff Kottkamp
17th Lt. Governor of Florida
Jeff Kottkamp, PA
(239)297-9741-cell
JeffKottkamp@Gmail.com

From: Stan.McClain@myfloridahouse.gov
To: Barquin, JuanF
Subject: Request to cosponsor bill: HB 1
Date: Friday, January 08, 2021 8:49:46 AM

Juan Fernandez-Barquin,

Stan McClain has requested to cosponsor HB 1.

Please review your "Cosponsor Requests" and either approve or deny this user's request.

From: Brad.Drake@myfloridahouse.gov
To: Barquin, JuanF
Subject: Request to cosponsor bill: HB 1
Date: Friday, January 08, 2021 12:00:33 PM

Juan Fernandez-Barquin,

Brad Drake has requested to cosponsor HB 1.

Please review your "Cosponsor Requests" and either approve or deny this user's request.

From: Mike.Giallombardo@myfloridahouse.gov
To: Barquin, JuanF
Subject: Request to cosponsor bill: HB 1
Date: Thursday, January 14, 2021 11:18:26 AM

Juan Fernandez-Barquin,

Mike Giallombardo has requested to cosponsor HB 1.

Please review your "Cosponsor Requests" and either approve or deny this user's request.

From: Scott.Plakon@myfloridahouse.gov
To: Barquin, JuanF
Subject: Request to cosponsor bill: HB 1
Date: Thursday, January 07, 2021 7:23:44 AM

Juan Fernandez-Barquin,

Scott Plakon has requested to cosponsor HB 1.

Please review your "Cosponsor Requests" and either approve or deny this user's request.

From: Spencer.Roach@myfloridahouse.gov
To: Barquin, JuanF
Subject: Request to cosponsor bill: HB 1
Date: Thursday, January 07, 2021 11:07:10 AM

Juan Fernandez-Barquin,

Spencer Roach has requested to cosponsor HB 1.

Please review your "Cosponsor Requests" and either approve or deny this user's request.

From: Javonni Hampton
To: Barquin, JuanF
Subject: The Florida Channel Interview
Date: Monday, January 11, 2021 10:50:36 PM
Attachments: image001.png

Hello,

My name is Javonni Hampton, I am a reporter with the Florida Channel. Was wondering if it was possible to set up an interview with the Representative sometime tomorrow morning before committees to discuss his new proposed legislation HB1. Tuesday before 9am, does that work?

Best,

Javonni

Javonni Hampton
Reporter/Producer- Florida Channel Programming
The FLORIDA Channel | Office: 850-488-1281
Direct: 407-680-7606 | FAX: 850-488-4876
jhampton@fsu.edu www.TheFloridaChannel.org

From: Jake
To: Barquin, JuanF
Subject: Cap News Interview Request
Date: Friday, January 08, 2021 11:33:02 AM

Hey just following up on this. Is it looking like we may be able to set something up?

-Jake

On Jan 8, 2021, at 9:38 AM, Jake <jake@flanews.com> wrote:

Hello and good morning all,

This is Jake Stofan with Capitol News Service in Tallahassee. I'm doing a story today on Rep Fernandez-Barquin's Combating Public Disorder bill and was curious if he might have a few minutes to do a zoom interview before 1 pm on it?

Feel free to call/text or email back to coordinate.

Thanks!

Jake Stofan
Capitol News Service
www.flanews.com
Jake@flanews.com
Cell Phone 904-207-4245

Where to See Us

WFLA, Tampa

WBBH, Ft. Myers

WZVN, Ft. Myers

WCJB, Gainesville

WCTV, Tallahassee

WJHG, Panama City

WEAR, Pensacola

WJXT, Jacksonville

From: Jake
To: Barquin, JuanF
Subject: Cap News Interview Request
Date: Friday, January 08, 2021 9:35:15 AM

Hello and good morning all,

This is Jake Stofan with Capitol News Service in Tallahassee. I'm doing a story today on Rep Fernandez-Barquin's Combating Public Disorder bill and was curious if he might have a few minutes to do a zoom interview before 1 pm on it?

Feel free to call/text or email back to coordinate.

Thanks!

Jake Stofan
Capitol News Service
www.flanews.com
Jake@flanews.com
Cell Phone 904-207-4245

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WCJB, Gainesville

WCTV, Tallahassee

WJHG, Panama City

WEAR, Pensacola

WJXT, Jacksonville

From:	Barquin, JuanF
To:	Juan Fernandez-Barquin
Subject:	Fw: materials for today"s meeting
Date:	Monday, December 21, 2020 12:31:43 PM
Attachments:	Combatting Public Disorder - Leadership Team.docx HB Draft- Rioting Draft 3.docx OutlookEmoji-1568727030772655576bde-0892-4859-a042-4726452b23b2.png

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

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402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Kramer, Trina
Sent: Monday, December 21, 2020 9:10 AM
To: Barquin, JuanF
Cc: Hall, Whitney
Subject: materials for today's meeting

Good morning, Attached is a draft copy of the bill and a one page summary for today's meeting at 1pm. Thanks!

From: Barquin, JuanF
To: Jake
Subject: Re: Cap News Interview Request
Date: Friday, January 08, 2021 1:07:02 PM
Attachments: OutlookEmoji-1568727030772729d464525-3e1e-45c9-aa3c-e8c2391a8906.png
OutlookEmoji-1568727030772bbcc8cc6-aefe-4fe2-aa64-16088dabdbaa.png
OutlookEmoji-15687270307728854996f-f9e9-481c-b048-9677653e194c.png
OutlookEmoji-1568727030772b03df2e1-6b93-48b1-af72-3c5db17ef7eb.png
OutlookEmoji-1568727030772a7cd38bf-ddd0-41e3-b317-1aad6358b947.png

---

Hi Jake,

I am not available this afternoon. I will be driving to Tallahassee Monday morning, we can do a phone conference Monday morning or we can meet or zoom Monday afternoon if you like.

Juan

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

District Office:
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Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Jake
Sent: Friday, January 8, 2021 11:32:59 AM
To: Barquin, JuanF
Subject: Cap News Interview Request

Hey just following up on this. Is it looking like we may be able to set something up?

-Jake

On Jan 8, 2021, at 9:38 AM, Jake <jake@flanews.com> wrote:

Hello and good morning all,

This is Jake Stofan with Capitol News Service in Tallahassee. I'm doing a story today on Rep

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Cell Phone 904-207-4245

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WBBH, Ft. Myers

WZVN, Ft. Myers

WCJB, Gainesville

WCTV, Tallahassee

WJHG, Panama City

WEAR, Pensacola

WJXT, Jacksonville

From: John O'Brien
To: Barquin, JuanF
Subject: Sinclair Broadcast Affiliate Interview
Date: Wednesday, January 13, 2021 11:25:38 PM

Hello Representative Fernandez-Barquin,

I'm Jay O'Brien with CBS 12 News in West Palm Beach and Sinclair Broadcast Group National Affiliates.

Would you be interested in a zoom interview tomorrow (Thursday) or Friday regarding the Combating Public Disorder bill? We're working on a special report for West Palm Beach, as well as our affiliates statewide.

Thanks so much!

Jay O'Brien
Reporter | CBS 12 News
561-356-6135
jjobrien@sbgtv.com
@jayobtv

From:	Kramer, Trina
To:	Barquin, JuanF
Cc:	Hall, Whitney
Subject:	materials for today"s meeting
Date:	Monday, December 21, 2020 9:10:31 AM
Attachments:	Combatting Public Disorder - Leadership Team.docx HB Draft- Rioting Draft 3.docx

Good morning, Attached is a draft copy of the bill and a one page summary for today's meeting at 1pm. Thanks!

From: Leagis.notify@myfloridahouse.gov
To: Barquin, JuanF
Subject: Approval of cosponsorship for bill: HB 1
Date: Wednesday, January 13, 2021 10:21:54 AM

Approval of cosponsorship for bill: HB 1 Sent to: Scott Plakon, Made by user: FLHOUSE\Munero.Armando

Approval of cosponsorship for bill: HB 1 Sent to: Brad Drake, Made by user: FLHOUSE\Munero.Armando

Approval of cosponsorship for bill: HB 1 Sent to: Stan McClain, Made by user: FLHOUSE\Munero.Armando

Approval of cosponsorship for bill: HB 1 Sent to: Spencer Roach, Made by user: FLHOUSE\Munero.Armando

From: Leagis.notify@myfloridahouse.gov
To: Barquin, JuanF
Subject: Approval of cosponsorship for bill: HB 1
Date: Friday, January 15, 2021 11:56:55 AM

Approval of cosponsorship for bill: HB 1 Sent to: Mike Giallombardo, Made by user: FLHOUSE\Munero.Armando

From: Jake
To: Barquin, JuanF
Subject: Cap News Interview Request
Date: Friday, January 08, 2021 11:33:02 AM

Hey just following up on this. Is it looking like we may be able to set something up?

-Jake

On Jan 8, 2021, at 9:38 AM, Jake <jake@flanews.com> wrote:

Hello and good morning all,

This is Jake Stofan with Capitol News Service in Tallahassee. I'm doing a story today on Rep Fernandez-Barquin's Combating Public Disorder bill and was curious if he might have a few minutes to do a zoom interview before 1 pm on it?

Feel free to call/text or email back to coordinate.

Thanks!

Jake Stofan
Capitol News Service
www.flanews.com
Jake@flanews.com
Cell Phone 904-207-4245

Where to See Us

WFLA, Tampa

WBBH, Ft. Myers

WZVN, Ft. Myers

WCJB, Gainesville

WCTV, Tallahassee

WJHG, Panama City

WEAR, Pensacola

WJXT, Jacksonville

From: Jake
To: Barquin, JuanF
Subject: Cap News Interview Request
Date: Friday, January 08, 2021 9:35:15 AM

Hello and good morning all,

This is Jake Stofan with Capitol News Service in Tallahassee. I'm doing a story today on Rep Fernandez-Barquin's Combating Public Disorder bill and was curious if he might have a few minutes to do a zoom interview before 1 pm on it?

Feel free to call/text or email back to coordinate.

Thanks!

Jake Stofan
Capitol News Service
www.flanews.com
Jake@flanews.com
Cell Phone 904-207-4245

Where to See Us

WFLA, Tampa

WBBH, Ft. Myers

WZVN, Ft. Myers

WCJB, Gainesville

WCTV, Tallahassee

WJHG, Panama City

WEAR, Pensacola

WJXT, Jacksonville

From: forrest.saunders@scripps.com
To: Barquin, JuanF
Subject: From "Write Your Representative" Website
Date: Thursday, January 07, 2021 9:58:46 AM

Forrest Saunders
306 S Duval St
Tallahassee, FL 32301
(319)432-9722

01/07/21 9:58 AM

To the Honorable Juan Alfonso Fernandez-Barquin ;

Hey there!

Curious if the Rep. has a few moments to talk about HB1/SB484, filed last night. Looking for five/10 minutes via Zoom/FaceTime/Skype.

Let me know if that's possible and thank you!

-Forrest

Forrest Saunders
FLORIDA STATE CAPITOL REPORTER
WFTS / WPTV / WFTX / WTXL / WSFL
Email: Forrest.Saunders@scripps.com
Cell: 319.432.9722
Work: 850.510.2540
Twitter: @ForrestSaundersNews

From: shellyengland@mac.com
To: Barquin, JuanF
Subject: From "Write Your Representative" Website
Date: Thursday, January 07, 2021 5:39:01 PM

Rochelle England
5187 NW 57th DR
Coral Springs, FL 33067

01/07/21 5:39 PM

To the Honorable Juan Alfonso Fernandez-Barquin ;

I am very concerned with Governor DeSantis's purposed legislation on “Combatting Violence, Disorder and Looting and Law Enforcement Protection Act”.
My son was a peaceful protestor (I have the video) in downtown Miami and was herded along with 40 other protestors into the back of 20 patrol cars when police officers were instructed to "Start grabbing bodies!". They were thrown to the ground, handcuffed and held in the cars with out access to a bathroom or water for 6 hours while the question "What should we do with them?" was answered. They were subsequently taken to Turner Guilford Knight Correctional Center for processing. This process consisted disposing of (not processing) my sons personal items, which included his backpack, car and apartment keys, water thermos, safety gear and only after the police officer took the cash out of my son's wallet and put it in his own pocket, did he then throw the wallet and it's contents, in the trash can, as well. He was then stripped searched, put in an orange jump suit and booked. Just before sunrise, I had my son in my car and was driving him back to his apartment in Miami. My son is well educated, works full time and we have the means to have expedited the process. The next day he was back at the Torch of Friendship with his fist held high in the air fighting for Social Justice. I am writing because if this purposed legislation is signed into law, things would have looked very different for a young man exercising his First Amendment rights. My son was on the side walk when officers begin grabbing protestors, he was forced off the curb and into the street, he then was charge with "Obstruction of Traffic". If this law would have been in place at that time, in the component of New Criminal Offenses to Combat Rioting, Looting and Violence (#2), he would have been charge with a 3rd degree felony under "Prohibition on Obstructing Roadways" and if he was hit by a car, the driver would NOT have been liable.
This legislation is also attempting to punish the group for the actions of one by including RICO liability (#5) I certainly do not support destruction and violence, but collective punishment is simply a tactic used to scare citizens from exercising their constitutional rights.
The final point that I would like to discuss is in the component Citizen and Taxpayer Protection Measures, Bail (#4). As I mentioned, my son is a productive member of society. He was arrested on July 19, 2020 and his arraignment was scheduled Aug. 11, 2020. If he was held without bail until his first appearance in court, he not only would have lost a month of wages but most likely his job and it would have cost tax payers an exorbitant amount of money to house him during that time, especially considering the charge. In the end, all charges were dropped against my son.
I implore you to consider the ramifications of the wording and inclusiveness of this purposed legislation.
Sincerely,

Rochelle England

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: materials for today"s meeting
Date: Monday, December 21, 2020 12:31:43 PM
Attachments: Combatting Public Disorder - Leadership Team.docx
HB Draft- Rioting Draft 3.docx
OutlookEmoji-1568727030772655576bde-0892-4859-a042-4726452b23b2.png

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Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Kramer, Trina
Sent: Monday, December 21, 2020 9:10 AM
To: Barquin, JuanF
Cc: Hall, Whitney
Subject: materials for today's meeting

Good morning, Attached is a draft copy of the bill and a one page summary for today's meeting at 1pm. Thanks!

Combatting Public Disorder Draft Talking Points

The bill will align with the themes and goals presented in the Governor's bill and create strong protections for our communities that will make Florida a leader in this effort. It will do this by building on current law whenever possible rather than creating new offenses that will not be familiar to law enforcement and prosecutors. This approach will:

- Codify current offense of rioting and create new offenses of aggravated rioting and aggravated inciting or encouraging a riot.

- Enhance penalties for defacing a memorial, create offense of destroying a memorial and require mandatory restitution for the full cost of repair or replacement of the memorial.

- Create offense of mob intimidation for an assembly of three or more persons to act together to compel another person by force, or threat of force, to do any act or assume or abandon a particular viewpoint. This is broader than the language in the Governor's draft which applied to actions taken in public accommodations like restaurants and movie theaters.

- Create offense of doxing which was not included in Governor's draft that will make it a 1st degree misdemeanor to electronically publish another's personal identification information with the intent the information will be used to threaten, intimidate, harass, or place a person in fear of death or great bodily harm.

- Create a minimum mandatory sentence of six months in jail for a person convicted of battery of a law enforcement officer in furtherance of a riot or aggravated riot.

- Instead of creating minimum mandatory sentences which were sometimes overbroad, the bill will reclassify the misdemeanor or felony degree of the offenses of assault, battery, theft and burglary offenses when committed in furtherance of a riot or aggravated riot.

- Increase the ranking in the offense severity ranking chart for specified crimes committed in furtherance of a riot including: aggravated assault or battery, assault or battery on a law enforcement officer, removing a tomb or monument or disturbing a grave, and specified thefts or burglaries.

- Rather than prohibiting a particular percentage of reduction in police funding, the bill will provide a process for objecting to a reduction in a police budget and will allow the Governor and Cabinet to overturn a reduction upon a finding that public safety would be compromised.

- Create a cause of action and waives sovereign immunity to allow a victim of a crime resulting from a riot to sue a municipality for damages, if the municipality obstructed or interfered with law enforcement's ability to provide police protection during a riot or unlawful assembly.

- Correct constitutional infirmities in current law to permit law enforcement to prohibit obstructing streets, highways, and roads and create a defense to civil liability for personal injury, wrongful death, or property damage arising from injury or damage sustained by a person participating in a riot or unlawful assembly.

- Require a person to be held in jail until appearing before a court for first appearance when he or she is arrested for certain rioting offenses.

- Termination of reemployment benefits upon rioting conviction not included because this would violate Federal law. Termination of state or local government employment not included because it would create a scenario where a violent protester would be completely barred from government employment but a sexual predator would not be.

RICO provision not included because not a tool frequently used or easily accessed by state prosecutors. Stand your ground is not included because current law is sufficient.

A bill to be entitled

An act relating to combating public disorder; amending s. 166.241, F.S., authorizing a citizen of a municipality to file an appeal to the Administration Commission if the governing body of a municipality makes a specified reduction to the operating budget of a municipal law enforcement agency; requiring the petition to contain specified information; requiring the Executive Office of the Governor to conduct a budget hearing considering the matter and make findings and recommendations to the Administration Commission; requiring the Administration to approve, amend, or modify the municipality's budget; amending s. 316.2045, F.S., prohibiting obstructing traffic by standing on the street, highway, or road; amending s. 768.28, F.S., creating a cause of action against a municipality for failing to provide reasonable law enforcement protection during a riot or unlawful assembly; waiving sovereign immunity for a municipality in specified circumstances; amending s. 784.011, F.S., reclassifying the penalty for an assault committed in furtherance of a riot or aggravated riot; amending s. 784.021, F.S., increasing the offense severity ranking of an aggravated assault for the purposes of the Criminal Punishment Code if

committed in furtherance of a riot or aggravated riot; amending s. 784.03, F.S., reclassifying the penalty for a battery committed in furtherance of a riot or aggravated riot; amending s. 784.045, F.S., increasing the offense severity ranking of an aggravated battery for the purposes of the Criminal Punishment Code if committed in furtherance of a riot or aggravated riot; creating s. 784.0495, F.S., prohibiting specified assemblies from using or threatening the use of force against another person to do any act or assume or abandon a particular viewpoint; providing a penalty; requiring a person arrested for a violation to be held in jail until first appearance; amending s. 784.07, F.S., requiring a minimum term of imprisonment for a person convicted of battery on a law enforcement officer committed in furtherance of a riot or aggravated riot; increasing the offense severity ranking of an assault or battery against specified first responders for the purposes of the Criminal Punishment Code if committed in furtherance of a riot or aggravated riot; amending s. 806.13, F.S., prohibiting defacing, injuring, or damaging a memorial; providing a penalty; requiring a court to order restitution for such a violation; creating s. 806.135, F.S., providing a definition; prohibiting a

person from destroying or demolishing a memorial; providing a penalty; requiring a court to order restitution for such a violation; amending s. 810.02, F.S., reclassifying specified burglary offenses committed during a riot or aggravated riot and facilitated by conditions arising from the riot; providing a definition; requiring a person arrested for such a violation to be held in jail until first appearance; amending s. 812.014, F.S., reclassifying specified theft offenses committed during a riot or aggravated riot and facilitated by conditions arising from the riot; providing a definition; requiring a person arrested for such a violation to be held in jail until first appearance; amending s. 870.01, F.S., prohibiting a person from fighting in a public place; prohibiting specified assemblies from engaging in disorderly and violent conduct resulting in specified damage or injury; increasing the penalty for rioting under specified circumstances; prohibiting a person from inciting or encouraging a riot; increasing the penalty for inciting or encouraging a riot under specified circumstances; providing definitions; requiring a person arrested for such a violation to be held in jail until first appearance; providing an exception; amending s. 870.02, F.S., requiring a

person arrested for an unlawful assembly to be held in jail until first appearance; amending s. 870.03, F.S., requiring a person arrested for a riot or rout to be held in jail until first appearance; creating s. 870.07, F.S., creating an affirmative defense to a civil action where the plaintiff participated in a riot or unlawful assembly; amending s. 872.02, F.S., increasing the offense severity ranking of specified offenses involving graves and tombs for the purposes of the Criminal Punishment Code if committed in furtherance of a riot or aggravated riot; amending s. 921.0022, F.S., conforming provisions to changes made by the act; ranking offenses created by the act on the offense severity ranking chart; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (4) through (6) of section 166.241, Florida Statutes, are renumbered as subsections (6) through (8), respectively, and new subsections (4) and (5) are added to that section, to read:

166.241 Fiscal years, budgets, appeal of municipal law enforcement agency budget, and budget amendments.—

(4)(a) Within 30 days of a municipality posting its

tentative budget to a public website, as required under s. 166.241, a resident of the municipality may file an appeal by petition to the Administration Commission if the tentative budget contains a funding reduction to the operating budget of the municipal law enforcement agency. The petition must set forth the tentative budget proposed by the municipality, in the form and manner prescribed by the Executive Office of the Governor and approved by the Administration Commission, the operating budget of the municipal law enforcement agency as approved by the municipality for the previous year, and state the reasons or grounds for the appeal. Such petition shall be filed with the Executive Office of the Governor, and a copy served upon the governing body of the municipality or to the clerk of the circuit court within the county in which the municipality lies.

(b) The governing body of the municipality shall have 5 days, not including Saturdays, Sundays, or legal holidays, following delivery of a copy of such petition to file a reply with the Executive Office of the Governor, and shall deliver a copy of such reply to the petitioner.

(5) Upon receipt of the petition, the Executive Office of the Governor shall provide for a budget hearing at which the matters presented in the petition and the reply shall be considered. A report of the findings and recommendations of the Executive Office of the Governor thereon shall be promptly

submitted to the Administration Commission, which, within 30 days, shall either approve the action of the governing body of the municipality or amend or modify the budget as to each separate item within the operating budget of the municipal law enforcement agency. The budget as approved, amended, or modified by the Administration Commission shall be final.

Section 2. Section 316.2045, Florida Statutes, is amended to read:

316.2045 Obstruction of public streets, highways, and roads.—

(1) A ~~It is unlawful for any~~ person ~~or persons willfully to~~ may not intentionally obstruct the free, convenient, and normal use of any public street, highway, or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, by standing or remaining on the street, highway, or road ~~or approaching motor vehicles thereon~~, or by endangering the safe movement of vehicles or pedestrians traveling thereon. A ~~; and any~~ person ~~or persons~~ who violates the provisions of this subsection~~, upon conviction,~~ shall be cited for a pedestrian violation, punishable as provided in chapter 318.

~~(2) It is unlawful, without proper authorization or a lawful permit, for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by any of the means specified in subsection (1)~~

~~in order to solicit. Any person who violates the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

~~Organizations qualified under s. 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, or persons or organizations acting on their behalf are exempted from the provisions of this subsection for activities on streets or roads not maintained by the state. Permits for the use of any portion of a state-maintained road or right-of-way shall be required only for those purposes and in the manner set out in s. 337.406.~~

~~(3) Permits for the use of any street, road, or right-of-way not maintained by the state may be issued by the appropriate local government. An organization that is qualified under s. 501(c)(3) of the Internal Revenue Code and registered under chapter 496, or a person or organization acting on behalf of that organization, is exempt from local requirements for a permit issued under this subsection for charitable solicitation activities on or along streets or roads that are not maintained by the state under the following conditions:~~

~~(a) The organization, or the person or organization acting on behalf of the organization, must provide all of the following to the local government:~~

~~1. No fewer than 14 calendar days prior to the proposed solicitation, the name and address of the person or organization that will perform the solicitation and the name and address of~~

~~the organization that will receive funds from the solicitation.~~

~~2. For review and comment, a plan for the safety of all persons participating in the solicitation, as well as the motoring public, at the locations where the solicitation will take place.~~

~~3. Specific details of the location or locations of the proposed solicitation and the hours during which the solicitation activities will occur.~~

~~4. Proof of commercial general liability insurance against claims for bodily injury and property damage occurring on streets, roads, or rights-of-way or arising from the solicitor's activities or use of the streets, roads, or rights-of-way by the solicitor or the solicitor's agents, contractors, or employees. The insurance shall have a limit of not less than $1 million per occurrence for the general aggregate. The certificate of insurance shall name the local government as an additional insured and shall be filed with the local government no later than 72 hours before the date of the solicitation.~~

~~5. Proof of registration with the Department of Agriculture and Consumer Services pursuant to s. 496.405 or proof that the soliciting organization is exempt from the registration requirement.~~

~~(b) Organizations or persons meeting the requirements of subparagraphs (a)1.-5. may solicit for a period not to exceed 10 cumulative days within 1 calendar year.~~

~~(c) All solicitation shall occur during daylight hours only.~~

~~(d) Solicitation activities shall not interfere with the safe and efficient movement of traffic and shall not cause danger to the participants or the public.~~

~~(e) No person engaging in solicitation activities shall persist after solicitation has been denied, act in a demanding or harassing manner, or use any sound or voice-amplifying apparatus or device.~~

~~(f) All persons participating in the solicitation shall be at least 18 years of age and shall possess picture identification.~~

~~(g) Signage providing notice of the solicitation shall be posted at least 500 feet before the site of the solicitation.~~

~~(h) The local government may stop solicitation activities if any conditions or requirements of this subsection are not met.~~

~~(4) Nothing in this section shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity.~~

(2) ~~(5)~~ Notwithstanding the provisions of subsection (1), any commercial vehicle used solely for the purpose of collecting solid waste or recyclable or recovered materials may stop or stand on any public street, highway, or road for the sole purpose of collecting solid waste or recyclable or recovered

materials. However, such solid waste or recyclable or recovered materials collection vehicle shall show or display amber flashing hazard lights at all times that it is engaged in stopping or standing for the purpose of collecting solid waste or recyclable or recovered materials. Local governments may establish reasonable regulations governing the standing and stopping of such commercial vehicles, provided that such regulations are applied uniformly and without regard to the ownership of the vehicles.

Section 3. Subsection (5) of section 768.28, Florida Statutes, is amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; civil liability for damages caused during a riot; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(5)(a) The state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period before judgment. Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of $200,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence,

exceeds the sum of $300,000. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this act up to $200,000 or $300,000, as the case may be; and that portion of the judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature. Notwithstanding the limited waiver of sovereign immunity provided herein, the state or an agency or subdivision thereof may agree, within the limits of insurance coverage provided, to settle a claim made or a judgment rendered against it without further action by the Legislature, but the state or agency or subdivision thereof shall not be deemed to have waived any defense of sovereign immunity or to have increased the limits of its liability as a result of its obtaining insurance coverage for tortious acts in excess of the $200,000 or $300,000 waiver provided above. The limitations of liability set forth in this subsection shall apply to the state and its agencies and subdivisions whether or not the state or its agencies or subdivisions possessed sovereign immunity before July 1, 1974.

(b) Any governing body of a municipality that intentionally obstructs or interferes with the ability of a municipal law enforcement agency to provide reasonable law enforcement protection during a riot or unlawful assembly is civilly liable for any damages, including damages arising from personal injury, wrongful death, or property damage, proximately

caused by such agency's failure to provide reasonable law enforcement protection during a riot or unlawful assembly. The sovereign immunity recovery limits in paragraph (a) do not apply to an action under this paragraph.

Section 4. Subsection (2) of section 784.011, Florida Statutes, is amended and a new subsection (3) is added to that section, to read:

784.011 Assault.—

(2) Except as provided in subsection (3), a person who ~~Whoever~~ commits ~~an~~ assault commits ~~shall be guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person who commits an assault in furtherance of a riot or aggravated riot, as defined in s. 870.01, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 5. Subsection (2) of section 784.021, Florida Statutes, is amended and a new subsection (3) is added to that section, to read:

784.021 Aggravated assault.—

(2) A person who ~~Whoever~~ commits ~~an~~ aggravated assault commits ~~shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) For the purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a

violation of this section committed by a person acting in furtherance of a riot or aggravated riot, as defined in s. 870.01, is ranked one level above the ranking under s. 921.0022 for the offense committed.

Section 6. Section 784.03, Florida Statutes, is amended to read:

784.03 Battery; felony battery.—

(1)(a) The offense of battery occurs when a person:

1. Actually and intentionally touches or strikes another person against the will of the other; or

2. Intentionally causes bodily harm to another person.

(b) Except as provided in subsection (2) or subsection (3), a person who commits battery commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A person who has one prior conviction for battery, aggravated battery, or felony battery and who commits any second or subsequent battery commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this subsection, "conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

(3) A person who commits a battery in furtherance of a riot or aggravated riot, as defined in s. 870.01, commits a

felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or 775.084.

Section 7. Subsection (3) is added to section 784.045, Florida Statutes, to read:

784.045 Aggravated battery.—

(3) For the purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a violation of this section committed by a person acting in furtherance of a riot or aggravated riot, as defined in s. 870.01, is ranked one level above the ranking under s. 921.0022 for the offense committed.

Section 8. Section 784.0495, Florida Statutes, is created to read:

784.0495 Mob intimidation.—

(1) It is unlawful for any person, assembled with two or more other persons and acting with a common intent, to compel or induce, or attempt to compel or induce, another person by force, or threat of force, to do any act or to assume or abandon a particular viewpoint.

(2) A person who violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person arrested for a violation of this section shall be held in custody until brought before the court for admittance to bail in accordance with chapter 903.

Section 9. Subsection (2) of section 784.07, Florida Statutes, is amended and a new subsection (4) is added to that section, to read:

784.07 Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.—

(2) Whenever any person is charged with knowingly committing an assault or battery upon a law enforcement officer, a firefighter, an emergency medical care provider, a railroad special officer, a traffic accident investigation officer as described in s. 316.640, a nonsworn law enforcement agency employee who is certified as an agency inspector, a blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI, a law enforcement explorer, a traffic infraction enforcement officer as described in s. 316.640, a parking enforcement specialist as defined in s. 316.640, a person licensed as a security officer as defined in s. 493.6101 and wearing a uniform that bears at least one patch or emblem that is visible at all times that clearly identifies the employing agency and that clearly identifies the person as a licensed security officer, or a security officer employed by the board of trustees of a community college, while the officer, firefighter,

emergency medical care provider, railroad special officer, traffic accident investigation officer, traffic infraction enforcement officer, inspector, analyst, operator, law enforcement explorer, parking enforcement specialist, public transit employee or agent, or security officer is engaged in the lawful performance of his or her duties, the offense for which the person is charged shall be reclassified as follows:

(a) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.

(b) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree. Notwithstanding any other provision of law, any person convicted of battery upon a law enforcement officer committed in furtherance of a riot or aggravated riot, as defined in s. 870.01, shall be sentenced to a minimum term of imprisonment of 6 months.

(c) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree. Notwithstanding any other provision of law, any person convicted of aggravated assault upon a law enforcement officer shall be sentenced to a minimum term of imprisonment of 3 years.

(d) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree. Notwithstanding any other provision of law, any person convicted of aggravated battery of a law enforcement officer shall be sentenced to a minimum term of imprisonment of 5 years.

(4) For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony violation of this section committed by a person acting in furtherance of a riot or aggravated riot, as defined in s. 870.01, is ranked one level above the ranking under s. 921.0022 for the offense committed.

Section 10. Subsections (3) through (9) of section 806.13, Florida Statutes, are renumbered as subsections (4) through (10), respectively, and a new subsection (3) is added to that section, to read:

806.13 Criminal mischief; penalties; penalty for minor.—

(3) Any person who, without the consent of the owner thereof, willfully and maliciously defaces, injures, or otherwise damages by any means a memorial, as defined in s. 806.135, and the value of the damage to the memorial is greater than $200, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A court shall order any person convicted of violating this subsection to pay restitution, which shall include the full cost of repair or replacement of such memorial.

Section 11. Section 806.135, Florida Statutes, is created to read:

806.135 Destroying or demolishing a memorial.—

(1) As used in this section, the term "memorial" means a plaque, statue, marker, flag, banner, cenotaph, religious

symbol, painting, seal, tombstone, structure name, or display that is constructed and located with the intent of being permanently displayed or perpetually maintained; is dedicated to a historical person, an entity, an event, or a series of events; and honors or recounts the military service of any past or present United States Armed Forces military personnel, or the past or present public service of a resident of the geographical area comprising the state or the United States. The term includes, but is not limited to, the following memorials established under chapter 265:

(a) Florida Women's Hall of Fame.

(b) Florida Medal of Honor Wall.

(c) Florida Veterans' Hall of Fame.

(d) POW-MIA Chair of Honor Memorial.

(e) Florida Veterans' Walk of Honor and Florida Veterans' Memorial Garden.

(f) Florida Law Enforcement Officers' Hall of Fame.

(g) Florida Holocaust Memorial.

(h) Florida Slavery Memorial.

(i) Any other memorial located within the Capitol Complex, including, but not limited to, Waller Park.

(2) It is unlawful for any person to willfully and maliciously destroy or demolish any memorial, or pull down a memorial, unless authorized by the owner of the memorial. A violation of this section is a felony of the second degree,

punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A court shall order any person convicted of violating this section to pay restitution, which shall include the full cost of repair or replacement of such memorial.

Section 12. Subsections (3) and (4) of section 810.02, Florida Statutes, are amended to read:

810.02 Burglary.—

(3) Burglary is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the course of committing the offense, the offender does not make an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the offender enters or remains in a:

(a) Dwelling, and there is another person in the dwelling at the time the offender enters or remains;

(b) Dwelling, and there is not another person in the dwelling at the time the offender enters or remains;

(c) Structure, and there is another person in the structure at the time the offender enters or remains;

(d) Conveyance, and there is another person in the conveyance at the time the offender enters or remains;

(e) Authorized emergency vehicle, as defined in s. 316.003; or

(f) Structure or conveyance when the offense intended to be committed therein is theft of a controlled substance as

defined in s. 893.02. Notwithstanding any other law, separate judgments and sentences for burglary with the intent to commit theft of a controlled substance under this paragraph and for any applicable possession of controlled substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

However, if the burglary is committed during a riot or aggravated riot, as defined in s. 870.01, and the perpetration of the burglary is facilitated by conditions arising from the riot; or within a county that is subject to a state of emergency declared by the Governor under chapter 252 after the declaration of emergency is made and the perpetration of the burglary is facilitated by conditions arising from the emergency, the burglary is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this subsection, the term "conditions arising from a riot" means civil unrest, power outages, curfews, or a reduction in the presence of or response time for first responders or homeland security personnel and "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel. A person arrested for committing a burglary during a

riot or aggravated riot or within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this subsection is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

(4) Burglary is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the course of committing the offense, the offender does not make an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the offender enters or remains in a:

(a) Structure, and there is not another person in the structure at the time the offender enters or remains; or

(b) Conveyance, and there is not another person in the conveyance at the time the offender enters or remains.

However, if the burglary is committed during a riot or aggravated riot, as defined in s. 870.01, and the perpetration of the burglary is facilitated by conditions arising from the riot; or within a county that is subject to a state of emergency declared by the Governor under chapter 252 after the declaration of emergency is made and the perpetration of the burglary is facilitated by conditions arising from the emergency, the

burglary is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this subsection, the term "conditions arising from a riot" means civil unrest, power outages, curfews, or a reduction in the presence of or response time for first responders or homeland security personnel and "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel. A person arrested for committing a burglary during a riot or aggravated riot or within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this subsection is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 13. Paragraphs (b) and (c) of subsection (2) of section 812.014, Florida Statutes, are amended to read:

812.014 Theft.—

(2)

(b)1. If the property stolen is valued at $20,000 or more, but less than $100,000;

2. The property stolen is cargo valued at less than $50,000 that has entered the stream of interstate or intrastate

commerce from the shipper's loading platform to the consignee's receiving dock;

3. The property stolen is emergency medical equipment, valued at $300 or more, that is taken from a facility licensed under chapter 395 or from an aircraft or vehicle permitted under chapter 401; or

4. The property stolen is law enforcement equipment, valued at $300 or more, that is taken from an authorized emergency vehicle, as defined in s. 316.003,

the offender commits grand theft in the second degree, punishable as a felony of the second degree, as provided in s. 775.082, s. 775.083, or s. 775.084. Emergency medical equipment means mechanical or electronic apparatus used to provide emergency services and care as defined in s. 395.002(9) or to treat medical emergencies. Law enforcement equipment means any property, device, or apparatus used by any law enforcement officer as defined in s. 943.10 in the officer's official business. However, if the property is stolen during a riot or aggravated riot, as defined in s. 870.01, and the perpetration of the theft is facilitated by conditions arising from the riot; or within a county that is subject to a state of emergency declared by the Governor under chapter 252, the theft is committed after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising

from the emergency, the theft is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this paragraph, the term "conditions arising from a riot" means civil unrest, power outages, curfews, or a reduction in the presence of or response time for first responders or homeland security personnel and "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel. A person arrested for committing a theft during a riot or aggravated riot or within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

1. Valued at $750 or more, but less than $5,000.

2. Valued at $5,000 or more, but less than $10,000.

3. Valued at $10,000 or more, but less than $20,000.

4. A will, codicil, or other testamentary instrument.

5. A firearm.

6. A motor vehicle, except as provided in paragraph (a).

7. Any commercially farmed animal, including any animal of the equine, avian, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; and aquaculture species raised at a certified aquaculture facility. If the property stolen is a commercially farmed animal, including an animal of the equine, avian, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; or an aquaculture species raised at a certified aquaculture facility, a $10,000 fine shall be imposed.

8. Any fire extinguisher that, at the time of the taking, was installed in any building for the purpose of fire prevention and control. This subparagraph does not apply to a fire extinguisher taken from the inventory at a point-of-sale business.

9. Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.

10. Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d).

11. Any stop sign.

12. Anhydrous ammonia.

13. Any amount of a controlled substance as defined in s. 893.02. Notwithstanding any other law, separate judgments and sentences for theft of a controlled substance under this subparagraph and for any applicable possession of controlled

substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

However, if the property is stolen during a riot or aggravated riot, as defined in s. 870.01, and the perpetration of the theft is facilitated by conditions arising from the riot; or within a county that is subject to a state of emergency declared by the Governor under chapter 252, the property is stolen after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property is valued at $5,000 or more, but less than $10,000, as provided under subparagraph 2., or if the property is valued at $10,000 or more, but less than $20,000, as provided under subparagraph 3. As used in this paragraph, the term "conditions arising from a riot" means civil unrest, power outages, curfews, or a reduction in the presence of or response time for first responders or homeland security personnel and "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel. A person arrested for committing a

theft during a riot or aggravated riot or within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 14. Section 836.115, Florida Statutes, is created to read:

836.115 Cyber intimidation by publication.—

(1) As used in this section, the term:

(a) "Electronically publish" means to disseminate, post, or otherwise disclose information to an Internet site or forum.

(b) "Personal identification information" has the same meaning as provided in s. 817.568.

(c) "Harass" has the same meaning as provided in s. 817.568.

(2) Any person who electronically publishes another's personal identification information with the intent to, or with the intent the information will be used by another to, threaten, intimidate, harass, incite violence or the commission of a crime against a person, or place a person in reasonable fear of death or great bodily harm commits a misdemeanor of a first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 15. Section 870.01, Florida Statutes, is amended

to read:

870.01 Affrays and riots.—

(1) A ~~All~~ person~~s~~ who, by mutual consent, engages in fighting with another in a public place to the terror of the people commits ~~guilty of~~ an affray, ~~shall be guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A ~~All~~ person~~s~~ who participates in a public disturbance involving an assembly of three or more persons acting with a common intent to mutually assist each other in disorderly and violent conduct resulting in injury or damage to another person or property, or creating a clear and present danger of injury or damage to another person or property, commits ~~guilty of~~ a riot, ~~or of inciting or encouraging a riot, shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person commits aggravated rioting, if in the course of committing a riot, he or she:

(a) Participates with nine or more other persons;

(b) Causes great bodily harm to another person not participating in the riot;

(c) Causes damage to property exceeding $5,000;

(d) Displays, uses, threatens to use, or attempts to use a deadly weapon; or

(e) By force, or threat of force, endangers the safe

movement of any vehicle traveling on any public street, highway, or road.

A violation of this subsection is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Any person who willfully incites or encourages another to participate in a riot, so that as a result of such inciting or encouraging, a riot occurs or a clear and present danger of a riot is created, commits inciting or encouraging a riot, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) A person commits aggravated inciting or encouraging a riot, if in the course of committing inciting or encouraging a riot, he or she:

(a) Incites or encourages a riot resulting in great bodily harm to another person not participating in the riot;

(b) Incites or encourages a riot resulting in damage to property exceeding $5,000; or

(c) Supplies a deadly weapon to another person or teaches another person to prepare a deadly weapon with intent that such deadly weapon be used in a riot.

A violation of this subsection is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) Except for a violation of subsection (1), a person arrested for a violation of this section shall be held in

custody until brought before the court for admittance to bail in accordance with chapter 903.

Section 16. Section 870.02, Florida Statutes, is amended to read:

870.02 Unlawful assemblies.—

(1) If three or more persons meet together to commit a breach of the peace, or to do any other unlawful act, each of them commits ~~shall be guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A person arrested for a violation of this section shall be held in custody until brought before the court for admittance to bail in accordance with chapter 903.

Section 17. Section 870.03, Florida Statutes, is amended to read:

870.03 Riots and routs.—

(1) If any persons unlawfully assembled demolish, pull down or destroy, or begin to demolish, pull down or destroy, any dwelling house or other building, or any ship or vessel, each of them commits ~~shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person arrested for a violation of this section shall be held in custody until brought before the court for admittance to bail in accordance with chapter 903.

Section 18. Section 870.07, Florida Statutes, is created to read:

870.07 Affirmative defense in civil action; party convicted of riot or unlawful assembly.—

(1) In any action for damages for personal injury, wrongful death, or property damage, it is an affirmative defense that such action arose from injury or damage sustained by a participant acting in furtherance of a riot or unlawful assembly. The affirmative defense authorized by this section shall be established by evidence that the participant has been convicted of riot, aggravated riot, or unlawful assembly, or by proof of the commission of such crime by a preponderance of the evidence.

(2) In any civil action where a defendant raises an affirmative defense under this section, the court must, on motion by the defendant, stay the action during the pendency of any criminal action which forms the basis for the defense, unless the court finds that a conviction in the criminal action would not form a valid defense under this section.

Section 19. Subsections (3) through (6) of section 872.02, F.S., are renumbered as subsections (4) through (7), respectively, and a new subsection (3) is added to that section, to read:

872.02 Injuring or removing tomb or monument; disturbing contents of grave or tomb; penalties.—

(3) For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a

violation of this section, committed by a person in furtherance of a riot or aggravated riot, as defined in s. 870.01, is ranked one level above the ranking under s. 921.0022 or s. 921.0023 for the offense committed.

Section 20. Paragraphs (b), (c), and (d) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(b) LEVEL 2

Florida Statute	Felony Degree	Description
379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or

	hazardous waste.	
517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
590.28(1)	3rd	Intentional burning of lands.
784.03(3)	3rd	Battery during a riot or aggravated riot.
784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
806.13(1)(b)3.	3rd	Criminal mischief; damage $1,000 or more to public communication or any other public service.
806.13(3)	3rd	Criminal mischief; damage $200 or more to a memorial.
810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.

810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
812.014(2)(c)1.	3rd	Grand theft, 3rd degree; $750 or more but less than $5,000.
812.014(2)(d)	3rd	Grand theft, 3rd degree; $100 or more but less than $750, taken from unenclosed curtilage of dwelling.
812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
817.234(1)(a)2.	3rd	False statement in support of insurance claim.
817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over $300.
817.52(3)	3rd	Failure to redeliver hired vehicle.
817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.

817.60(5) 3rd Dealing in credit cards of another.

817.60(6)(a) 3rd Forgery; purchase goods, services with false card.

817.61 3rd Fraudulent use of credit cards over $100 or more within 6 months.

826.04 3rd Knowingly marries or has sexual intercourse with person to whom related.

831.01 3rd Forgery.

831.02 3rd Uttering forged instrument; utters or publishes alteration with intent to defraud.

831.07 3rd Forging bank bills, checks, drafts, or promissory notes.

831.08 3rd Possessing 10 or more forged notes, bills, checks, or drafts.

831.09 3rd Uttering forged notes, bills, checks, drafts, or promissory notes.

831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
843.08	3rd	False personation.
893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs other than cannabis.
893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066	3rd	Unlawfully obtaining or using confidential

(3)(b)- crash reports.
(d)

316.193(2)(b) 3rd Felony DUI, 3rd conviction.

316.1935(2) 3rd Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.

319.30(4) 3rd Possession by junkyard of motor vehicle with identification number plate removed.

319.33(1)(a) 3rd Alter or forge any certificate of title to a motor vehicle or mobile home.

319.33(1)(c) 3rd Procure or pass title on stolen vehicle.

319.33(4) 3rd With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.

327.35(2)(b) 3rd Felony BUI.

328.05(2) 3rd Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of

			vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.	
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.	
379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.	
379.2431 (1)(e)6.	3rd	Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in the Marine Turtle Protection Act.	
379.2431 (1)(e)7.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.	

400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.

790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
812.015(8)(b)	3rd	Retail theft with intent to sell; conspires with others.
815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.

817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.	
817.233	3rd	Burning to defraud insurer.	
817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.	
817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.	
817.236	3rd	Filing a false motor vehicle insurance application.	
817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.	
817.413(2)	3rd	Sale of used goods of $1,000 or more as new.	
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument with intent to defraud.	

831.29 2nd Possession of instruments for counterfeiting driver licenses or identification cards.

838.021(3)(b) 3rd Threatens unlawful harm to public servant.

843.19 2nd Injure, disable, or kill police, fire, or SAR canine or police horse.

860.15(3) 3rd Overcharging for repairs and parts.

870.01(2) 3rd Riot~~; inciting or encouraging~~.

870.01(4) 3rd Inciting or encouraging a riot.

893.13(1)(a)2. 3rd Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs).

893.13(1)(d)2. 2nd Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of university.

893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of public housing facility.
893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material

			information on any document or record required by chapter 893.
877			
	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
878			
	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
879			
	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
880			
	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
881			
	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation

		evidence.
944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or

transaction statements.

499.0051(5) 2nd Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.

517.07(1) 3rd Failure to register securities.

517.12(1) 3rd Failure of dealer, associated person, or issuer of securities to register.

784.07(2)(b) 3rd Battery of law enforcement officer, firefighter, etc.

784.074(1)(c) 3rd Battery of sexually violent predators facility staff.

784.075 3rd Battery on detention or commitment facility staff.

784.078 3rd Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.

784.08(2)(c) 3rd Battery on a person 65 years of age or older.

784.081(3) 3rd Battery on specified official or employee.

784.082(3) 3rd Battery by detained person on visitor or other detainee.

784.083(3) 3rd Battery on code inspector.

784.085 3rd Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.

787.03(1) 3rd Interference with custody; wrongly takes minor from appointed guardian.

787.04(2) 3rd Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.

787.04(3) 3rd Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.

787.07 3rd Human smuggling.

790.115(1) 3rd Exhibiting firearm or weapon within 1,000 feet of a school.

790.115(2)(b) 3rd Possessing electric weapon or device,

destructive device, or other weapon on school property.

790.115(2)(c) 3rd Possessing firearm on school property.

800.04(7)(c) 3rd Lewd or lascivious exhibition; offender less than 18 years.

806.135 2nd Destroying or demolishing a memorial.

810.02(4)(a) 3rd Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.

810.02(4)(b) 3rd Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.

810.06 3rd Burglary; possession of tools.

810.08(2)(c) 3rd Trespass on property, armed with firearm or dangerous weapon.

812.014(2)(c)3. 3rd Grand theft, 3rd degree $10,000 or more but less than $20,000.

812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree; specified items.	
812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen $300 or more.	
817.505(4)(a)	3rd	Patient brokering.	
817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.	
817.568(2)(a)	3rd	Fraudulent use of personal identification information.	
817.625(2)(a)	3rd	Fraudulent use of scanning device, skimming device, or reencoder.	
817.625(2)(c)	3rd	Possess, sell, or deliver skimming device.	
828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.	

837.02(1) 3rd Perjury in official proceedings.

837.021(1) 3rd Make contradictory statements in official proceedings.

838.022 3rd Official misconduct.

839.13(2)(a) 3rd Falsifying records of an individual in the care and custody of a state agency.

839.13(2)(c) 3rd Falsifying records of the Department of Children and Families.

843.021 3rd Possession of a concealed handcuff key by a person in custody.

843.025 3rd Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.

843.15(1)(a) 3rd Failure to appear while on bail for felony (bond estreature or bond jumping).

847.0135(5)(c) 3rd Lewd or lascivious exhibition using computer; offender less than 18 years.

933

870.01(3) 3rd Aggravated rioting.

934

870.01(5) 3rd Aggravated inciting or encouraging a riot.

935

874.05(1)(a) 3rd Encouraging or recruiting another to join a criminal gang.

936

893.13(2)(a)1. 2nd Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)5. drugs).

937

914.14(2) 3rd Witnesses accepting bribes.

938

914.22(1) 3rd Force, threaten, etc., witness, victim, or informant.

939

914.23(2) 3rd Retaliation against a witness, victim, or informant, no bodily injury.

940

916.1085 3rd Introduction of specified contraband into certain DCF facilities.
(2)(c)1.

941

918.12 3rd Tampering with jurors.

934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
944.47(1)(a)6.	3rd	Introduction of contraband (cellular telephone or other portable communication device) into correctional institution.
951.22(1)(h), (j) & (k)	3rd	Intoxicating drug, instrumentality or other device to aid escape, or cellular telephone or other portable communication device introduced into county detention facility.

Section 21. This act shall take effect October 1, 2021.

Florida House of Representatives

State Representative Juan Fernandez-Barquin

District 119

District Office:
2450 SW 137th Ave
Suite 218
Miami, FL 33175
(305) 222-4119

Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Barquin, JuanF
To: Juan Fernandez-Barquin
Subject: Fw: The Florida Channel Interview
Date: Tuesday, January 12, 2021 11:30:33 AM
Attachments: image001.png
OutlookEmoji-1568727030772c18586d8-2a43-49df-b277-76f667c0cca8.png

---

Juan,

Would you like me to set up a meeting for you to talk to this reporter about HB1?

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

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(850) 717-5119

From: Javonni Hampton
Sent: Monday, January 11, 2021 10:50 PM
To: Barquin, JuanF
Subject: The Florida Channel Interview

Hello,
My name is Javonni Hampton, I am a reporter with the Florida Channel. Was wondering if it was possible to set up an interview with the Representative sometime tomorrow morning before committees to discuss his new proposed legislation HB1. Tuesday before 9am, does that work?
Best,
Javonni

Javonni Hampton
Reporter/Producer- Florida Channel Programming

The FLORIDA Channel | Office: 850-488-1281
Direct: 407-680-7606 | FAX: 850-488-4876
jhampton@fsu.edu www.TheFloridaChannel.org

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From: Barquin, JuanF
To: Munero, Armando
Subject: HB 1
Date: Friday, January 08, 2021 1:02:28 PM
Attachments: OutlookEmoji-1568727030772906667ca-2c90-42ec-82b8-375db044e6e5.png

Please approve the people asking to co-sponsor HB 1. There is a difference between Prime Co-Sponsor and Co-Sponsor. Do NOT approve Prime Co-Sponsors.

JFB

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From: Jeff Kottkamp
To: Barquin, JuanF
Subject: HB 1
Date: Thursday, January 14, 2021 5:03:38 PM

Representative---thank you for taking the time to discuss HB 1. I fully support the bill and have some ideas to make it stronger. Below are some initial thoughts:

-After the bill becomes law it will almost certainly get challenged in Court. For that reason--you should add a **severability clause**.

-Would love to see a **citizen standing** provision---for citizens of the state and members of historical preservation organizations.
Here's some language to consider:
A public entity owning a monument, any resident of this state, or an entity whose purpose is historic preservation, shall have standing to seek enforcement of this Act through civil action in the circuit court in the county in which a memorial which has been damaged, defaced, destroyed or removed is located.
If the State of Florida or a political subdivision of the state accepts, or has accepted,
the donation of a memorial the donor of the monument, and any organization of the state
organized for the purpose of historic preservation, shall have a continuing interest in
the monument and shall have standing to bring a cause of action to protect and preserve
the donated monument.
Waiver of Sovereign Immunity-Notwithstanding the provisions of s.768.28 sovereign immunity is waived by the state and its subdivisions for purposes of
permitting a victim of a crime resulting from a violent or disorderly assembly
to file an action for damages against any subdivision of the state when that subdivision was grossly negligent in failing to protect persons and property from
harm.

-It would be great if the **Secretary of State had the ability to pull back funding or remove a historic district designation** if a local government removes historic monuments. Here's some possible language:
Florida Statute 265.705 is amended to read:
Section 7. A. State policy relative to historical properties.—The rich and

unique heritage of historical properties in this state, representing more than 10,000 years of human presence, is an important legacy to be valued and conserved for present and future generations. The destruction of these nonrenewable historical resources will engender a significant loss to the state's quality of life, economy, and cultural environment. It is therefore declared to be state policy to provide leadership in the preservation of the state's historical resources and to administer state-owned or state-controlled historical resources in a spirit of stewardship and trusteeship, and accordingly the Secretary of State is hereby authorized to take such action necessary or appropriate to protect
and preserve the historical resources of the state, including but not limited to criminal referrals to
the Attorney General of Florida
B. The Secretary of State shall have authority to de-certifiy a Historic District in the State of Florida when a historic resource is removed from a Historic District and make reduce or eliminate funding to any historic district in the state that has removed any historic resource that served as the basis for the creation of the Historic District.
C. The Secretary of State shall have standing to pursue any legal action necessary to protect and preserve historic property or historic resources in this state as defined in s. 265.7025 (4).

-How about appointing a **Domestic Terrorism Task Force**. It would provide an opportunity to really dive into the tactics being used by Anitifa and others to intimidate local elected officials and coerce them into removing historical monuments.

-On line 442 you may want to consider removing the phrase "without consent of the owner thereof"....it is often difficult to determine who actually owns some of the historical monuments.

-You may want to look at Chapter 876 "Criminal Anarchy, Treason, and Other Crimes Against Public Order"....there are a number of provisions that could easily be amended to add some teeth to the bill.

Thank you again for taking the time to discuss the bill. Please consider me a resource and sounding board. This is an important piece of legislation and I would like to help you get it across the finish line.

Jeff Kottkamp
17th Lt. Governor of Florida
Jeff Kottkamp, PA
(239)297-9741-cell
JeffKottkamp@Gmail.com

From: Kramer, Trina
To: Barquin, JuanF
Cc: Hall, Whitney
Subject: materials for today"s meeting
Date: Monday, December 21, 2020 9:10:31 AM
Attachments: Combatting Public Disorder - Leadership Team.docx
HB Draft- Rioting Draft 3.docx

Good morning, Attached is a draft copy of the bill and a one page summary for today's meeting at 1pm. Thanks!

Combatting Public Disorder Draft Talking Points

The bill will align with the themes and goals presented in the Governor's bill and create strong protections for our communities that will make Florida a leader in this effort. It will do this by building on current law whenever possible rather than creating new offenses that will not be familiar to law enforcement and prosecutors. This approach will:

- Codify current offense of rioting and create new offenses of aggravated rioting and aggravated inciting or encouraging a riot.

- Enhance penalties for defacing a memorial, create offense of destroying a memorial and require mandatory restitution for the full cost of repair or replacement of the memorial.

- Create offense of mob intimidation for an assembly of three or more persons to act together to compel another person by force, or threat of force, to do any act or assume or abandon a particular viewpoint. This is broader than the language in the Governor's draft which applied to actions taken in public accommodations like restaurants and movie theaters.

- Create offense of doxing which was not included in Governor's draft that will make it a 1st degree misdemeanor to electronically publish another's personal identification information with the intent the information will be used to threaten, intimidate, harass, or place a person in fear of death or great bodily harm.

- Create a minimum mandatory sentence of six months in jail for a person convicted of battery of a law enforcement officer in furtherance of a riot or aggravated riot.

- Instead of creating minimum mandatory sentences which were sometimes overbroad, the bill will reclassify the misdemeanor or felony degree of the offenses of assault, battery, theft and burglary offenses when committed in furtherance of a riot or aggravated riot.

- Increase the ranking in the offense severity ranking chart for specified crimes committed in furtherance of a riot including: aggravated assault or battery, assault or battery on a law enforcement officer, removing a tomb or monument or disturbing a grave, and specified thefts or burglaries.

- Rather than prohibiting a particular percentage of reduction in police funding, the bill will provide a process for objecting to a reduction in a police budget and will allow the Governor and Cabinet to overturn a reduction upon a finding that public safety would be compromised.

- Create a cause of action and waives sovereign immunity to allow a victim of a crime resulting from a riot to sue a municipality for damages, if the municipality obstructed or interfered with law enforcement's ability to provide police protection during a riot or unlawful assembly.

- Correct constitutional infirmities in current law to permit law enforcement to prohibit obstructing streets, highways, and roads and create a defense to civil liability for personal injury, wrongful death, or property damage arising from injury or damage sustained by a person participating in a riot or unlawful assembly.

- Require a person to be held in jail until appearing before a court for first appearance when he or she is arrested for certain rioting offenses.

- Termination of reemployment benefits upon rioting conviction not included because this would violate Federal law. Termination of state or local government employment not included because it would create a scenario where a violent protester would be completely barred from government employment but a sexual predator would not be.

RICO provision not included because not a tool frequently used or easily accessed by state prosecutors. Stand your ground is not included because current law is sufficient.

A bill to be entitled

An act relating to combating public disorder; amending s. 166.241, F.S., authorizing a citizen of a municipality to file an appeal to the Administration Commission if the governing body of a municipality makes a specified reduction to the operating budget of a municipal law enforcement agency; requiring the petition to contain specified information; requiring the Executive Office of the Governor to conduct a budget hearing considering the matter and make findings and recommendations to the Administration Commission; requiring the Administration to approve, amend, or modify the municipality's budget; amending s. 316.2045, F.S., prohibiting obstructing traffic by standing on the street, highway, or road; amending s. 768.28, F.S., creating a cause of action against a municipality for failing to provide reasonable law enforcement protection during a riot or unlawful assembly; waiving sovereign immunity for a municipality in specified circumstances; amending s. 784.011, F.S., reclassifying the penalty for an assault committed in furtherance of a riot or aggravated riot; amending s. 784.021, F.S., increasing the offense severity ranking of an aggravated assault for the purposes of the Criminal Punishment Code if

committed in furtherance of a riot or aggravated riot; amending s. 784.03, F.S., reclassifying the penalty for a battery committed in furtherance of a riot or aggravated riot; amending s. 784.045, F.S., increasing the offense severity ranking of an aggravated battery for the purposes of the Criminal Punishment Code if committed in furtherance of a riot or aggravated riot; creating s. 784.0495, F.S., prohibiting specified assemblies from using or threatening the use of force against another person to do any act or assume or abandon a particular viewpoint; providing a penalty; requiring a person arrested for a violation to be held in jail until first appearance; amending s. 784.07, F.S., requiring a minimum term of imprisonment for a person convicted of battery on a law enforcement officer committed in furtherance of a riot or aggravated riot; increasing the offense severity ranking of an assault or battery against specified first responders for the purposes of the Criminal Punishment Code if committed in furtherance of a riot or aggravated riot; amending s. 806.13, F.S., prohibiting defacing, injuring, or damaging a memorial; providing a penalty; requiring a court to order restitution for such a violation; creating s. 806.135, F.S., providing a definition; prohibiting a

person from destroying or demolishing a memorial; providing a penalty; requiring a court to order restitution for such a violation; amending s. 810.02, F.S., reclassifying specified burglary offenses committed during a riot or aggravated riot and facilitated by conditions arising from the riot; providing a definition; requiring a person arrested for such a violation to be held in jail until first appearance; amending s. 812.014, F.S., reclassifying specified theft offenses committed during a riot or aggravated riot and facilitated by conditions arising from the riot; providing a definition; requiring a person arrested for such a violation to be held in jail until first appearance; amending s. 870.01, F.S., prohibiting a person from fighting in a public place; prohibiting specified assemblies from engaging in disorderly and violent conduct resulting in specified damage or injury; increasing the penalty for rioting under specified circumstances; prohibiting a person from inciting or encouraging a riot; increasing the penalty for inciting or encouraging a riot under specified circumstances; providing definitions; requiring a person arrested for such a violation to be held in jail until first appearance; providing an exception; amending s. 870.02, F.S., requiring a

person arrested for an unlawful assembly to be held in jail until first appearance; amending s. 870.03, F.S., requiring a person arrested for a riot or rout to be held in jail until first appearance; creating s. 870.07, F.S., creating an affirmative defense to a civil action where the plaintiff participated in a riot or unlawful assembly; amending s. 872.02, F.S., increasing the offense severity ranking of specified offenses involving graves and tombs for the purposes of the Criminal Punishment Code if committed in furtherance of a riot or aggravated riot; amending s. 921.0022, F.S., conforming provisions to changes made by the act; ranking offenses created by the act on the offense severity ranking chart; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (4) through (6) of section 166.241, Florida Statutes, are renumbered as subsections (6) through (8), respectively, and new subsections (4) and (5) are added to that section, to read:

166.241 Fiscal years, budgets, appeal of municipal law enforcement agency budget, and budget amendments.—

(4)(a) Within 30 days of a municipality posting its

tentative budget to a public website, as required under s. 166.241, a resident of the municipality may file an appeal by petition to the Administration Commission if the tentative budget contains a funding reduction to the operating budget of the municipal law enforcement agency. The petition must set forth the tentative budget proposed by the municipality, in the form and manner prescribed by the Executive Office of the Governor and approved by the Administration Commission, the operating budget of the municipal law enforcement agency as approved by the municipality for the previous year, and state the reasons or grounds for the appeal. Such petition shall be filed with the Executive Office of the Governor, and a copy served upon the governing body of the municipality or to the clerk of the circuit court within the county in which the municipality lies.

(b) The governing body of the municipality shall have 5 days, not including Saturdays, Sundays, or legal holidays, following delivery of a copy of such petition to file a reply with the Executive Office of the Governor, and shall deliver a copy of such reply to the petitioner.

(5) Upon receipt of the petition, the Executive Office of the Governor shall provide for a budget hearing at which the matters presented in the petition and the reply shall be considered. A report of the findings and recommendations of the Executive Office of the Governor thereon shall be promptly

submitted to the Administration Commission, which, within 30 days, shall either approve the action of the governing body of the municipality or amend or modify the budget as to each separate item within the operating budget of the municipal law enforcement agency. The budget as approved, amended, or modified by the Administration Commission shall be final.

Section 2. Section 316.2045, Florida Statutes, is amended to read:

316.2045 Obstruction of public streets, highways, and roads.—

(1) A ~~It is unlawful for any~~ person ~~or persons willfully to~~ may not intentionally obstruct the free, convenient, and normal use of any public street, highway, or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, by standing or remaining on the street, highway, or road ~~or approaching motor vehicles thereon~~, or by endangering the safe movement of vehicles or pedestrians traveling thereon. A ~~; and any~~ person ~~or persons~~ who violates the provisions of this subsection~~, upon conviction,~~ shall be cited for a pedestrian violation, punishable as provided in chapter 318.

~~(2) It is unlawful, without proper authorization or a lawful permit, for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by any of the means specified in subsection (1)~~

~~in order to solicit. Any person who violates the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

~~Organizations qualified under s. 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, or persons or organizations acting on their behalf are exempted from the provisions of this subsection for activities on streets or roads not maintained by the state. Permits for the use of any portion of a state-maintained road or right-of-way shall be required only for those purposes and in the manner set out in s. 337.406.~~

~~(3) Permits for the use of any street, road, or right-of-way not maintained by the state may be issued by the appropriate local government. An organization that is qualified under s. 501(c)(3) of the Internal Revenue Code and registered under chapter 496, or a person or organization acting on behalf of that organization, is exempt from local requirements for a permit issued under this subsection for charitable solicitation activities on or along streets or roads that are not maintained by the state under the following conditions:~~

~~(a) The organization, or the person or organization acting on behalf of the organization, must provide all of the following to the local government:~~

~~1. No fewer than 14 calendar days prior to the proposed solicitation, the name and address of the person or organization that will perform the solicitation and the name and address of~~

~~the organization that will receive funds from the solicitation.~~

~~2. For review and comment, a plan for the safety of all persons participating in the solicitation, as well as the motoring public, at the locations where the solicitation will take place.~~

~~3. Specific details of the location or locations of the proposed solicitation and the hours during which the solicitation activities will occur.~~

~~4. Proof of commercial general liability insurance against claims for bodily injury and property damage occurring on streets, roads, or rights-of-way or arising from the solicitor's activities or use of the streets, roads, or rights-of-way by the solicitor or the solicitor's agents, contractors, or employees. The insurance shall have a limit of not less than $1 million per occurrence for the general aggregate. The certificate of insurance shall name the local government as an additional insured and shall be filed with the local government no later than 72 hours before the date of the solicitation.~~

~~5. Proof of registration with the Department of Agriculture and Consumer Services pursuant to s. 496.405 or proof that the soliciting organization is exempt from the registration requirement.~~

~~(b) Organizations or persons meeting the requirements of subparagraphs (a)1.-5. may solicit for a period not to exceed 10 cumulative days within 1 calendar year.~~

~~(c) All solicitation shall occur during daylight hours only.~~

~~(d) Solicitation activities shall not interfere with the safe and efficient movement of traffic and shall not cause danger to the participants or the public.~~

~~(e) No person engaging in solicitation activities shall persist after solicitation has been denied, act in a demanding or harassing manner, or use any sound or voice-amplifying apparatus or device.~~

~~(f) All persons participating in the solicitation shall be at least 18 years of age and shall possess picture identification.~~

~~(g) Signage providing notice of the solicitation shall be posted at least 500 feet before the site of the solicitation.~~

~~(h) The local government may stop solicitation activities if any conditions or requirements of this subsection are not met.~~

~~(4) Nothing in this section shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity.~~

(2) ~~(5)~~ Notwithstanding the provisions of subsection (1), any commercial vehicle used solely for the purpose of collecting solid waste or recyclable or recovered materials may stop or stand on any public street, highway, or road for the sole purpose of collecting solid waste or recyclable or recovered

materials. However, such solid waste or recyclable or recovered materials collection vehicle shall show or display amber flashing hazard lights at all times that it is engaged in stopping or standing for the purpose of collecting solid waste or recyclable or recovered materials. Local governments may establish reasonable regulations governing the standing and stopping of such commercial vehicles, provided that such regulations are applied uniformly and without regard to the ownership of the vehicles.

Section 3. Subsection (5) of section 768.28, Florida Statutes, is amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; civil liability for damages caused during a riot; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(5)(a) The state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period before judgment. Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of $200,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence,

exceeds the sum of $300,000. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this act up to $200,000 or $300,000, as the case may be; and that portion of the judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature. Notwithstanding the limited waiver of sovereign immunity provided herein, the state or an agency or subdivision thereof may agree, within the limits of insurance coverage provided, to settle a claim made or a judgment rendered against it without further action by the Legislature, but the state or agency or subdivision thereof shall not be deemed to have waived any defense of sovereign immunity or to have increased the limits of its liability as a result of its obtaining insurance coverage for tortious acts in excess of the $200,000 or $300,000 waiver provided above. The limitations of liability set forth in this subsection shall apply to the state and its agencies and subdivisions whether or not the state or its agencies or subdivisions possessed sovereign immunity before July 1, 1974.

(b) Any governing body of a municipality that intentionally obstructs or interferes with the ability of a municipal law enforcement agency to provide reasonable law enforcement protection during a riot or unlawful assembly is civilly liable for any damages, including damages arising from personal injury, wrongful death, or property damage, proximately

caused by such agency's failure to provide reasonable law enforcement protection during a riot or unlawful assembly. The sovereign immunity recovery limits in paragraph (a) do not apply to an action under this paragraph.

Section 4. Subsection (2) of section 784.011, Florida Statutes, is amended and a new subsection (3) is added to that section, to read:

784.011 Assault.—

(2) Except as provided in subsection (3), a person who ~~Whoever~~ commits ~~an~~ assault commits ~~shall be guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person who commits an assault in furtherance of a riot or aggravated riot, as defined in s. 870.01, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 5. Subsection (2) of section 784.021, Florida Statutes, is amended and a new subsection (3) is added to that section, to read:

784.021 Aggravated assault.—

(2) A person who ~~Whoever~~ commits ~~an~~ aggravated assault commits ~~shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) For the purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a

violation of this section committed by a person acting in furtherance of a riot or aggravated riot, as defined in s. 870.01, is ranked one level above the ranking under s. 921.0022 for the offense committed.

Section 6. Section 784.03, Florida Statutes, is amended to read:

784.03 Battery; felony battery.—

(1)(a) The offense of battery occurs when a person:

1. Actually and intentionally touches or strikes another person against the will of the other; or

2. Intentionally causes bodily harm to another person.

(b) Except as provided in subsection (2) or subsection (3), a person who commits battery commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A person who has one prior conviction for battery, aggravated battery, or felony battery and who commits any second or subsequent battery commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this subsection, "conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

(3) A person who commits a battery in furtherance of a riot or aggravated riot, as defined in s. 870.01, commits a

felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or 775.084.

Section 7. Subsection (3) is added to section 784.045, Florida Statutes, to read:

784.045 Aggravated battery.—

(3) For the purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a violation of this section committed by a person acting in furtherance of a riot or aggravated riot, as defined in s. 870.01, is ranked one level above the ranking under s. 921.0022 for the offense committed.

Section 8. Section 784.0495, Florida Statutes, is created to read:

784.0495 Mob intimidation.—

(1) It is unlawful for any person, assembled with two or more other persons and acting with a common intent, to compel or induce, or attempt to compel or induce, another person by force, or threat of force, to do any act or to assume or abandon a particular viewpoint.

(2) A person who violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person arrested for a violation of this section shall be held in custody until brought before the court for admittance to bail in accordance with chapter 903.

Section 9. Subsection (2) of section 784.07, Florida Statutes, is amended and a new subsection (4) is added to that section, to read:

784.07 Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.—

(2) Whenever any person is charged with knowingly committing an assault or battery upon a law enforcement officer, a firefighter, an emergency medical care provider, a railroad special officer, a traffic accident investigation officer as described in s. 316.640, a nonsworn law enforcement agency employee who is certified as an agency inspector, a blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI, a law enforcement explorer, a traffic infraction enforcement officer as described in s. 316.640, a parking enforcement specialist as defined in s. 316.640, a person licensed as a security officer as defined in s. 493.6101 and wearing a uniform that bears at least one patch or emblem that is visible at all times that clearly identifies the employing agency and that clearly identifies the person as a licensed security officer, or a security officer employed by the board of trustees of a community college, while the officer, firefighter,

emergency medical care provider, railroad special officer, traffic accident investigation officer, traffic infraction enforcement officer, inspector, analyst, operator, law enforcement explorer, parking enforcement specialist, public transit employee or agent, or security officer is engaged in the lawful performance of his or her duties, the offense for which the person is charged shall be reclassified as follows:

(a) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.

(b) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree. Notwithstanding any other provision of law, any person convicted of battery upon a law enforcement officer committed in furtherance of a riot or aggravated riot, as defined in s. 870.01, shall be sentenced to a minimum term of imprisonment of 6 months.

(c) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree. Notwithstanding any other provision of law, any person convicted of aggravated assault upon a law enforcement officer shall be sentenced to a minimum term of imprisonment of 3 years.

(d) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree. Notwithstanding any other provision of law, any person convicted of aggravated battery of a law enforcement officer shall be sentenced to a minimum term of imprisonment of 5 years.

(4) For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony violation of this section committed by a person acting in furtherance of a riot or aggravated riot, as defined in s. 870.01, is ranked one level above the ranking under s. 921.0022 for the offense committed.

Section 10. Subsections (3) through (9) of section 806.13, Florida Statutes, are renumbered as subsections (4) through (10), respectively, and a new subsection (3) is added to that section, to read:

806.13 Criminal mischief; penalties; penalty for minor.—

(3) Any person who, without the consent of the owner thereof, willfully and maliciously defaces, injures, or otherwise damages by any means a memorial, as defined in s. 806.135, and the value of the damage to the memorial is greater than $200, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A court shall order any person convicted of violating this subsection to pay restitution, which shall include the full cost of repair or replacement of such memorial.

Section 11. Section 806.135, Florida Statutes, is created to read:

806.135 Destroying or demolishing a memorial.—

(1) As used in this section, the term "memorial" means a plaque, statue, marker, flag, banner, cenotaph, religious

symbol, painting, seal, tombstone, structure name, or display that is constructed and located with the intent of being permanently displayed or perpetually maintained; is dedicated to a historical person, an entity, an event, or a series of events; and honors or recounts the military service of any past or present United States Armed Forces military personnel, or the past or present public service of a resident of the geographical area comprising the state or the United States. The term includes, but is not limited to, the following memorials established under chapter 265:

(a) Florida Women's Hall of Fame.

(b) Florida Medal of Honor Wall.

(c) Florida Veterans' Hall of Fame.

(d) POW-MIA Chair of Honor Memorial.

(e) Florida Veterans' Walk of Honor and Florida Veterans' Memorial Garden.

(f) Florida Law Enforcement Officers' Hall of Fame.

(g) Florida Holocaust Memorial.

(h) Florida Slavery Memorial.

(i) Any other memorial located within the Capitol Complex, including, but not limited to, Waller Park.

(2) It is unlawful for any person to willfully and maliciously destroy or demolish any memorial, or pull down a memorial, unless authorized by the owner of the memorial. A violation of this section is a felony of the second degree,

punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A court shall order any person convicted of violating this section to pay restitution, which shall include the full cost of repair or replacement of such memorial.

Section 12. Subsections (3) and (4) of section 810.02, Florida Statutes, are amended to read:

810.02 Burglary.—

(3) Burglary is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the course of committing the offense, the offender does not make an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the offender enters or remains in a:

(a) Dwelling, and there is another person in the dwelling at the time the offender enters or remains;

(b) Dwelling, and there is not another person in the dwelling at the time the offender enters or remains;

(c) Structure, and there is another person in the structure at the time the offender enters or remains;

(d) Conveyance, and there is another person in the conveyance at the time the offender enters or remains;

(e) Authorized emergency vehicle, as defined in s. 316.003; or

(f) Structure or conveyance when the offense intended to be committed therein is theft of a controlled substance as

defined in s. 893.02. Notwithstanding any other law, separate judgments and sentences for burglary with the intent to commit theft of a controlled substance under this paragraph and for any applicable possession of controlled substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

However, if the burglary is committed during a riot or aggravated riot, as defined in s. 870.01, and the perpetration of the burglary is facilitated by conditions arising from the riot; or within a county that is subject to a state of emergency declared by the Governor under chapter 252 after the declaration of emergency is made and the perpetration of the burglary is facilitated by conditions arising from the emergency, the burglary is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this subsection, the term "conditions arising from a riot" means civil unrest, power outages, curfews, or a reduction in the presence of or response time for first responders or homeland security personnel and "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel. A person arrested for committing a burglary during a

riot or aggravated riot or within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this subsection is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

(4) Burglary is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the course of committing the offense, the offender does not make an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the offender enters or remains in a:

(a) Structure, and there is not another person in the structure at the time the offender enters or remains; or

(b) Conveyance, and there is not another person in the conveyance at the time the offender enters or remains.

However, if the burglary is committed during a riot or aggravated riot, as defined in s. 870.01, and the perpetration of the burglary is facilitated by conditions arising from the riot; or within a county that is subject to a state of emergency declared by the Governor under chapter 252 after the declaration of emergency is made and the perpetration of the burglary is facilitated by conditions arising from the emergency, the

burglary is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this subsection, the term "conditions arising from a riot" means civil unrest, power outages, curfews, or a reduction in the presence of or response time for first responders or homeland security personnel and "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel. A person arrested for committing a burglary during a riot or aggravated riot or within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this subsection is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 13. Paragraphs (b) and (c) of subsection (2) of section 812.014, Florida Statutes, are amended to read:

812.014 Theft.—

(2)

(b)1. If the property stolen is valued at $20,000 or more, but less than $100,000;

2. The property stolen is cargo valued at less than $50,000 that has entered the stream of interstate or intrastate

commerce from the shipper's loading platform to the consignee's receiving dock;

3. The property stolen is emergency medical equipment, valued at $300 or more, that is taken from a facility licensed under chapter 395 or from an aircraft or vehicle permitted under chapter 401; or

4. The property stolen is law enforcement equipment, valued at $300 or more, that is taken from an authorized emergency vehicle, as defined in s. 316.003,

the offender commits grand theft in the second degree, punishable as a felony of the second degree, as provided in s. 775.082, s. 775.083, or s. 775.084. Emergency medical equipment means mechanical or electronic apparatus used to provide emergency services and care as defined in s. 395.002(9) or to treat medical emergencies. Law enforcement equipment means any property, device, or apparatus used by any law enforcement officer as defined in s. 943.10 in the officer's official business. However, if the property is stolen during a riot or aggravated riot, as defined in s. 870.01, and the perpetration of the theft is facilitated by conditions arising from the riot; or within a county that is subject to a state of emergency declared by the Governor under chapter 252, the theft is committed after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising

from the emergency, the theft is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this paragraph, the term "conditions arising from a riot" means civil unrest, power outages, curfews, or a reduction in the presence of or response time for first responders or homeland security personnel and "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel. A person arrested for committing a theft during a riot or aggravated riot or within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

1. Valued at $750 or more, but less than $5,000.

2. Valued at $5,000 or more, but less than $10,000.

3. Valued at $10,000 or more, but less than $20,000.

4. A will, codicil, or other testamentary instrument.

5. A firearm.

6. A motor vehicle, except as provided in paragraph (a).

7. Any commercially farmed animal, including any animal of the equine, avian, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; and aquaculture species raised at a certified aquaculture facility. If the property stolen is a commercially farmed animal, including an animal of the equine, avian, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; or an aquaculture species raised at a certified aquaculture facility, a $10,000 fine shall be imposed.

8. Any fire extinguisher that, at the time of the taking, was installed in any building for the purpose of fire prevention and control. This subparagraph does not apply to a fire extinguisher taken from the inventory at a point-of-sale business.

9. Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.

10. Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d).

11. Any stop sign.

12. Anhydrous ammonia.

13. Any amount of a controlled substance as defined in s. 893.02. Notwithstanding any other law, separate judgments and sentences for theft of a controlled substance under this subparagraph and for any applicable possession of controlled

substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

However, if the property is stolen during a riot or aggravated riot, as defined in s. 870.01, and the perpetration of the theft is facilitated by conditions arising from the riot; or within a county that is subject to a state of emergency declared by the Governor under chapter 252, the property is stolen after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property is valued at $5,000 or more, but less than $10,000, as provided under subparagraph 2., or if the property is valued at $10,000 or more, but less than $20,000, as provided under subparagraph 3. As used in this paragraph, the term "conditions arising from a riot" means civil unrest, power outages, curfews, or a reduction in the presence of or response time for first responders or homeland security personnel and "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel. A person arrested for committing a

theft during a riot or aggravated riot or within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 14. Section 836.115, Florida Statutes, is created to read:

836.115 Cyber intimidation by publication.—

(1) As used in this section, the term:

(a) "Electronically publish" means to disseminate, post, or otherwise disclose information to an Internet site or forum.

(b) "Personal identification information" has the same meaning as provided in s. 817.568.

(c) "Harass" has the same meaning as provided in s. 817.568.

(2) Any person who electronically publishes another's personal identification information with the intent to, or with the intent the information will be used by another to, threaten, intimidate, harass, incite violence or the commission of a crime against a person, or place a person in reasonable fear of death or great bodily harm commits a misdemeanor of a first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 15. Section 870.01, Florida Statutes, is amended

to read:

870.01 Affrays and riots.—

(1) A ~~All~~ person~~s~~ who, by mutual consent, engages in fighting with another in a public place to the terror of the people commits ~~guilty of~~ an affray, ~~shall be guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A ~~All~~ person~~s~~ who participates in a public disturbance involving an assembly of three or more persons acting with a common intent to mutually assist each other in disorderly and violent conduct resulting in injury or damage to another person or property, or creating a clear and present danger of injury or damage to another person or property, commits ~~guilty of~~ a riot, ~~or of inciting or encouraging a riot, shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person commits aggravated rioting, if in the course of committing a riot, he or she:

(a) Participates with nine or more other persons;

(b) Causes great bodily harm to another person not participating in the riot;

(c) Causes damage to property exceeding $5,000;

(d) Displays, uses, threatens to use, or attempts to use a deadly weapon; or

(e) By force, or threat of force, endangers the safe

movement of any vehicle traveling on any public street, highway, or road.

A violation of this subsection is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Any person who willfully incites or encourages another to participate in a riot, so that as a result of such inciting or encouraging, a riot occurs or a clear and present danger of a riot is created, commits inciting or encouraging a riot, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) A person commits aggravated inciting or encouraging a riot, if in the course of committing inciting or encouraging a riot, he or she:

(a) Incites or encourages a riot resulting in great bodily harm to another person not participating in the riot;

(b) Incites or encourages a riot resulting in damage to property exceeding $5,000; or

(c) Supplies a deadly weapon to another person or teaches another person to prepare a deadly weapon with intent that such deadly weapon be used in a riot.

A violation of this subsection is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) Except for a violation of subsection (1), a person arrested for a violation of this section shall be held in

custody until brought before the court for admittance to bail in accordance with chapter 903.

Section 16. Section 870.02, Florida Statutes, is amended to read:

870.02 Unlawful assemblies.—

(1) If three or more persons meet together to commit a breach of the peace, or to do any other unlawful act, each of them commits ~~shall be guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A person arrested for a violation of this section shall be held in custody until brought before the court for admittance to bail in accordance with chapter 903.

Section 17. Section 870.03, Florida Statutes, is amended to read:

870.03 Riots and routs.—

(1) If any persons unlawfully assembled demolish, pull down or destroy, or begin to demolish, pull down or destroy, any dwelling house or other building, or any ship or vessel, each of them commits ~~shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person arrested for a violation of this section shall be held in custody until brought before the court for admittance to bail in accordance with chapter 903.

Section 18. Section 870.07, Florida Statutes, is created to read:

870.07 Affirmative defense in civil action; party convicted of riot or unlawful assembly.—

(1) In any action for damages for personal injury, wrongful death, or property damage, it is an affirmative defense that such action arose from injury or damage sustained by a participant acting in furtherance of a riot or unlawful assembly. The affirmative defense authorized by this section shall be established by evidence that the participant has been convicted of riot, aggravated riot, or unlawful assembly, or by proof of the commission of such crime by a preponderance of the evidence.

(2) In any civil action where a defendant raises an affirmative defense under this section, the court must, on motion by the defendant, stay the action during the pendency of any criminal action which forms the basis for the defense, unless the court finds that a conviction in the criminal action would not form a valid defense under this section.

Section 19. Subsections (3) through (6) of section 872.02, F.S., are renumbered as subsections (4) through (7), respectively, and a new subsection (3) is added to that section, to read:

872.02 Injuring or removing tomb or monument; disturbing contents of grave or tomb; penalties.—

(3) For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a

violation of this section, committed by a person in furtherance of a riot or aggravated riot, as defined in s. 870.01, is ranked one level above the ranking under s. 921.0022 or s. 921.0023 for the offense committed.

Section 20. Paragraphs (b), (c), and (d) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(b) LEVEL 2

Florida Statute	Felony Degree	Description
379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or

hazardous waste.

517.07(2) 3rd Failure to furnish a prospectus meeting requirements.

590.28(1) 3rd Intentional burning of lands.

784.03(3) 3rd Battery during a riot or aggravated riot.

784.05(3) 3rd Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.

787.04(1) 3rd In violation of court order, take, entice, etc., minor beyond state limits.

806.13(1)(b)3. 3rd Criminal mischief; damage $1,000 or more to public communication or any other public service.

806.13(3) 3rd Criminal mischief; damage $200 or more to a memorial.

810.061(2) 3rd Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.

810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
812.014(2)(c)1.	3rd	Grand theft, 3rd degree; $750 or more but less than $5,000.
812.014(2)(d)	3rd	Grand theft, 3rd degree; $100 or more but less than $750, taken from unenclosed curtilage of dwelling.
812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
817.234(1)(a)2.	3rd	False statement in support of insurance claim.
817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over $300.
817.52(3)	3rd	Failure to redeliver hired vehicle.
817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.

817.60(5) 3rd Dealing in credit cards of another.

817.60(6)(a) 3rd Forgery; purchase goods, services with false card.

817.61 3rd Fraudulent use of credit cards over $100 or more within 6 months.

826.04 3rd Knowingly marries or has sexual intercourse with person to whom related.

831.01 3rd Forgery.

831.02 3rd Uttering forged instrument; utters or publishes alteration with intent to defraud.

831.07 3rd Forging bank bills, checks, drafts, or promissory notes.

831.08 3rd Possessing 10 or more forged notes, bills, checks, or drafts.

831.09 3rd Uttering forged notes, bills, checks, drafts, or promissory notes.

831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
843.08	3rd	False personation.
893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs other than cannabis.
893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066	3rd	Unlawfully obtaining or using confidential

(3)(b)- crash reports.
(d)

316.193(2)(b) 3rd Felony DUI, 3rd conviction.

316.1935(2) 3rd Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.

319.30(4) 3rd Possession by junkyard of motor vehicle with identification number plate removed.

319.33(1)(a) 3rd Alter or forge any certificate of title to a motor vehicle or mobile home.

319.33(1)(c) 3rd Procure or pass title on stolen vehicle.

319.33(4) 3rd With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.

327.35(2)(b) 3rd Felony BUI.

328.05(2) 3rd Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of

			vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.	
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.	
379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.	
379.2431 (1)(e)6.	3rd	Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in the Marine Turtle Protection Act.	
379.2431 (1)(e)7.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.	

400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.

790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
812.015(8)(b)	3rd	Retail theft with intent to sell; conspires with others.
815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.

817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.	
817.233	3rd	Burning to defraud insurer.	
817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.	
817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.	
817.236	3rd	Filing a false motor vehicle insurance application.	
817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.	
817.413(2)	3rd	Sale of used goods of $1,000 or more as new.	
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument with intent to defraud.	

831.29 2nd Possession of instruments for counterfeiting driver licenses or identification cards.

838.021(3)(b) 3rd Threatens unlawful harm to public servant.

843.19 2nd Injure, disable, or kill police, fire, or SAR canine or police horse.

860.15(3) 3rd Overcharging for repairs and parts.

870.01(2) 3rd Riot~~; inciting or encouraging~~.

870.01(4) 3rd Inciting or encouraging a riot.

893.13(1)(a)2. 3rd Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs).

893.13(1)(d)2. 2nd Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of university.

893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of public housing facility.
893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material

			information on any document or record required by chapter 893.
877			
	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
878			
	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
879			
	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
880			
	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
881			
	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation

		evidence.
944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or

		transaction statements.
499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
517.07(1)	3rd	Failure to register securities.
517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
784.075	3rd	Battery on detention or commitment facility staff.
784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
784.081(3)	3rd	Battery on specified official or employee.

784.082(3) 3rd Battery by detained person on visitor or other detainee.

784.083(3) 3rd Battery on code inspector.

784.085 3rd Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.

787.03(1) 3rd Interference with custody; wrongly takes minor from appointed guardian.

787.04(2) 3rd Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.

787.04(3) 3rd Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.

787.07 3rd Human smuggling.

790.115(1) 3rd Exhibiting firearm or weapon within 1,000 feet of a school.

790.115(2)(b) 3rd Possessing electric weapon or device,

destructive device, or other weapon on school property.

790.115(2)(c) 3rd Possessing firearm on school property.

800.04(7)(c) 3rd Lewd or lascivious exhibition; offender less than 18 years.

806.135 2nd Destroying or demolishing a memorial.

810.02(4)(a) 3rd Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.

810.02(4)(b) 3rd Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.

810.06 3rd Burglary; possession of tools.

810.08(2)(c) 3rd Trespass on property, armed with firearm or dangerous weapon.

812.014(2)(c)3. 3rd Grand theft, 3rd degree $10,000 or more but less than $20,000.

916

812.014 3rd Grand theft, 3rd degree; specified items. (2)(c)4.-10.

917

812.0195(2) 3rd Dealing in stolen property by use of the Internet; property stolen $300 or more.

918

817.505(4)(a) 3rd Patient brokering.

919

817.563(1) 3rd Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.

920

817.568(2)(a) 3rd Fraudulent use of personal identification information.

921

817.625(2)(a) 3rd Fraudulent use of scanning device, skimming device, or reencoder.

922

817.625(2)(c) 3rd Possess, sell, or deliver skimming device.

923

828.125(1) 2nd Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.

924

837.02(1) 3rd Perjury in official proceedings.

837.021(1) 3rd Make contradictory statements in official proceedings.

838.022 3rd Official misconduct.

839.13(2)(a) 3rd Falsifying records of an individual in the care and custody of a state agency.

839.13(2)(c) 3rd Falsifying records of the Department of Children and Families.

843.021 3rd Possession of a concealed handcuff key by a person in custody.

843.025 3rd Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.

843.15(1)(a) 3rd Failure to appear while on bail for felony (bond estreature or bond jumping).

847.0135(5)(c) 3rd Lewd or lascivious exhibition using computer; offender less than 18 years.

870.01(3)	3rd	Aggravated rioting.	
870.01(5)	3rd	Aggravated inciting or encouraging a riot.	
874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.	
893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)5. drugs).	
914.14(2)	3rd	Witnesses accepting bribes.	
914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.	
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.	
916.1085 (2)(c)1.	3rd	Introduction of specified contraband into certain DCF facilities.	
918.12	3rd	Tampering with jurors.	

934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
944.47(1)(a)6.	3rd	Introduction of contraband (cellular telephone or other portable communication device) into correctional institution.
951.22(1)(h), (j) & (k)	3rd	Intoxicating drug, instrumentality or other device to aid escape, or cellular telephone or other portable communication device introduced into county detention facility.

Section 21. This act shall take effect October 1, 2021.

From: Barquin, JuanF
To: Jake
Subject: Re: Cap News Interview Request
Date: Friday, January 08, 2021 1:07:02 PM
Attachments: OutlookEmoji-1568727030772729d464525-3e1e-45c9-aa3c-e8c2391a8906.png
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OutlookEmoji-1568727030772a7cd38bf-ddd0-41e3-b317-1aad6358b947.png

---

Hi Jake,

I am not available this afternoon. I will be driving to Tallahassee Monday morning, we can do a phone conference Monday morning or we can meet or zoom Monday afternoon if you like.

Juan

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

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Suite 218
Miami, FL 33175
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Tallahassee Office:
1301 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5119

From: Jake
Sent: Friday, January 8, 2021 11:32:59 AM
To: Barquin, JuanF
Subject: Cap News Interview Request

Hey just following up on this. Is it looking like we may be able to set something up?

-Jake

On Jan 8, 2021, at 9:38 AM, Jake <jake@flanews.com> wrote:

Hello and good morning all,

This is Jake Stofan with Capitol News Service in Tallahassee. I'm doing a story today on Rep

Fernandez-Barquin's Combating Public Disorder bill and was curious if he might have a few minutes to do a zoom interview before 1 pm on it?

Feel free to call/text or email back to coordinate.

Thanks!

Jake Stofan
Capitol News Service
www.flanews.com
Jake@flanews.com
Cell Phone 904-207-4245

Where to See Us

WFLA, Tampa

WBBH, Ft. Myers

WZVN, Ft. Myers

WCJB, Gainesville

WCTV, Tallahassee

WJHG, Panama City

WEAR, Pensacola

WJXT, Jacksonville

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From: Stan.McClain@myfloridahouse.gov
To: Barquin, JuanF
Subject: Request to cosponsor bill: HB 1
Date: Friday, January 08, 2021 8:49:46 AM

Juan Fernandez-Barquin,

Stan McClain has requested to cosponsor HB 1.

Please review your "Cosponsor Requests" and either approve or deny this user's request.

From: Brad.Drake@myfloridahouse.gov
To: Barquin, JuanF
Subject: Request to cosponsor bill: HB 1
Date: Friday, January 08, 2021 12:00:33 PM

Juan Fernandez-Barquin,

Brad Drake has requested to cosponsor HB 1.

Please review your "Cosponsor Requests" and either approve or deny this user's request.

From:	Mike.Giallombardo@myfloridahouse.gov
To:	Barquin, JuanF
Subject:	Request to cosponsor bill: HB 1
Date:	Thursday, January 14, 2021 11:18:26 AM

Juan Fernandez-Barquin,

Mike Giallombardo has requested to cosponsor HB 1.

Please review your "Cosponsor Requests" and either approve or deny this user's request.

From: Scott.Plakon@myfloridahouse.gov
To: Barquin, JuanF
Subject: Request to cosponsor bill: HB 1
Date: Thursday, January 07, 2021 7:23:44 AM

Juan Fernandez-Barquin,

Scott Plakon has requested to cosponsor HB 1.

Please review your "Cosponsor Requests" and either approve or deny this user's request.

From: Spencer.Roach@myfloridahouse.gov
To: Barquin, JuanF
Subject: Request to cosponsor bill: HB 1
Date: Thursday, January 07, 2021 11:07:10 AM

Juan Fernandez-Barquin,

Spencer Roach has requested to cosponsor HB 1.

Please review your "Cosponsor Requests" and either approve or deny this user's request.

From: John O'Brien
To: Barquin, JuanF
Subject: Sinclair Broadcast Affiliate Interview
Date: Wednesday, January 13, 2021 11:25:38 PM

Hello Representative Fernandez-Barquin,

I'm Jay O'Brien with CBS 12 News in West Palm Beach and Sinclair Broadcast Group National Affiliates.

Would you be interested in a zoom interview tomorrow (Thursday) or Friday regarding the Combating Public Disorder bill? We're working on a special report for West Palm Beach, as well as our affiliates statewide.

Thanks so much!

Jay O'Brien
Reporter | CBS 12 News
561-356-6135
jjobrien@sbgtv.com
@jayobtv

From: Javonni Hampton
To: Barquin, JuanF
Subject: The Florida Channel Interview
Date: Monday, January 11, 2021 10:50:36 PM
Attachments: image001.png

Hello,

My name is Javonni Hampton, I am a reporter with the Florida Channel. Was wondering if it was possible to set up an interview with the Representative sometime tomorrow morning before committees to discuss his new proposed legislation HB1. Tuesday before 9am, does that work?

Best,

Javonni

Javonni Hampton
Reporter/Producer- Florida Channel Programming
The FLORIDA Channel | Office: 850-488-1281
Direct: 407-680-7606 | FAX: 850-488-4876
jhampton@fsu.edu www.TheFloridaChannel.org

From:	Munero, Armando
To:	"Juan Fernandez-Barquin"
Subject:	FW: HB 1 Talking Points and Chart
Date:	Tuesday, January 26, 2021 4:29:25 PM
Attachments:	Rioting Bill-OSRC Chart.docx HB 1 CRM Talking Points.docx

---

From: Hall, Whitney
Sent: Tuesday, January 26, 2021 11:00 AM
To: Barquin, JuanF
Cc: Munero, Armando
Subject: HB 1 Talking Points and Chart

Hi Representative,

Attached are the talking points for the bill as well as a copy of the chart outlining the criminal penalties under the bill. Just let me know if there is anything else you need!

Thanks!

Whitney Hall
Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

From:	Munero, Armando
To:	"Juan Fernandez-Barquin"
Subject:	FW: HB 1 Talking Points and Chart
Date:	Tuesday, January 26, 2021 4:29:25 PM
Attachments:	Rioting Bill-OSRC Chart.docx HB 1 CRM Talking Points.docx

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Sent: Tuesday, January 26, 2021 11:00 AM
To: Barquin, JuanF
Cc: Munero, Armando
Subject: HB 1 Talking Points and Chart

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Attached are the talking points for the bill as well as a copy of the chart outlining the criminal penalties under the bill. Just let me know if there is anything else you need!

Thanks!

Whitney Hall
Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

HB 1 Combating Public Disorder
Rep. Fernandez-Barquin
Criminal Justice & Public Safety Subcommittee- Jan. 27, 2021

HB 1 combats public disorder and protects public safety in Florida by:

Criminal Protections

- Defining the existing crimes of **rioting** and **inciting a riot** (**F3**).

- Creating new crimes of **aggravated rioting** and **aggravated inciting a riot** (**F2**) and enhancing penalties when a person riots or incites a riot and in doing so:
    - Causes great bodily harm to another person not rioting,
    - Causes significant property damage (over $5,000),
    - Uses or gives another person a deadly weapon to be used in the riot,
    - Endangers vehicles traveling on the road by using or threatening force, or
    - Riots with 9 or more people thereby causing greater risk of injury or property damage.

- Reclassifying penalties for an **assault** (**M1**) or **battery** (**F3**) committed in furtherance of a riot and specified **thefts** and **burglaries** committed during a riot and facilitated by the condition of the riot.

- Increasing the minimum permissible sentence by increasing the **offense severity ranking** for specified felonies committed in furtherance of a riot including destroying a tomb or monument, disturbing the contents of a grave, and aggravated assault or battery.

- Protecting law enforcement officers attempting to quell a riot by requiring a **6-month minimum mandatory** sentence for **battery on a law enforcement** officer in furtherance a riot (**F3**).

- Creating new offenses to protect all historical **monuments** from being **destroyed** (**F2**), **vandalized**, or **graffiti** (**F3**).

- Protecting a person from being victimized by a group of people forcefully compelling him or her to do any act or assume or abandon a particular viewpoint by prohibiting **mob intimidation** (**M1**).

- Protecting victims from **cyberintimidation ("doxing")** through the publication of personal identification information meant to be used by the publisher, or a third party, to threaten, intimidate, or harass the victim, or incite violence or the commission of a crime against the victim (**M1**).

- Requiring persons arrested for offenses related to rioting including rioting, aggravated rioting, inciting a riot, aggravated inciting a riot, unlawful assembly, burglary or theft committed during a riot and facilitated by conditions of the riot, or mob intimidation to remain in custody until appearing for first appearance and having a judge determine bond.

Civil Protections

- Giving a resident of a municipality the opportunity challenge a reduction to the budget of a municipal law enforcement agency and allowing the Administration Commission (Gov. and Cabinet) to review and modify the budget as necessary to protect public safety.

- Corrects constitutional issues that have prohibited the current law against obstructing streets by impeding traffic from being enforced (**pedestrian violation**).

- Waives sovereign immunity and creates a cause of action allowing a person who suffers injury or property damage to sue a municipality if the municipality intentionally obstructed or interfered with the municipal law enforcement agency's ability to provide reasonable police protection during a riot or unlawful assembly, if such failure is the proximate cause of the plaintiff's injury or damages.

- Provides an affirmative defense for a person who is sued for civil damages for injuries that were sustained by a plaintiff who participated in a riot or unlawful assembly.

HB 1: Combating Public Disorder Crimes

Section	Statute	Crime	Offense Degree	Offense Severity Ranking	FAR?
2	316.2045	Obstructing public street, highway, and road	Noncriminal pedestrian violation	NA	NA
4	784.011(3)	Assault in furtherance of a riot or aggravated riot	M1	NA	No
5	784.021(3)	Aggravated assault in furtherance of a riot or aggravated riot	F3	Level 7	No
6	784.03(3)	Battery in furtherance of a riot or aggravated riot	F3	Level 2	No
7	784.045(3)	Aggravated battery in furtherance of a riot or aggravated riot	F2	Level 8	No
8	784.0495	Mob intimidation	M1	NA	Yes
9	784.07	Assault or *battery on LEO in furtherance of a riot or aggravated riot*	Varies *6 month min man*	Assault (NA), Battery (Level 5), Agg. Assault (Level 7), Agg. Battery (Level 8)	No
10	806.13	Criminal mischief of memorial, over $200 damages	F3	Level 2	No
11	806.135	Destroying or demolishing a memorial	F2	Level 4	No
12	810.02(3)	Burglary in the second degree during a riot or aggravated riot	F1	Occupied dwelling; unoccupied dwelling; occupied conveyance; or authorized emergency vehicle (Offender not armed; no assault or battery)(Level 8) Occupied structure (Offender not armed; no assault or battery) (Level 7)	Yes
12	810.02(4)	Burglary during a riot or aggravated riot	F2	Unoccupied structure; unoccupied conveyance (Offender not armed; no assault or battery) (Level 5)	Yes
13	812.014 (2)(b)	Grand theft in the second degree during a riot or aggravated riot	F1	$20k < $100k (Level 7) Cargo valued at < $50k; $300+ of emergency medical equipment or law enforcement equipment taken from an authorized emergency vehicle (Level 8)	Yes
13	812.014 (2)(c)	Grand theft in the third degree during a riot or aggravated riot	F2	$750 < $5k (Level 3) $5k < $10k (Level 4) $10k < $20k (Level 5) Will, codicil, firearm, fire extinguisher, etc. (Level 5)	Yes
14	836.115	Cyberintimidation by Publication (Doxing)	M1	NA	No
15	870.01(1)	Affray	M1	NA	No
15	870.01(2)	Riot	F3	Level 3	Yes
15	870.01(3)	Aggravated Rioting	F2	Level 4	Yes
15	870.01(4)	Inciting or Encouraging a Riot	F3	Level 3	Yes
15	870.01(5)	Aggravated Inciting or Encouraging a Riot	F2	Level 4	Yes
16	870.02	Unlawful Assemblies	M2	NA	Yes
17	870.03	Riots and Routs	F3	Unranked- Level 1	Yes
19	872.02(3)	Injuring or Removing tomb or monument in furtherance of a riot or aggravated riot	F3- Destroy, mutilate, deface, injure, remove a tomb/ monument/ gravestone etc. F2- Remove or disturb contents of a grave/tomb	F3 Violation (Level 2) F2 Violation (Level 5)	No

New Crime CF/MM Degree Reclassification Offense Severity Ranking Level Increase

From: Barquin, JuanF
To: ALEX2176@GMAIL.COM
Subject: Re: From "Write Your Representative" Website
Date: Monday, February 08, 2021 12:39:28 PM
Attachments: OutlookEmoji-1568727030772235fb5f3a-a806-4c70-be7c-4bf392ce483c.png
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OutlookEmoji-15687270307720f0fc5c7-53ba-4edc-a417-c0a8106f7f64.png

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Hi Alex,

I completely agree with you. I am against this bill, and I give you my word I will work against this bill.

Thank you for contacting me.
Juan

Florida House of Representatives
State Representative Juan Fernandez-Barquin
District 119

District Office:	Tallahassee Office:
2450 SW 137th Ave	1301 The Capitol
Suite 218	402 South Monroe Street
Miami, FL 33175	Tallahassee, FL 32399
(305) 222-4119	(850) 717-5119

From: ALEX2176@GMAIL.COM
Sent: Monday, February 8, 2021 12:04:20 PM
To: Barquin, JuanF
Subject: From 'Write Your Representative' Website

ALEX MOYA
2000 S.W. 154TH AVE
Miami, FL 33185
(305)303-7215

02/08/21 12:04 PM

To the Honorable Juan Alfonso Fernandez-Barquin ;

Good Afternoon Rep. Fernandez-Barquin,

I am writing to you today in reference to HB 6063 introduced by Rep.Joseph and SB 1052 by Senator Jones. This bill talks about repealing provision relating to home protection an the duty to retreat. I do not believe this bill has the best interest of the people of Florida. I do not see that need to have to leave my home if some unwanted person enters it. It is putting the safety of my family in jeopardy if i need to retreat before i am able to defend them. It also looks to delete Florida Statues 776.013 which covers Home protection and defines what a Dwelling ,Residence and a Vehicle.

From: Barquin, JuanF
To: ALEX2176@GMAIL.COM
Subject: Re: From "Write Your Representative" Website
Date: Monday, February 08, 2021 12:39:28 PM
Attachments: OutlookEmoji-1568727030772 35fb5f3a-a806-4c70-be7c-4bf392ce483c.png
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OutlookEmoji-1568727030720f0fc5c7-53ba-4edc-a417-c0a8106f7f64.png

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From: ALEX2176@GMAIL.COM
Sent: Monday, February 8, 2021 12:04:20 PM
To: Barquin, JuanF
Subject: From 'Write Your Representative' Website

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2000 S.W. 154TH AVE
Miami, FL 33185
(305)303-7215

02/08/21 12:04 PM

To the Honorable Juan Alfonso Fernandez-Barquin ;

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From:	Munero, Armando
To:	"Juan Fernandez-Barquin"
Subject:	FW: HB 1 Talking Points and Chart
Date:	Tuesday, January 26, 2021 4:29:25 PM
Attachments:	Rioting Bill-OSRC Chart.docx HB 1 CRM Talking Points.docx

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From: Hall, Whitney
Sent: Tuesday, January 26, 2021 11:00 AM
To: Barquin, JuanF
Cc: Munero, Armando
Subject: HB 1 Talking Points and Chart

Hi Representative,

Attached are the talking points for the bill as well as a copy of the chart outlining the criminal penalties under the bill. Just let me know if there is anything else you need!

Thanks!

Whitney Hall
Policy Chief, Criminal Justice and Public Safety Subcommittee
Florida House of Representatives
(850) 717-4877

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HB 1 Combating Public Disorder
Rep. Fernandez-Barquin
Criminal Justice & Public Safety Subcommittee- Jan. 27, 2021

HB 1 combats public disorder and protects public safety in Florida by:

Criminal Protections

- Defining the existing crimes of **rioting** and **inciting a riot** (**F3**).

- Creating new crimes of **aggravated rioting** and **aggravated inciting a riot** (**F2**) and enhancing penalties when a person riots or incites a riot and in doing so:
    - Causes great bodily harm to another person not rioting,
    - Causes significant property damage (over $5,000),
    - Uses or gives another person a deadly weapon to be used in the riot,
    - Endangers vehicles traveling on the road by using or threatening force, or
    - Riots with 9 or more people thereby causing greater risk of injury or property damage.

- Reclassifying penalties for an **assault** (**M1**) or **battery** (**F3**) committed in furtherance of a riot and specified **thefts** and **burglaries** committed during a riot and facilitated by the condition of the riot.

- Increasing the minimum permissible sentence by increasing the **offense severity ranking** for specified felonies committed in furtherance of a riot including destroying a tomb or monument, disturbing the contents of a grave, and aggravated assault or battery.

- Protecting law enforcement officers attempting to quell a riot by requiring a **6-month minimum mandatory** sentence for **battery on a law enforcement** officer in furtherance a riot (**F3**).

- Creating new offenses to protect all historical **monuments** from being **destroyed** (**F2**), **vandalized**, or **graffiti** (**F3**).

- Protecting a person from being victimized by a group of people forcefully compelling him or her to do any act or assume or abandon a particular viewpoint by prohibiting **mob intimidation** (**M1**).

- Protecting victims from **cyberintimidation ("doxing")** through the publication of personal identification information meant to be used by the publisher, or a third party, to threaten, intimidate, or harass the victim, or incite violence or the commission of a crime against the victim (**M1**).

- Requiring persons arrested for offenses related to rioting including rioting, aggravated rioting, inciting a riot, aggravated inciting a riot, unlawful assembly, burglary or theft committed during a riot and facilitated by conditions of the riot, or mob intimidation to remain in custody until appearing for first appearance and having a judge determine bond.

Civil Protections

- Giving a resident of a municipality the opportunity challenge a reduction to the budget of a municipal law enforcement agency and allowing the Administration Commission (Gov. and Cabinet) to review and modify the budget as necessary to protect public safety.

- Corrects constitutional issues that have prohibited the current law against obstructing streets by impeding traffic from being enforced (**pedestrian violation**).

- Waives sovereign immunity and creates a cause of action allowing a person who suffers injury or property damage to sue a municipality if the municipality intentionally obstructed or interfered with the municipal law enforcement agency's ability to provide reasonable police protection during a riot or unlawful assembly, if such failure is the proximate cause of the plaintiff's injury or damages.

- Provides an affirmative defense for a person who is sued for civil damages for injuries that were sustained by a plaintiff who participated in a riot or unlawful assembly.

HB 1: Combating Public Disorder Crimes

Section	Statute	Crime	Offense Degree	Offense Severity Ranking	FAR?
2	316.2045	Obstructing public street, highway, and road	Noncriminal pedestrian violation	NA	NA
4	784.011(3)	Assault in furtherance of a riot or aggravated riot	M1	NA	No
5	784.021(3)	Aggravated assault in furtherance of a riot or aggravated riot	F3	Level 7	No
6	784.03(3)	Battery in furtherance of a riot or aggravated riot	F3	Level 2	No
7	784.045(3)	Aggravated battery in furtherance of a riot or aggravated riot	F2	Level 8	No
8	784.0495	Mob intimidation	M1	NA	Yes
9	784.07	Assault or *battery on LEO in furtherance of a riot or aggravated riot*	Varies *6 month min man*	Assault (NA), Battery (Level 5), Agg. Assault (Level 7), Agg. Battery (Level 8)	No
10	806.13	Criminal mischief of memorial, over $200 damages	F3	Level 2	No
11	806.135	Destroying or demolishing a memorial	F2	Level 4	No
12	810.02(3)	Burglary in the second degree during a riot or aggravated riot	F1	Occupied dwelling; unoccupied dwelling; occupied conveyance; or authorized emergency vehicle (Offender not armed; no assault or battery)(Level 8) Occupied structure (Offender not armed; no assault or battery) (Level 7)	Yes
12	810.02(4)	Burglary during a riot or aggravated riot	F2	Unoccupied structure; unoccupied conveyance (Offender not armed; no assault or battery) (Level 5)	Yes
13	812.014 (2)(b)	Grand theft in the second degree during a riot or aggravated riot	F1	$20k < $100k (Level 7) Cargo valued at < $50k; $300+ of emergency medical equipment or law enforcement equipment taken from an authorized emergency vehicle (Level 8)	Yes
13	812.014 (2)(c)	Grand theft in the third degree during a riot or aggravated riot	F2	$750 < $5k (Level 3) $5k < $10k (Level 4) $10k < $20k (Level 5) Will, codicil, firearm, fire extinguisher, etc. (Level 5)	Yes
14	836.115	Cyberintimidation by Publication (Doxing)	M1	NA	No
15	870.01(1)	Affray	M1	NA	No
15	870.01(2)	Riot	F3	Level 3	Yes
15	870.01(3)	Aggravated Rioting	F2	Level 4	Yes
15	870.01(4)	Inciting or Encouraging a Riot	F3	Level 3	Yes
15	870.01(5)	Aggravated Inciting or Encouraging a Riot	F2	Level 4	Yes
16	870.02	Unlawful Assemblies	M2	NA	Yes
17	870.03	Riots and Routs	F3	Unranked- Level 1	Yes
19	872.02(3)	Injuring or Removing tomb or monument in furtherance of a riot or aggravated riot	F3- Destroy, mutilate, deface, injure, remove a tomb/ monument/ gravestone etc. F2- Remove or disturb contents of a grave/tomb	F3 Violation (Level 2) F2 Violation (Level 5)	No

New Crime CF/MM Degree Reclassification Offense Severity Ranking Level Increase

From: Barquin, JuanF
To: ALEX2176@GMAIL.COM
Subject: Re: From "Write Your Representative" Website
Date: Monday, February 08, 2021 12:39:28 PM
Attachments: OutlookEmoji-1568727030772235fb5f3a-a806-4c70-be7c-4bf392ce483c.png
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Hi Alex,

I completely agree with you. I am against this bill, and I give you my word I will work against this bill.

Thank you for contacting me.
Juan

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From: ALEX2176@GMAIL.COM
Sent: Monday, February 8, 2021 12:04:20 PM
To: Barquin, JuanF
Subject: From 'Write Your Representative' Website

ALEX MOYA
2000 S.W. 154TH AVE
Miami, FL 33185
(305)303-7215

02/08/21 12:04 PM

To the Honorable Juan Alfonso Fernandez-Barquin ;

Good Afternoon Rep. Fernandez-Barquin,

I am writing to you today in reference to HB 6063 introduced by Rep.Joseph and SB 1052 by Senator Jones. This bill talks about repealing provision relating to home protection an the duty to retreat. I do not believe this bill has the best interest of the people of Florida. I do not see that need to have to leave my home if some unwanted person enters it. It is putting the safety of my family in jeopardy if i need to retreat before i am able to defend them. It also looks to delete Florida Statues 776.013 which covers Home protection and defines what a Dwelling ,Residence and a Vehicle.

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