

Legislative #

201001B

TO: Gainesville City Commission
FROM: Public Rights Project & Community Justice Project
RE: The Case for Challenging HB 1

I. **Executive Summary**

The Combating Violence, Disorder, and Looting and Law Enforcement Protection Act, also known as HB 1, obstructs municipalities' ability to control their budgets—a core local power. HB 1 gives the governor and his cabinet the power to line-edit municipal budgets with binding legal effect whenever a reduction to the law enforcement budget is challenged by the state attorney, member of the City Commission, or possibly even a county sheriff.¹ This review process chills local government action.

Municipalities need full control of their budgets so that they can function properly. Municipal revenue can be variable, which is why cities need full authority to structure their budgets to weather changes. When revenues are down in periods of economic hardship, municipalities need flexibility to tighten spending wherever such measures would be most efficient, whether those tightening measures affect law enforcement or parks and recreation. When municipalities receive opportunities to apply for one-time grants to supplement a city budget or need to make a large expenditure to update the infrastructure or technology in a department, they need the flexibility to make this increase without being locked into maintaining a higher spending level. Furthermore, municipalities need flexibility to reorganize their departments if certain programs would fit better under the purview of another department.

Municipalities also require full control of their budgets in order to be responsive to the needs of their residents. Budgets reflect community priorities and values. If residents need greater investment in municipal human services as they struggle in the wake of a pandemic and economic downturn, then it is the municipality's duty and prerogative to formulate a budget that is responsive to residents' needs and values.

In the summer of 2020, the murders of George Floyd and Breonna Taylor, among others, catalyzed many Floridians to call on their local governments to rebalance budgeting priorities to invest in public safety strategies that prioritize social and human services separate from law enforcement. These residents pointed out that law enforcement has been relied on as a first responder for non-violent incidents that could be addressed with a public health or social service approach, but that these community approaches need funding. Municipalities, like Gainesville, responded by exploring how non-law enforcement functions such as youth mentorship programs could be transferred from the law enforcement budget to other municipal departments.

From the faraway state capital, Governor Ron DeSantis preempted the discussions between local governments and residents with HB 1. Though his intent was to stymie discussions started by the movement for racial justice, the effect will be much broader, interfering with

¹ Matt Dixon, *Florida Panel Paves Way for Law Enforcement to Appeal Local Police Budget Cuts*, Politico (June 15, 2021), <https://www.politico.com/states/florida/story/2021/06/15/florida-panel-paves-way-for-law-enforcement-to-appeal-local-police-budget-cuts-1386464>.

municipalities' ability to weather economic downturns, administer their departments efficiently, and respond to the needs of residents by directing funds where they are most needed. Local leaders are chilled right now from continuing to pursue budget proposals that could trigger HB 1.

Litigation is the only remaining avenue to challenge HB 1. HB 1 is injuring municipalities right now by the chilling budgeting discussions and creating budget uncertainty. HB 1 violates several provisions of the constitutions on its face, and three legal entities (national legal non-profit Public Rights Project, Florida-based community lawyers Community Justice Project, and national firm Jenner & Block) have reviewed these facial claims to ensure their viability. Challenging HB 1 on its face, rather than waiting for an application to challenge, will create an opportunity for a much broader remedy: the invalidation of the law rather than the invalidation of only one application. For these reasons, we recommend proceeding with the attached complaint.

II. HB 1's Injury to Municipalities

HB 1 threatens Gainesville's ability to make policy and governance decisions that best reflect the needs of its constituents. HB 1 works by allowing either a state attorney or a member of a municipal governing body (or a county sheriff pending new rules) to contest any funding reduction to law enforcement departments in that municipality's budget. Any municipal budget that is challenged is then reviewed by the Administration Commission, a commission made up of the Governor and his cabinet members. The Administration Commission will then review, amend, or modify the law enforcement items of a municipality's budget. Because of Governor DeSantis' publicly stated position that law enforcement budgets should not be reduced in any way, it is very likely that any reduction to a municipal law enforcement budget will be rejected. Any amendment or modification to a municipality's budget is final.

HB 1 gives the Governor and his cabinet nearly unbridled discretion to preempt the municipal budget. Even the smallest of budgetary adjustments could trigger budgetary revisions from state governing officials who have little to no stake in day-to-day life in Gainesville.

The imposition of this process has already impacted budgetary discussions. In 2020, in response to residents' calls for justice reform and greater investment in social services, Gainesville had made a one-time significant investment in acquiring body cameras for police officers. The Gainesville City Commission had also directed the City Manager to examine whether non-law enforcement functions under the purview of Gainesville Police Department could be transferred to other municipal departments; throughout 2020 and 2021, the City Commission has been discussing whether certain youth services programs could be transferred from the Gainesville Police Department to another municipal department as these programs do not relate to law enforcement. In fact, just recently the City Commission directed the City Manager to bring back options to facilitate the creation of an independent youth services department. HB 1 impedes the City Commission's consideration of options that affect the law enforcement budget. As Mayor Poe has previously stated, local leaders "feel intimidated and threatened by HB 1" because they are

"being told [they] cannot make government decisions." HB 1's impacts on budget considerations and decisions create uncertainty and cause injury to the City and its residents.

This injury is real and it is impacting budgeting decisions right now, which means that municipalities have standing and a controversy that is ripe for judicial intervention.

III. Facial Legal Claims

Not only does Gainesville have standing to challenge HB 1, but it also has five claims to assert in arguing that HB 1 violates the Florida Constitution. These claims have been researched and analyzed by national and Florida non-profit organizations including Public Rights Project and Community Justice Project, and by a private firm, Jenner & Block.

Claim One: Separation of Powers

Under the Florida Constitution, no branch of government can exercise the powers of another branch and no branch can assign its constitutionally given powers to another branch. Fla. Const. art. II, § 3; *Smith v. State*, 537 So. 2d 982, 987 (Fla. 1989). HB 1 assigns two fundamentally legislative powers to the executive branch. First, HB 1 gives the Governor and his cabinet the ability through the municipal budget revision process to reduce appropriations of public funds, which is a power that belongs exclusively to the legislative branch. *See, e.g., Florida House of Representatives v. Martinez*, 555 So. 2d 839, 845 (Fla. 1990). Second, HB 1 gives the Governor and his cabinet the ability to revise municipal decisions with binding effect, even though the ability to limit municipal power is also an exclusively legislative authority. *See, e.g., Askew v. Cross Key Waterways*, 372 So. 2d 913, 915-19 (Fla. 1978). Because HB 1 delegates two legislative functions to the executive branch, it violates the Florida Constitution on its face.

Claim Two: Nondelegation Doctrine

To the extent the legislative branch had some authority to delegate to the executive branch here, HB 1 nonetheless violates the nondelegation doctrine enshrined in the Florida Constitution. This doctrine holds that any delegation of legislative functions must be accompanied by "some minimal standards and guidelines ascertainable by reference to the enactment establishing the program." *Askew v. Cross Key Waterways*, 372 So. 2d 913, 925 (Fla. 1978). The nondelegation doctrine aims to prevent the executive "from acting through whim, showing favoritism, or exercising unbridled discretion." *S. All. for Clean Energy v. Graham*, 113 So. 3d 742, 748 (Fla. 2013). But HB 1 does not provide any such guidelines that instruct the executive how to review municipal reductions to the law enforcement budget, so the executive can act with unchecked discretion. The lack of standards allows the Administration Commission to make arbitrary decisions about municipal budgets with no meaningful oversight or guiding principles, in direct violation of the nondelegation doctrine.

Claim Three: Single Subject Rule

The Florida Constitution prohibits a law from addressing multiple unconnected issues and requires a bill's title to express the subject of the legislation. Fla. Const. art. III, § 6. HB 1 violates this rule because it combines two distinct and unrelated legal objectives into one law: Section 1 institutes a process for executive review of local budgeting decisions and the other provisions of the law impose criminal penalties on individuals for protest-related activities. Additionally, it is unclear how the HB 1's title "[a]n act relating to combatting public disorder" relates to the municipal budgeting provisions.

Claim Four: Unfunded Mandate

The Florida Constitution generally prohibits the passage of any state legislation that requires municipalities to spend funds or to take actions that require the expenditure of funds unless the state provides or authorizes a revenue stream. Fla. Const. art. VII, § 18. HB 1 requires a municipality to expend funds in order to maintain the previous year's law enforcement budget or else risk the state seizing budgetary control from the municipality and line-editing the budget without the municipality's consent or collaboration. Yet, the state has provided no revenue to maintain such funding, nor has it authorized a new municipal funding stream. For these reasons, HB 1 creates an unconstitutional unfunded mandate.

Claim Five: Home Rule

Like many other states across the country, Florida allows municipalities to adopt a home rule charter which grants them broad powers to meet municipal needs. Fla. Const. art. VIII, § 2(b); *Thomas v. State*, 614 So. 2d 468, 472 (Fla. 1993). Among these powers include the ability to propose and pass budgets. *See City of Boca Raton v. Gidman*, 440 So. 2d 1277, 1281-82 (Fla. 1983); *City of Gainesville v. Bd. of Control*, 81 So. 2d 514, 518 (Fla. 1955). HB 1 impedes this function by creating a process through which the state can usurp control of the municipal budget and unilaterally revise the budget with binding effect on the municipality. This is a clear violation of the City's home rule authority.

IV. Conclusion and Recommendation

HB 1's injury to municipal autonomy is egregious and strategic, and it obstructs the ability of municipalities to structure a budget that best responds to the needs and values of its residents. Municipal autonomy and responsive local democracy are worth defending, and pursuing this litigation would allow municipalities to defend their authority from increasing encroachment by the state. We recommend that Gainesville vote to pursue this lawsuit.