IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

ALACHUA COUNTY EDUCATION ASSOCIATION, et al.,

***Plaintiffs*,**

v. **Case No.: 1:23cv111-MW/HTC**

KEREY CARPENTER, et al.,

***Defendants*.**

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ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

Plaintiffs and Defendants Jeff Aaron, Kerey Carpenter, and Michael Sasso (the "PERC Defendants") have filed cross-motions for summary judgment. This Court has considered, without hearing, their cross-motions, responses, and replies. For the reasons that follow, Plaintiffs' motion, ECF No. 98, is **DENIED**, and the PERC Defendants' motion, ECF No. 116, is **GRANTED in part and DENIED in part**. Additionally, Counts I and II of Plaintiffs' second amended complaint, ECF No. 48, is **DISMISSED without prejudice** for lack of standing.

I

This Court begins with an overview of the pertinent statutory framework and undisputed facts. Plaintiffs are unions of educators and education support professionals working in Florida's public education institutions (the "Union

Plaintiffs") and Professor Malini Schueller, who is a member of Plaintiff United Faculty of Florida ("UFF") and Plaintiff United Faculty of Florida-University of Florida ("UFF-UF"). In this case, Plaintiffs challenge amendments to Florida's Public Employee Relations Act ("PERA"), Chapter 447, Part II, Florida Statutes. Relevant here, PERA sets out how unions become and remain representatives for their members in negotiating collective bargaining agreements ("CBAs") with their employers. All but two of the Union Plaintiffs—namely, Plaintiff UFF-UF and Plaintiff Florida Education Association ("FEA")—have current CBAs with various public employers. Those Union Plaintiffs that have CBAs—namely, Plaintiff UFF, Plaintiff Alachua County Education Association ("ACEA"), Plaintiff Lafayette Education Association ("LEA"), Plaintiff Pinellas Classroom Teachers Association ("PCTA"), and Plaintiff Hernando United School Workers ("HUSW")—are collectively referred to as the "Union Plaintiffs with CBAs."

In broad strokes, PERA sets out three steps for unions to become and remain bargaining representatives. First, a union registers with the Florida Public Employees Relations Commission ("PERC"). § 447.305(1), Fla. Stat. (2023). Second, a union that has successfully registered must petition for certification by PERC. § 447.307(1)(a), (2). Accompanying the petition must be signed, dated statements from at least thirty percent of the employees in the proposed bargaining unit the union seeks to represent, indicating their desire that the union represent

them. § 447.307(2). If the union provides a petition, PERC must order an election by secret ballot for the employees in the proposed bargaining unit, which the union wins if a majority of the employees voting select the union to represent them. § 447.307(3)(a)–(b). Third, a union that PERC has certified as a collective bargaining representative must apply each year for renewal of registration. § 447.305(2).

If a union fails to renew its registration, or if it loses a decertification election (which may be called via petition for decertification, accompanied by signed statements from at least thirty percent of the employees in the bargaining unit, between one hundred fifty and ninety days before the CBA expires), its certification will be revoked. §§ 447.305(6), 447.307(3)(d); Ch. 2024-23, § 4, at 7, Laws of Fla. If a union loses its certification, it will no longer be able to act as bargaining representative, and the CBA between it and the employer will no longer be effective. *See, e.g.*, *Teamsters Loc. Union No. 385 v. Orange Cnty.*, 25 FPER ¶ 30072, 1999 WL 35114734 (PERC Feb. 3, 1999) ("Upon decertification of the incumbent union, the collective bargaining agreement no longer exists.") (citation omitted). A CBA may last no longer than three years. § 447.309(5).

The three provisions Plaintiffs challenge were enrolled in Chapter 2023-55, Laws of Florida, and amended by Chapter 2024-23, Laws of Florida. The first provision, the membership authorization form provision, first appeared in Section 1 of Chapter 2023-55. It requires that all public employees—except for law

enforcement officers, correctional officers, correctional probation officers, or firefighters (hereinafter "public safety employees") belonging to unions certified as bargaining representatives—wishing to join a union complete a membership authorization form. § 447.301(1)(b)1. The form must be completed by the public employee, and it must include the employee's class title and class code, the identity and salaries of the union's five highest compensated officers and employees, and other information. § 447.301(1)(b)2. The public employee must also "sign and date" the form with the union's bargaining agent. § 447.301(b)1. The membership authorization form must contain the following statement in fourteen-point type:

> The State of Florida is a right-to-work state. Membership or non-membership in a labor union is not required as a condition of employment, and union membership and payment of union dues and assessments are voluntary. Each person has the right to join and pay dues to a labor union or to refrain from joining and paying dues to a labor union. No employee may be discriminated against in any manner for joining and financially supporting a labor union or for refusing to join or financially support a labor union.

§ 447.301(1)(b)3. Finally, the union to which the member belongs must retain the member's completed membership authorization form for inspection by PERC. § 447.301(1)(b)5.

The second provision, the payroll deduction ban, first appeared in Section 3 of Chapter 2023-55. It prohibits unions that have been certified as bargaining representatives—except for those representing public safety employees—from "having [their] dues and uniform assessments deducted and collected by the

employer from the salaries of those employees in the unit." § 447.303(1), (2)(a). Previously, unions certified as bargaining representatives had "the right" to make such deductions, § 447.303(2)(a), Fla. Stat. (2022), and the CBAs of all Union Plaintiffs with CBAs included a provision permitting such deductions.[1]

The third provision, the recertification rules, first appeared in Section 4 of Chapter 2023-55. These rules dictate that, if the proportion of union members fell below sixty percent of all public employees working for the public employer in the previous registration period, the union must petition PERC for recertification—a process identical to the certification process. *See* § 447.305(2), (6), Fla. Stat. (2023); § 1012.2315(4)(c)2., Fla. Stat. (2022); Ch. 2024-23, § 4, at 7, Laws of Fla. A 2024 amendment to the recertification rules also specifies that, to be counted toward the new sixty-percent membership threshold, union members must not only have paid dues in the previous registration period, but also have submitted membership authorization forms. Ch. 2024-23, § 4, at 7, Laws of Fla. The CBAs of the Union Plaintiffs with CBAs last longer than one year, such that they would have to re-

[1] ECF No. 97-2 at 23–24 (CBA for instructional staff between Plaintiff ACEA and Defendant School Board of Alachua County); ECF No. 97-3 at 21–22 (CBA between Plaintiff UFF and the University of Florida Board of Trustees); ECF No. 97-5 at 15–17, 93–94 (CBA between Plaintiff LEA and nonparty School Board of Lafayette County); ECF No. 97-6 at 21 (CBA between Plaintiff HUSW and Defendant School Board of Hernando County); ECF No. 97-7 at 83–84 (CBA between Plaintiff PCTA and Defendant School Board of Pinellas County).

register—and, therefore, meet the sixty-percent threshold to avoid a recertification process—at least once.[2]

Unions of K-12 instructors and education personnel—among them Plaintiffs ACEA, LEA, and PCTA—were previously subject to a similar rule. That provision, however, set the threshold for required recertification petitions at fifty percent as opposed to sixty percent, and it did not require union members to have submitted membership authorization forms in order to be counted toward the threshold. *See* § 1012.2315(4)(c)2., Fla. Stat. (2022).

II

This Court now summarizes this case's procedural history. Plaintiffs bring seven claims. Counts I–III challenge the membership authorization form provision as unconstitutionally compelling them to speak, violating their rights to freedom of association, and violating their rights to equal protection under the law, respectively. Counts IV–VI challenge the payroll deduction ban as violating the Contracts Clause, unconstitutionally discriminating against them on the basis of viewpoint, and

[2] *See* ECF No. 97-2 at 15, 19 (CBA for instructional staff between Plaintiff ACEA and Defendant School Board of Alachua County, effective from August 1, 2021, until July 31, 2024); ECF No. 97-3 at 148 (CBA between Plaintiff UFF and the University of Florida Board of Trustees, effective from July 1, 2021, until June 30, 2024); ECF No. 97-5 ¶ 6 ("The CBAs [between Plaintiff LEA and nonparty School Board of Lafayette County] are in effect from July 1, 2022 through June 30, 2025."); ECF No. 97-6 at 9 (CBA between Plaintiff HUSW and Defendant School Board of Hernando County, effective from July 1, 2010, until June 30, 2026); ECF No. 97-7 at 19 (CBA between Plaintiff PCTA and Defendant School Board of Pinellas County, effective from April 12, 2022, until June 30, 2025).

violating their rights to equal protection under the law, respectively. Finally, Count VII challenges the recertification rules as violating the Contracts Clause.

Initially, the only Plaintiffs were ACEA, UFF-UF, UFF, and FEA, and the only Defendants were the three commissioners of PERC, each sued in their official capacities (the aforementioned "PERC Defendants"). ECF No. 1. After amending their complaint, ECF No. 13, those same Plaintiffs moved for a preliminary injunction, ECF No. 15. Their motion discussed only (1) their compelled speech challenge to the membership authorization form provision, (2) their Contracts Clause challenge to the payroll deduction ban, and (3) their viewpoint discrimination challenge to the payroll deduction ban. This Court denied this motion for lack of standing. ECF No. 45.

In their second amended complaint, Plaintiffs—now consisting of all Union Plaintiffs and Plaintiff Schueller—sue both the PERC Defendants and several of the public employers with whom they have or had CBAs (the "Public Employer Defendants"). ECF No. 48. Specifically, the Public Employer Defendants are the members of the Board of Trustees of the University of Florida, each sued in their official capacities, the School Board of Alachua County, the School Board of Pinellas County, and the School Board of Hernando County. *Id.* Plaintiffs again moved for a preliminary injunction, this time discussing their Contracts Clause challenge to the payroll deduction ban. ECF No. 63.

In addressing this second motion, this Court concluded that the Union Plaintiffs with CBAs had shown a substantial likelihood of success in establishing standing on this claim and that they could bring a Contracts Clause claim under 42 U.S.C. § 1983. This Court also concluded that, for purposes of a preliminary injunction, the Union Plaintiffs with CBAs had shown that the payroll deduction ban substantially undermined their contractual bargains. Nevertheless, this Court concluded that, for purposes of a preliminary injunction, the Union Plaintiffs with CBAs had not shown that the payroll deduction ban substantially interfered with their reasonable expectations regarding their ability to collect dues via payroll deduction or that it prevented them from safeguarding or reinstating their rights. For that reason, this Court denied Plaintiffs' second motion for preliminary injunction as well. ECF No. 106.

While Plaintiffs' second motion for preliminary injunction was pending, Plaintiffs moved for partial summary judgment against the PERC Defendants as to their challenges to the payroll deduction ban and recertification rules. ECF No. 98. The PERC Defendants filed a combined response and cross-motion for summary judgment on all counts. ECF No. 116.

After both sides had fully briefed their motions for summary judgment, the PERC Defendants filed a notice of amendments to the challenged provisions. ECF No. 139. These 2024 amendments impact the membership authorization form

provision and the recertification rules. This Court permitted the parties to supplement their summary judgment briefing to address the effects of the amendments on their pending cross-motions for summary judgment. ECF No. 140. The parties complied. ECF Nos. 143 & 147. This Order discusses the effects of those amendments within its discussion of standing as to the challenged provisions.

Two procedural matters remain. First, this Court recognizes that one of the amendments—namely, the added requirement that a dues-paying union member must have submitted a membership authorization form in order to be counted toward the sixty-percent threshold under the recertification rules—was enacted after having apparently been scrapped as a proposed PERC regulation. In their supplemental briefing on the effects of the 2024 amendments on the cross-motions for summary judgment, Plaintiffs requested leave to move for summary judgment as to Counts I–III in light of that new statute. ECF No. 143 at 4–5. As discussed *infra*, however, Plaintiffs lack standing for two of their three challenges to the membership authorization form provision, Counts I–II. This Court cannot grant leave to file a motion regarding counts over which it lacks jurisdiction. As for the challenge to the membership authorization form provision for which Plaintiffs do have standing, Count III, Plaintiffs were on notice that the regulation had been proposed anew before they filed their response to the PERC Defendants' motion for summary judgment. Despite their awareness, Plaintiffs did not request additional time to file

their response or conduct discovery, and they did not move for leave to amend their complaint. Instead, they addressed the proposed regulation in their response to the PERC Defendants' motion for summary judgment. *See* ECF No. 123 at 12 ("The impact of that regulation on Plaintiffs' challenges to [the recertification rules and membership authorization form provision] is fully explored in . . . this Brief."). Thus, Plaintiffs addressed the law while it was still a proposed regulation. This Court declines to afford Plaintiffs a second bite at the apple simply because the regulation is now a statute.

Second, both parties have requested oral argument on the cross-motions for summary judgment. ECF Nos. 98 & 116. For reasons discussed *infra*, Plaintiffs' sole surviving claim, Count IV, must be resolved at trial—not summary judgment. Therefore, this Court denies the parties' request for oral argument.

III

Now, the relevant standard. Summary judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A "genuine" dispute exists "if the evidence is such that a reasonable [factfinder] could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Facts are "material" with respect to the substantive law if they form disputes that are not "irrelevant or unnecessary" and have the potential to "affect the outcome of the

suit." *Id*. Where material facts are not in dispute, this Court may "resolve purely legal questions" at this stage. *Rodriguez v. Procter & Gamble Co.*, 465 F. Supp. 3d 1301, 1314 (S.D. Fla. 2020) (citation omitted).

When considering a motion for summary judgment, a district court must evaluate all material facts and logical inferences drawn from the evidence in the light most favorable to the nonmoving party. *Mize v. Jefferson City Bd. of Educ.*, 93 F.3d 739, 742 (11th Cir. 1996). On cross-motions for summary judgment, that standard remains the same.

IV

Before jumping into the merits, this Court, as it must, addresses standing. The Supreme Court has long held that an actual controversy exists when the parties have "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues." *Baker v. Carr*, 369 U.S. 186, 204 (1962). Over time, the Supreme Court has developed a three-part test for determining when such adverseness exists. Under that test, a plaintiff must show (1) that they have suffered an injury-in-fact that is (2) fairly traceable to the defendant and that (3) will likely be redressed by a favorable ruling. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–561 (1992). "[E]ach element of standing must be supported 'with the manner and degree of evidence required at the successive stages of the litigation.' " *Church v. City of Huntsville*, 30 F.3d 1332, 1336 (11th Cir. 1994)

(quoting *Lujan*, 504 U.S. at 561). Thus, at summary judgment, "a plaintiff cannot 'rest on such mere allegations, [as would be appropriate at the pleadings stage,] but must set forth by affidavit or other evidence specific facts, which for purposes of the summary judgment motion will be taken to be true.' " *Cacchillo v. Insmed, Inc.*, 638 F.3d 401, 404 (2d Cir. 2011) (some alteration in original) (quoting *Lujan*, 504 U.S. at 561).

Standing "is not dispensed in gross." *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996). Consequently, " 'a plaintiff must demonstrate standing for each claim he seeks to press' and 'for each form of relief' " that is sought. *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008) (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006)). Likewise, a plaintiff must also demonstrate standing for each statutory provision challenged. *Harrell v. Fla. Bar*, 608 F.3d 1241, 1253–54 (11th Cir. 2010); *see CAMP Legal Def. Fund, Inc. v. City of Atlanta*, 451 F.3d 1257, 1271–73 (11th Cir. 2006) (holding a plaintiff "may challenge only provisions . . . that affects its activities"). That said, the standing requirement is satisfied so long as a single plaintiff has standing. *See Rumsfeld v. FAIR*, 547 U.S. 47, 53 n.2 (2006). Finally, regardless of whether the parties address standing as to a given count, federal courts have an "independent obligation . . . to ensure a case or controversy exists as to each challenged provision[.]" *CAMP Legal Def. Fund, Inc.*, 451 F.3d at 1273.

Each count in this case comprises a distinct challenge to a provision.

Therefore, Plaintiffs must demonstrate that at least one of their number has standing as to each count. This Court evaluates Plaintiffs' standing as to each count, beginning with Count I.

A

Counts I–III are challenges to the membership authorization form provision. Only the PERC Defendants—not Plaintiffs—have moved for summary judgment as to these Counts. In Count I, Plaintiffs assert that the membership authorization form provision infringes their freedom of speech by compelling them to distribute a message they disagree with and wish not to distribute. ECF No. 48 ¶¶ 96–101. This Court has already discussed the Union Plaintiffs' standing as to Count I in its order denying their first motion for preliminary injunction, ECF No. 45. There, this Court held that the Union Plaintiffs lacked standing because they lacked an injury-in-fact. Specifically, the imposition of the membership authorization form provision may, as a practical matter, result in Union Plaintiffs distributing the forms to prospective members, because without completed forms from sixty percent of their dues-paying members, the Union Plaintiffs will face a recertification process, including elections.[3] ECF No. 45 at 4–7. Even so, the membership authorization form

[3] When this Court issued its order on Plaintiffs' first motion for preliminary injunction, ECF No. 45, permitting only dues-paying members who had completed a membership authorization form to be counted toward this sixty-percent threshold was merely a proposed regulation, as mentioned *supra*. ECF No. 45 at 6–7 (citing ECF No. 41-6 at 3). That provision has since been codified in statute. *See* Ch. 2024-23, § 4, at 7, Laws of Fla. (amending § 447.305(6), Fla. Stat. (2023)).

provision *itself* does not force them to do so. *Id.* And Plaintiffs could not, at that stage, identify a case holding that such a *de facto* command amounted to compelled speech. *Id.* at 7.

Now, Plaintiffs contend they have found support for their position. They point to caselaw concerning standing for prior restraint and pre-enforcement chilled speech challenges to argue that this Court should "eschew[] a formalistic analysis" and examine the practical effects of the membership authorization form provision. ECF No. 123 at 47–49 (citing *Healy v. James*, 408 U.S. 169, 183 (1972); *Speech First, Inc. v. Cartwright*, 32 F.4th 1110 (11th Cir. 2022)). According to them, this practical focus for standing follows from "substantive First Amendment doctrine" as embodied in unconstitutional conditions caselaw. ECF No. 123 at 49–51 (citing *Bd. of Comm'rs v. Umbehr*, 518 U.S. 668, 674 (1996)).

These arguments do not move the needle. For one, courts have crafted different sets of rules for different types of free speech violations. Plaintiffs cannot engraft aspects of one theory onto another. Instead, because Plaintiffs have brought a compelled speech claim, they must rely on principles applicable to compelled speech cases—not to chilled speech and prior restraint cases such as *Speech First* and *Healy*, respectively. And compelled speech cases require a direct injury-in-fact, not an injury from a practical effect.

Likewise, this Court refuses to engraft principles of a substantive concept,

such as the unconstitutional conditions doctrine, onto the standing analysis. And, at any rate, the unconstitutional conditions doctrine applies when the government places conditions *on the plaintiff*. *See, e.g.*, *USAID v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 214 (2013) (affirming funding applicants' challenge to policy "compel[ling] as a condition of federal funding the affirmation of a belief"). Here, the Union Plaintiffs' asserted need to distribute the forms comes from a statutory command to their *members* to complete, sign, date, and submit them. Plaintiffs cite no unconstitutional conditions case, and this Court's own research has revealed none, premised on such an injury. Finally, although the membership authorization form provision does require unions to *retain* the forms their members submit to them, that is neither compelled speech nor related to the need to *distribute* the forms.

Plaintiffs do not address Plaintiff Schueller's standing as to Count I, but this Court has an independent obligation to do so. *See CAMP Legal Def. Fund, Inc.*, 451 F.3d at 1273. Plaintiff Schueller does not have standing, either. The parties agree that the "right-to-work" message on the membership authorization form is government speech.[4] ECF No. 42 at 10. The membership authorization form

[4] Plaintiffs argue that some of the information on the form—namely, the statement that "[n]o employee may be discriminated against in any manner . . . for refusing to join or financially support a labor union"—is incorrect. ECF No. 123 at 45 n.13. They point to authority stating that unions need not process grievances for nonmembers and that unions may exclude nonmembers from certain activities. *Id.* (citing *NLRB v. Fin. Inst. Emps., Loc. 1182*, 475 U.S. 192, 205 (1986); § 447.401, Fla. Stat.). But government speech doctrine does not distinguish between true and false statements of law. True or false, the Constitution's free-speech protections do not restrain government speech. *Cf.* Caroline Mala Corbin, *The Unconstitutionality of Government*

provision does not demand that Plaintiff Schueller adhere to, carry, or affirm that message—just that she "sign and date" the form on which the message appears.[5] § 447.301(1)(b)1. That is not compelled speech.[6]

Therefore, because Plaintiffs have not suffered an injury-in-fact—that is, because the membership authorization form provision does not compel them to speak—they lack standing as to Count I. And because the standing defect in Count I is the absence of an injury-in-fact as opposed to a lack of traceability or redressability, Plaintiffs also lack standing to bring this claim against the other defendants in this matter, the Public Employer Defendants. Count I is due to be dismissed for lack of standing.[7]

B

This Court now turns to Count II, Plaintiffs' freedom of association challenge to the membership authorization form provision. For purposes of summary

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Propaganda, 81 Oh. St. L.J. 815 (2019) (observing that government speech doctrine does not distinguish between true and false statements of fact).

[5] It is worth noting that the signature and date blocks come on the first page of the form, before the right-to-work message on the second page. *See* ECF No. 115-7.

[6] Plaintiff Schueller does not challenge as compelled speech the requirement that she provide on the membership authorization form her class title and class code, the identity and salaries of the union's five highest compensated officers and employees, and other information. ECF No. 45 ¶ 99.

[7] Plaintiffs highlighted a recent Supreme Court opinion, *Moody v. NetChoice*, in their notice of supplemental authority, ECF No. 151. The Supreme Court's analysis in *NetChoice* does not change the standing analysis here, because here, no Plaintiff is compelled to convey the Government's speech.

judgment, Plaintiffs lack standing as to this Count.

The Union Plaintiffs do not address standing in their briefing. At best, they allege that the membership authorization form provision "infringes the[ir] freedom of association rights . . . by depriving them of a core aspect of their institutional autonomy, namely, their autonomy over their membership admissions process." ECF No. 48 ¶ 107. But the membership authorization form provision does no such thing. It does affect which union members may be counted toward the sixty-percent membership threshold—which may, in turn, affect whether a union certified as a bargaining representative remains certified. Restricting which union members can be counted as members for recertification purposes, however, is not the same as restricting an employee from becoming a union member in the first place. The former arguably frustrates the purpose of union membership, but only the latter touches the membership admission process. In plain terms, an employee need not sign a membership authorization form to join a union. The Union Plaintiffs have not, on this record, established they have suffered an injury-in-fact.

Plaintiff Schueller, in contrast, has suffered an injury-in-fact. Plaintiff Schueller intends not to sign a membership authorization form—partly because she objects to the "right-to-work" message, partly because she does not know much of the information the form requires, and partly because she "object[s] to the State Government dictating the terms on which [she] can become a full-fledged member

of an association . . . ." ECF No. 120-3 ¶¶ 14–16, 20–21.[8]

But if Plaintiff Schueller does not sign, date, and submit a membership authorization form, then she will not count toward the sixty-percent membership threshold, decreasing the likelihood that one of her unions, Plaintiff UFF, will avoid having to petition PERC for recertification. If Plaintiff UFF loses a recertification election, it will no longer be able to bargain on her behalf, and the CBA between it and the University of Florida Board of Trustees will no longer be effective. Thus, the membership authorization form provision arguably dilutes the value of Plaintiff Schueller's union membership by preventing her—unless and until she submits a form—from counting among the employees PERC recognizes, for recertification purposes, as union members.

The PERC Defendants point out that an individual can become a union member without signing a membership authorization form and that, as a result, the membership form provision does not infringe the right to join a union, let alone affect union membership at all. ECF No. 116-1 at 74–75; ECF No. 131 at 50–51. Thus, the PERC Defendants argue, the membership authorization form provision imposes an

[8] Plaintiffs filed this declaration in support of their response to the PERC Defendants' motion for summary judgment, ECF No. 115, and in support of their own motion for partial summary judgment, ECF No. 98—thus, after they had already filed their motion. But Plaintiffs did not move for leave to file additional evidence in support of their motion. Therefore, this Court will consider neither this declaration nor the others filed with it in evaluating Plaintiffs' motion for partial summary judgment. This Court will, however, consider this declaration in evaluating the PERC Defendants' motion for summary judgment. *See* N.D. Fla. Local Rule 56.1(C).

"independent obligation on employees" rather than interfere with their freedom of association. *Id.*

As this Court explained *supra*, Defendants are correct that an individual may join or belong to a union without submitting a membership authorization form. Nonetheless, binding precedent recognizes as "fundamental" not only "[t]he right to organize collectively[,]" but also the right "to select representatives for purposes of engaging in collective bargaining . . . ." *United Steelworkers of America, AFL-CIO v. Univ. of Ala.*, 599 F.2d 56, 61 (5th Cir. 1979) (citations omitted).[9] In preventing Plaintiff Schueller from counting toward the sixty-percent threshold notwithstanding her status as a union member, the membership authorization form provision diminishes her ability to use her union membership for its classic purpose—engaging, through her chosen representatives, in collective bargaining. *See id.* This is an injury-in-fact.[10]

Plaintiff Schueller's injury-in-fact is fairly traceable to the PERC Defendants. PERC is responsible for "prescrib[ing]" the membership authorization form and may

[9] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down before October 1, 1981.

[10] Plaintiffs also point to a previously proposed regulation that would have allowed PERC to issue a show-cause order to a dues-paying union member who has not submitted a completed membership authorization form. Inasmuch as this regulation has only been proposed in the past, an injury flowing from it is speculative at best and cannot support the standing of any Plaintiff here.

inspect the completed forms, which members submit to their unions. § 447.301(1)(b)1., (b)5. PERC may also "adopt rules to implement" those actions. § 447.301(1)(b)7. Because it prescribes the forms, PERC ensures that the "right-to-work" message appears on the forms and determine which other information (including the information Plaintiff Schueller does not know) those forms require. Additionally, PERC's inspection power allows it to verify whether those individuals whom the union counts toward the sixty-percent threshold have completed the membership authorization forms.

Nonetheless, Plaintiff Schueller's injury would not be redressed by an injunction preventing the PERC Defendants from enforcing the membership authorization form provision. Her problem is that, in addition to not submitting a membership authorization form, she has not paid union dues since the University of Florida ceased deducting and remitting her union dues in or about July 2023. ECF No. 120-3 ¶¶ 9–10. Thus, according to the 2023 and 2024 amendments to PERA, she would not currently be able to count toward the membership threshold for the independent reason that she has not paid dues. Ch. 2024-23, § 4, at 7, Laws of Fla.; Ch. 2023-35, § 4, at 6, Laws of Fla. As a result, even with a court order enjoining enforcement of the membership authorization form requirement, Plaintiff Schueller would not count toward the sixty-percent threshold because she has not paid her membership dues.

Because the Union Plaintiffs have failed to establish an injury-in-fact, and because the injunction Plaintiffs seek would not redress Plaintiff Schueller's injuries, Plaintiffs lack standing as to Count II. Count II is due to be dismissed for lack of standing.

C

This Court now turns to Count III, Plaintiffs' equal protection challenge to the membership authorization form provision. For purposes of summary judgment, the Union Plaintiffs with CBAs have established standing as to this Count. The membership authorization form provision imposes a restriction—namely, that union members must complete the membership authorization form to be counted toward the sixty-percent threshold—upon the members of the Union Plaintiffs with CBAs. It also requires the unions to which the members belong (that is, the Union Plaintiffs with CBAs) to retain completed membership authorization forms for inspection by PERC. The membership authorization form provision, however, does not require members of unions certified as bargaining representatives for public safety employees to complete a membership authorization form. § 447.301(1)(b)6. Thus, it also does not require members of those unions to retain membership authorization forms. As a result, the requirement that unions retain membership authorization forms discriminates on the basis of the group the union represents. This is an injury-in-fact.

This injury-in-fact is fairly traceable to the PERC Defendants. As mentioned *supra*, PERC "prescribes" the membership authorization form, inspects the completed forms, and "adopt[s] rules to implement" those actions. § 447.301(1)(b)1., (b)5., (b)7. An injunction prohibiting the PERC Defendants from enforcing the membership authorization form provision would also redress the injury-in-fact the Union Plaintiffs with CBAs suffer. If the PERC Defendants could not prescribe the forms or verify whether the members whom a union counts toward the sixty-percent threshold have completed the forms, then the Union Plaintiffs with CBAs would be able to count members toward the threshold without regard to whether the members have submitted a membership authorization form—just like unions representing public safety employees may do.

Accordingly, the Union Plaintiffs with CBAs have, for purposes of summary judgment, established standing as to Count III. Because the standing requirement is satisfied so long as a single plaintiff has standing, *see Rumsfeld*, 547 U.S. at 53 n.2, this Court need not, and so does not, address whether the other Plaintiffs have standing as to Count III.

D

Counts IV–VI challenge the payroll deduction ban. Both Plaintiffs and the PERC Defendants have moved for summary judgment as to these Counts. In Count IV, Plaintiffs argue that this ban violates the Contracts Clause. For purposes of

summary judgment, the Union Plaintiffs with CBAs have established standing as to this Count.

As discussed in this Court's order denying Plaintiffs' second preliminary injunction motion, the Union Plaintiffs with CBAs have demonstrated an injury-in-fact—namely, the payroll deduction ban nullifies an express term of their CBAs. ECF No. 45 at 8. Under their CBAs, these Plaintiffs have a contractual right to dues deduction directly from employer payroll. The payroll deduction ban impairs the conditions of those CBAs because it prohibits this bargained-for method of dues deduction.

These Plaintiffs' injuries are also fairly traceable to the PERC Defendants. Unions that attempt to work with a public employer to deduct member dues directly from payroll commit an unfair labor practice. *See* § 447.501(2)(b) (naming as an unfair labor practice a union's "causing or attempting to cause [a] public employer to violate any of the provisions of this part"); § 447.303 (payroll deduction ban appears in the same part as above subsection). PERC processes charges of unfair labor practices and remedies violations when they have occurred. §§ 447.503, 447.207(6). Specifically, although PERC cannot bring charges of an unfair labor practice, *see* § 447.503(1), it evaluates the sufficiency of the charges, determines whether an unfair labor practice has occurred, and, when it finds that one has occurred, can issue a cease-and-desist order and "take such positive action, including

reinstatement of employees with or without back pay, as will best implement the general policies expressed in this part." § 447.503(2), (2)(a), (6)(a). Relevant here, PERC may decline to certify a union that has engaged in an unfair labor practice. *See* § 447.307(1)(b).

Finally, enjoining the PERC Defendants from enforcing the payroll deduction ban would redress the injuries Union Plaintiffs with CBAs suffer. If the PERC Defendants could not enforce the ban, unions could continue with public employers to have member dues deducted directly from payroll—all without the fear of an unfair labor practice charge, proceedings, and violation.[11]

Accordingly, the Union Plaintiffs with CBAs have, for purposes of summary judgment, established standing as to Count IV. Because the standing requirement is satisfied so long as a single plaintiff has standing, *see Rumsfeld*, 547 U.S. at 53 n.2, this Court need not, and so does not, address whether the other Plaintiffs have standing as to Count IV.

E

This Court now turns to Count V, Plaintiffs' viewpoint discrimination challenge to the payroll deduction ban. For purposes of summary judgment, the

[11] As mentioned in both of its orders denying Plaintiffs' motions for preliminary injunction, the Public Employer Defendants are also needed to redress the injuries the Union Plaintiffs with CBAs suffer. ECF No. 45 at 9–12; ECF No. 106 at 8. The Public Employer Defendants have not moved for summary judgment, and Plaintiffs have not moved for summary judgment against them. Nonetheless, because these Defendants are still parties to this case, their noninvolvement in the briefing here does not affect this Court's standing analysis.

Union Plaintiffs with CBAs have established standing as to this Count. As discussed in this Court's order denying Plaintiffs' first motion for preliminary injunction, the Union Plaintiffs with CBAs have demonstrated an injury-in-fact—namely, the payroll deduction ban eliminates their primary mode of dues collection. ECF No. 45 at 8. And for the same reasons that their injury-in-fact in Count IV is fairly traceable to and redressable by the PERC Defendants, so, too, is their injury in this Count fairly traceable to and redressable by the PERC Defendants. In short, attempting to deduct member dues directly from employer payroll is grounds for an unfair labor practice charge. PERC can investigate and hold hearings on such a charge, determine whether a violation has occurred, and take "positive action" against the violator. Enjoining the PERC Defendants from enforcing the payroll deduction ban would allow the Union Plaintiffs with CBAs to continue collecting member dues via payroll deduction, as they did before the payroll deduction ban became law.

Accordingly, the Union Plaintiffs with CBAs have, for purposes of summary judgment, established standing as to Count V. Once again, because the standing requirement is satisfied so long as a single plaintiff has standing, *see Rumsfeld*, 547 U.S. at 53 n.2, this Court need not, and so does not, address whether the other Plaintiffs have standing as to Count V.

F

This Court now turns to Count VI, Plaintiffs' equal protection challenge to the

payroll deduction ban. For purposes of summary judgment, the Union Plaintiffs with CBAs have established standing as to this Count. This provision imposes a restriction—namely, a ban on collecting member dues directly from employers' payroll—upon the Union Plaintiffs with CBAs but not on unions certified as bargaining representatives for public safety employees. § 447.303(1)–(2)(a). Thus, it discriminates on the basis of the group the union represents. This is an injury-in-fact. Additionally, the injury-in-fact the Union Plaintiffs with CBAs suffer is traceable to, and redressable by an injunction against, the PERC Defendants for the same reasons that their injuries identified in Count IV are traceable to, and redressable by an injunction against, the PERC Defendants.

Accordingly, the Union Plaintiffs with CBAs have, for purposes of summary judgment, established standing as to Count VI. Because the standing requirement is satisfied so long as a single plaintiff has standing, *see Rumsfeld*, 547 U.S. at 53 n.2, this Court need not, and so does not, address whether the other Plaintiffs have standing as to Count VI.

G

In Count VII, Plaintiffs assert that the recertification rules[12] violate the

[12] Plaintiffs also challenge a provision from Section 4 that required a union applying for re-registration to include a "current annual audited financial statement, certified by an independent certified public accountant . . . ." Ch. 2023-55, § 4, at 5, Laws of Fla. This "audit requirement" has since been replaced by a provision requiring an "annual financial statement, prepared by an independent certified public accountant[.]" Ch. 2024-23, § 4, at 5, Laws of Fla. In their response to the PERC Defendants' notice of amendments, Plaintiffs acknowledged "that the audit

Contracts Clause. Both Plaintiffs and the PERC Defendants have moved for summary judgment as to this Count. For purposes of summary judgment, the Union Plaintiffs with CBAs have established standing as to this Count. These additional rules impose the sixty-percent threshold mentioned *supra*—an uptick from the fifty percent to which Plaintiffs ACEA, LEA, and PCTA were previously subject. § 447.305(6), Fla. Stat. (2023); Ch. 2023-35, § 6, at 8, Laws of Fla. They also add the requirement that, to be counted toward the sixty-percent threshold required to avoid a recertification election as often as annually, the union members must also have submitted the membership authorization form. Ch. 2024-23, § 4, at 7, Laws of Fla.

On its own, the increased possibility of a recertification process would be too speculative to constitute an injury-in-fact. That is not the injury the Union Plaintiffs with CBAs assert, however.[13] Rather, these Plaintiffs assert that they are parties to contracts whose very terms have been frustrated. *See* ECF No. 123 at 33 ("[T]he Unions have *already* suffered injury because Section 4 has altered the terms that

requirement was a barrier to recertification only for small unions . . . and even then, only in combination with Section 4's other impairments," such as the recertification rules. ECF No. 143 at 5 n.1. Insofar as the "audit requirement" has been repealed, Plaintiffs' challenge to it is moot.

[13] Relatedly, the PERC Defendants argue that, to the extent Plaintiffs assert a future decertification as the injury-in-fact on which they rely for standing for this claim, their claim is not ripe. ECF No. 116-1 at 45–51; ECF No. 131 at 29–30. This Court does not take Plaintiffs to have raised a claim based on potential future decertification. Instead, the only asserted injury to the Union Plaintiffs with CBAs that this Court need consider is the frustration of those terms of their CBAs setting out a multi-year duration. Therefore, this Court does not reach the PERC Defendants' ripeness arguments at this juncture.

govern the duration of their CBAs.") (citation omitted).

For Plaintiffs UFF and HUSW, the imposition of a threshold to avoid having to petition for recertification after each registration period (that is, each year) is a new requirement. The record reveals that Plaintiff UFF was not expecting this requirement when it negotiated its multi-year CBA. *See* ECF No. 97-3 ¶ 8 ("UFF had no reason to expect and did not in fact expect that it could be decertified as the exclusive representative of the University of Florida employees it represents during the term of the CBA."). Previously, these Plaintiffs could only be subject to a decertification election between one hundred fifty and ninety days before their CBA expired. *See* § 447.307(3)(d). Because a multi-year contract provides less certainty when a process that can result in its nullification is available following each (annual) registration period, the threshold arguably dilutes the value of the terms of their CBAs setting out a multi-year duration.

For Plaintiffs ACEA, LEA, and PCTA, who are already subject to a threshold, the increase of the threshold from fifty percent to sixty percent and further restriction of members who can be counted toward the threshold (no longer all dues-paying members, but only dues-paying members who have submitted membership authorization forms) increase the likelihood of the need to petition for recertification and, to that extent, also increase the likelihood of decertification. This, too, arguably dilutes the value of the terms of their CBAs setting out a multi-year duration.

For all Union Plaintiffs with CBAs, the increased possibility of recertification processes each year is only a possibility. Even so, both the imposition of that possibility and the consequence of losing certification threaten the multi-year duration that the Union Plaintiffs with CBAs negotiated and, thus, the longer-term certainty for which they negotiated. Consequently, the recertification rules diminish the value of these Plaintiffs' CBAs. This is an injury-in-fact.[14]

This injury-in-fact is fairly traceable to the PERC Defendants. PERC is responsible for reviewing petitions for recertification, and if it finds that a petition is insufficient, it may dismiss the petition. §§ 447.305(6), 447.307(3)(a). Additionally, an injunction prohibiting the PERC Defendants from enforcing the recertification rules would redress the injuries of the Union Plaintiffs with CBAs. Plaintiffs UFF and HUSW would not be threatened with early termination of their CBAs because there would be no need to reach a threshold to avoid a recertification process. Plaintiffs ACEA, LEA, and PCTA would remain subject to a threshold, but to a

[14] The PERC Defendants also argue that the Union Plaintiffs with CBAs have not suffered an injury in their own right. They rely on Plaintiffs' responses to the PERC Defendants' first set of interrogatories, in which Plaintiffs state that "[t]here are no provisions of the CBAs [other than those allowing payroll deductions] that are for the benefit of the Unions and not for employees." ECF No. 115-13 at 9. The PERC Defendants portray this statement as an admission that the Union Plaintiffs with CBAs have not suffered an injury-in-fact. ECF No. 116-1 at 44. Not so. Plaintiffs' response means that, in their view, all provisions of the CBAs benefit both the Union Plaintiffs with CBAs *and* employees. *See* ECF No. 115-13 at 9 (requesting Union Plaintiffs "[i]dentify which specific contractual provisions that are for Your benefit, rather than the employees' benefit . . . ."; registering objection "to the extent that the question contains a premise that there are provisions of the CBAs that are for the benefit of the Unions and nor for employees").

lower one.

Accordingly, the Union Plaintiffs with CBAs have, for purposes of summary judgment, established standing as to Count VII. Because the standing requirement is satisfied so long as a single plaintiff has standing, *see Rumsfeld*, 547 U.S. at 53 n.2, this Court need not, and so does not, address whether the other Plaintiffs have standing as to Count VII.

* * *

To summarize, for purposes of summary judgment, Plaintiffs have standing as to all counts except for Counts I and II. Counts I and II are due to be dismissed without prejudice for lack of standing.

V

This Court addresses one additional matter before turning to the merits. In Counts IV and VII, Plaintiffs assert that the payroll deduction ban and the recertification rules, respectively, violate the Contracts Clause. Plaintiffs bring these claims both under 42 U.S.C. § 1983 and under the Contracts Clause itself. ECF No. 48 ¶ 5. The PERC Defendants have argued here and elsewhere that Plaintiffs cannot bring these claims under either section 1983 or the Contracts Clause. In its order denying Plaintiffs' second motion for preliminary injunction, this Court held that

Plaintiffs could, in fact, bring their Contracts Clause claims under section 1983.[15] ECF No. 106 at 9–17. This Court stands by its earlier reasoning and incorporates its analysis, *id.*, by reference into this Order.[16] Nonetheless, this Court must discuss two new arguments the PERC Defendants raise in their summary judgment briefing.

The PERC Defendants first clarify their position that *Carter v. Greenhow*, 114 U.S. 317 (1885), not only "settled the issue" on whether a plaintiff may bring a Contracts Clause claim under section 1983, but also "was correct as an original matter." ECF No. 116-1 at 22–23. An assertion that a case was correctly decided, however, means little if disagreement exists as to *what* it decided. This Court has held that *Carter* does not stand for what the PERC Defendants assert it does. Their position that *Carter* is correct does not change this Court's analysis.

The PERC Defendants also observe that Justice O'Connor joined the majority in two cases construing *Carter*—namely, *Dennis v. Higgins*, 498 U.S. 439 (1991), and *Crosby v. City of Gastonia*, 635 F.3d 634 (4th Cir. 2011). In *Dennis*, the Supreme Court, addressing the issue of whether a plaintiff may sue for violations of the Commerce Clause under section 1983, rejected the dissent's reliance on *Carter* for

[15] Because this Court held that Plaintiffs could bring their Contracts Clause claims under section 1983, this Court did not reach the question of whether Plaintiffs could bring them under the Contracts Clause itself. It need not, and so does not, reach that question here, either.

[16] This Court could have copied and pasted the analysis in its order denying Plaintiffs' second motion for preliminary injunction into this Order, but it incorporates its analysis by reference for the sake of efficiency.

the notion that "the Commerce clause does not secure any rights, privileges, or immunities within the meaning of § 1983 . . . ." *Dennis*, 489 U.S. at 451 n.9. The Court observed that it had "already given [*Carter*] a narrow reading" as a case about " 'a matter of pleading.' " *Id.* (citing *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 613 n.29 (1979)).

Twenty years later, a Fourth Circuit panel, with Justice O'Connor riding circuit, held that "the continuing vitality of *Carter* with respect to the Contracts Clause was not before the *Dennis* Court" and that "*Carter* stands even today for the proposition that an attempted § 1983 action alleging state impairment of a private contract will not lie." *Crosby*, 635 F.3d at 640–41. The PERC Defendants urge that Justice O'Connor's joining the majority in *Crosby* "would be bizarre" if *Carter* did not foreclose a Contracts Clause claim under section 1983. ECF No. 116-1 at 23–24.

This Court will not speculate as to Justice O'Connor's unstated reasoning. Nor will this Court further speculate as to how Justice O'Connor's unstated reasoning bears on the written opinions in *Dennis* and *Crosby*. Written opinions are authority. Judges' possible thought processes in deciding to join written opinions are not. Instead, this Court hews to its reasoning, including its analysis of Supreme Court precedent, in its order denying Plaintiffs' second motion for preliminary injunction, ECF No. 106. *Carter* does not preclude Plaintiffs from bringing their Contracts Clause claims under section 1983.

VI

This Court now turns to the merits of the claims for which Plaintiffs have standing.

A

This Court begins with Count III, the one remaining count for which only the PERC Defendants move for summary judgment. In Count III, Plaintiffs assert that the membership authorization form provision violates the Equal Protection Clause by unjustifiably discriminating against "disfavored" unions. Specifically, they argue that this provision burdens most classes of unions, which generally opposed Governor Ron DeSantis's successful 2022 gubernatorial campaign, but exempts public safety unions (at least those unions certified as bargaining representatives), which generally supported it. *See* ECF No. 99-1 at 25–26, 41, 47–48; ECF No. 123 at 28–30, 59–60. They agree with the PERC Defendants that rational basis review applies, but they contend that no rational basis exists for the classification. ECF No. 123 at 59–60; *see id.* at 28–30 (arguing the payroll deduction ban violates the equal protection clause), 59–60 (incorporating payroll deduction ban arguments in equal protection challenge to membership authorization form provision).

As just mentioned, the parties agree that rational basis review applies. On rational basis review, a court's task is to assess both the strength of the government's interest and the fit between that interest and the restriction the statute imposes. It is

not to look beyond a permissible justification to sleuth out impermissible motives. Instead, "because we never require a legislature to articulate its reasons for enacting a statute, it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature." *F.C.C. v. Beach Communications, Inc.*, 508 U.S. 307, 315 (1993); *see also Haves v. City of Miami*, 52 F.3d 918, 923 (11th Cir. 1995) ("Appellants' evidence of improper motive does not create a genuine issue of material fact sufficient to survive summary judgment because the actual purposes of Ordinance 10932 are not relevant to a rational-basis equal protection inquiry.").

Thus, Plaintiffs may portray the membership authorization form requirement as "nothing more than naked 'favoritism for certain labor organizations performing the same services as the non-exempted labor organizations.' " ECF No. 123 at 30 (citing *Ky. Educ. Ass'n v. Link*, No. 23-CI-00343 (Ky. Cir. Ct. Aug. 30, 2023)). They may also allege political hostility as the true impetus for the challenged amendments. *See* ECF No. 48 ¶¶ 24, 84. But to the extent Plaintiffs suggest this Court should interrogate the Florida Legislature's motivation in passing the challenged provision while applying rational basis review to their claim, they are mistaken. As explained *supra*, the case law is clear—the Florida Legislature's motivation in passing the challenged provision is irrelevant for purposes of applying rational basis review.

This Court now determines whether the membership authorization form survives rational basis review. "On rational basis review, '[t]he general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest.' " *Cook*, 792 F.3d at 1301 (alteration in original) (quoting *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. at 440). The legislature making the classification "need not actually articulate at any time the purpose or rationale supporting its classification." *Heller v. Doe by Doe*, 509 U.S. 312, 320 (1993) (internal quotation marks omitted). "Instead, a classification must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Id.* (internal quotation marks omitted). "[T]he burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it, whether or not the basis has a foundation in the record." *Id.* at 320–21 (internal quotation marks omitted). "A classification does not fail rational-basis review because it is not made with mathematical nicety or because in practice it results in some inequality." *Id.* at 321 (internal quotation marks omitted). Likewise, a legislature may address a perceived policy issue stepwise and piecemeal, "select[ing] one phase of one field and apply[ing] a remedy there, neglecting the others." *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483, 489 (1955).

Rational basis review, however, does not mean that courts should stick their heads in the sand or accept any justification the government offers. "Regardless of the level of scrutiny, there is no substitute for careful, unbiased, intellectually honest analysis." *Doe v. Ladapo*, Case No. 4:23cv114-RH-MAF, 2024 WL 2947123, at *12 (N.D. Fla. Jun. 11, 2024) (Hinkle, J.). For example, a statute fails even rational basis review where *no* legitimate government interest exists to support it. *See, e.g.*, *City of Cleburne*, 473 U.S. at 446–50 (observing that "some objectives—such as a bare . . . desire to harm a politically unpopular group—are not legitimate state interests"; holding zoning ordinance failed rational basis review where it was unrelated to government's proffered legitimate interests and instead "rest[ed] on an irrational prejudice against the mentally [impaired]") (quoting *Zobel v. Williams*, 457 U.S. 55, 63 (1982)).

But that is not this case. Although it is not their burden to advance a justification, the PERC Defendants assert that "public employees are often in the dark about their rights, the nature of their relationship with the unions, and the unions' use of their dues." ECF No. 116-1 at 12–13 (citing ECF Nos. 115-1, 115-3, 115-4, 115-5).[17] The government has a legitimate interest in a public employee

[17] Plaintiffs argue that this Court should not consider the exhibits supporting this justification because they are inadmissible. ECF No. 123 at 13–14. Regardless of their admissibility, however, they evince "a reasonably conceivable state of facts" supporting the membership authorization form provision." *See Heller*, 509 U.S. at 320. Because a rationale need not have "a foundation in the record," *see id.* at 320–21, this Court may consider the rationale these exhibits suggest, regardless of their admissibility..

workforce familiar with its unions and union rights, and the membership authorization form—which requires inclusion of information concerning the unions' highest-paid officers and other information about union membership—is rationally related to that interest.

Plaintiffs argue that this is not enough because it does not explain why public safety employees and their unions are exempted from the provision while other public employees and unions are not. ECF No. 123 at 29. In their view, the State's proffered rationales for differentiating between regular public employees and unions and public safety employees and unions—including "the dangerous nature of public safety jobs[,] a concern for labor peace among public safety employees[, and] the absence of one centralized work location"—fail to support the exemption. *Id.* All that could support the exemption, Plaintiffs say, is "evidence that members of [public safety] unions are any more knowledgeable about Florida's 'right-to-work' laws or their union officers' salaries than are members of disfavored unions." *Id.* at 60. They assert the record contains no such evidence. *Id.*

Even without evidence supporting this rationale, however, the membership authorization form provision still survives rational basis review. This deferential level of scrutiny does not require the Florida Legislature, in remedying a perceived wrong, to explain why its remedy does not extend to all groups. Instead, the Florida Legislature is entitled to "select one phase of one field and apply a remedy there,

neglecting the others." *See Williamson*, 348 U.S. at 489 (rejecting optician's equal protection challenge to law that prohibited opticians from duplicating or fitting lenses without an optometrist's or ophthalmologist's prescription but exempted sellers of ready-to-wear glasses). Thus, it is entitled to pass a law to inform most public employees about union-related information while excluding a subset of public employees from that law's reach. The membership authorization form provision does just that.

Plaintiffs also argue—based on the same lack of evidence that public safety employees know more than other public employees about Florida union laws or union officers' salaries—that the membership authorization form is "wildly underinclusive." ECF No. 123 at 59–60 (citing *NIFLA v. Becerra*, 585 U.S. 755, 774 (2018)). But underinclusiveness only "raises a red flag," *Williams-Yulee v. Florida Bar*, 575 U.S. 433, 449 (2015), and then only when the challenged law is subject to heightened scrutiny. Plaintiffs cite no case, and this Court's own research has revealed none, where an underinclusive provision fails rational basis review. *See, e.g.*, *Vance v. Bradley*, 440 U.S. 93, 108 (1979) (examining provision subject to rational basis review under equal protection challenged: "[e]ven if the classification involved here is to some extent both underinclusive and overinclusive, and hence the line drawn by Congress imperfect, it is nevertheless the rule that in a case like this perfection is by no means required") (internal quotation marks omitted). Given

that rational basis review applies and that a rational basis exists, the challenged amendments do not fail for underinclusiveness.

At best, Plaintiffs' argument boils down to an understandable skepticism of the State's stated rationale for exempting public safety unions and their employees from the membership authorization form provision and other amendments to PERA. As mentioned *supra*, Plaintiffs assert that these exemptions instead constitute hostility toward them and favoritism toward the exempted unions. Plaintiffs may well be correct. But alongside Plaintiffs' asserted rationale is a reasonably conceivable, permissible rationale—namely, the desire to keep public employees informed about unions. A rational basis is no less rational simply because a plaintiff can articulate an irrational alternative. Nor is a provision unconstitutional simply because the same rational basis would justify a broader scope of effect.

Accordingly, the membership authorization form provision is rationally related to the legitimate government interest of ensuring public employees know their unions and their union rights. And although the provision exempts public safety employees, rational basis review permits such a carve-out. *See Williamson*, 348 U.S. at 489. As a result, the provision survives rational basis review. This Court recognizes the frustration Plaintiffs may feel toward this conclusion. The Equal Protection Clause has long restrained the government from pushing one group below another, yet it permits the State of Florida to do just that to the bulk of its public

employee unions. But this Court cannot rewrite equal protection law or ignore the low bar that rational basis review presents.

The PERC Defendants' motion for summary judgment is due to be granted as to Plaintiffs' equal protection challenge to the membership authorization form provision, Count III.

B

This Court proceeds to Counts IV–VII. Both Plaintiffs and the PERC Defendants move for summary judgment on these counts. In Count IV, Plaintiffs challenge the payroll deduction ban as violating the Contracts Clause. This Court took up this claim in its order denying Plaintiffs' second motion for summary judgment, ECF No. 106. Now, with the benefit of a fuller record and fuller briefing, this Court revisits its analysis.[18] It concludes that neither side is entitled to summary judgment as to this Count. For the reasons explained *infra*, this claim requires resolution at trial.

The Constitution prohibits the States from passing "any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts." U.S. Const. art. I, § 10. The final clause quoted, known as the Contracts Clause, "applies to any kind of

[18] This Court is well aware that, unlike at the preliminary injunction stage, it cannot find facts at summary judgment. Nevertheless, because the parties crafted their arguments here against the backdrop of this Court's substantial impairment analysis in its order denying Plaintiffs' second motion for preliminary injunction, and given that neither points to new evidence affecting this factor, this Court uses its prior analysis as a starting point for the substantial impairment analysis here.

contract." *Sveen v. Melin*, 584 U.S. 811, 818 (2018). It is not, however, an absolute bar to legislation that affects contracts. Rather, the Constitution recognizes that contracts reflect parties' expectations about the future, and at times it may be necessary for a government to subordinate those expectations to the needs of the public's health, safety, and welfare. *See Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 241 (1978) (explaining the Contracts Clause "does not operate to obliterate the police power of the States").

For a Contracts Clause claim,

> The threshold issue is whether the state law has operated as a substantial impairment of a contractual relationship. . . . If [it has], the inquiry turns to the means and ends of the legislation. In particular, the Court has asked whether the state law is drawn in an appropriate and reasonable way to advance a significant and legitimate public purpose.

Sveen, 584 U.S. at 819 (cleaned up) (citations omitted). This Court starts with whether the payroll deduction ban has substantially impaired the CBAs the Union Plaintiffs have concluded with their respective public employers. Then, this Court evaluates whether the payroll deduction ban is drawn in an appropriate, reasonable way to advance a significant, legitimate public purpose.

1

An analysis of whether a state law substantially impairs a contract "turns on 'whether there is a contractual relationship, whether a change in law impairs that contractual relationship, and whether the impairment is substantial.' " *Taylor v. City*

of Gadsden, 767 F.3d 1124, 1133 (11th Cir. 2014) (citing *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 186 (1992)). Here, the parties do not dispute that each CBA binds its respective Union Plaintiff to its respective public employer and that the payroll deduction ban impairs their respective contractual relationships.

This Court turns, then, to "whether the impairment is substantial." *See Taylor*, 767 F.3d at 1133 (citing *Romein*, 503 U.S. at 186). As Plaintiffs concede, ECF No. 99-1 at 27, Plaintiffs bear the burden of showing a substantial impairment of their contract rights. *See Toledo Area AFL-CIO Council v. Pizza*, 154 F.3d 307, 307, 323 (6th Cir. 1998) ("This analytic framework first requires us to determine whether the complaining party has established that the challenged legislation in fact operates as a 'substantial impairment of a contractual relationship.' ") (citing *Energy Reserves Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411 (1983)); *CDK Global LLC v. Brnovich*, 16 F.4th 1266, 1279 (9th Cir. 2021) ("To establish a substantial impairment of a contractual relationship, a party must show, at a minimum, that a law effects an 'alteration of contractual obligations'—in other words, that it alters the rights or duties created by a contract . . . . In any event, CDK has not shown even that the statute impairs its ability to perform its contracts.") (citing *Spannaus*, 438 U.S. at 245); *see also Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 504 (1987) ("Petitioners claim that they obtained damages waivers for a large percentage of the land surface protected by the Subsidence Act, but that the Act

removes the surface owners' contractual obligations to waive damages. We agree that the statute operates as a substantial impairment of a contractual relationship . . . .") (internal quotation marks omitted); *Vesta Fire Ins. Corp. v. State of Fla.*, 141 F.3d 1427, 1433 (11th Cir. 1998) (proceeding to second step of Contracts Clause analysis after plaintiffs had "ma[d]e a sufficient showing that the Florida legislation substantially impaired the contracts . . . ."), *abrogation on other grounds recognized by South Grande View Devel. Corp. v. City of Alabaster, Ala.*, 1 F.4th 1299 (11th Cir. 2021).

In determining whether an impairment is substantial, courts consider three factors—"the extent to which the law undermines the contractual bargain, interferes with a party's reasonable expectations, and prevents the party from safeguarding or reinstating his rights." *Sveen*, 584 U.S. at 819 (citations omitted). This Court considers each factor in turn.

a. Undermining the Contractual Bargain

Plaintiffs point to the declarations of several members of Union Plaintiffs who have firsthand knowledge of the CBA negotiations. These members declare that the ability to deduct dues from the public employers' payroll was a valuable term of the CBAs, because payroll deduction both simplifies dues collection for unions and makes it more convenient for members to pay their voluntary membership dues. *See, e.g.*, ECF No. 97-5 ¶ 8 (declaration of Rebecca Sharpe). They also indicate that

payroll deduction is the primary means of collection of membership dues, which are, in turn, the primary source of the Union Plaintiffs' revenue. *See, e.g.*, *id.* ¶¶ 11, 14.

The PERC Defendants argue that these are "self-serving statements" that "should not be credited." ECF No. 116-1 at 30. To rebut them, they point to the declaration of Keith Calloway, a former teacher, union member, and head of a teacher advocacy group. ECF No. 115-1. Calloway states, "When the unions are negotiating the teachers' collective bargaining agreements, teachers typically care most about subjects like pay, promotion, and health care. In my career, I have never heard a teacher express interest in whether a collective bargaining agreement allows the union to collect its dues from paychecks."[19] ECF No. 115-1 ¶ 12. The PERC Defendants argue that Calloway's statement demonstrates that "dues deductions are immaterial to public employees." ECF No. 116-1 at 30.

As an initial matter, this Court cannot choose not to "credit" a statement on summary judgment. This Court cannot weigh the evidence, but must credit all of it. If evidence conflicts, and if that conflict involves a material fact, this Court must deny summary judgment. Therefore, this Court must determine whether the declarations produce a dispute of fact and, if so, whether the disputed fact is material.

[19] Plaintiffs seek to exclude this statement because, in their view, it is hearsay. ECF No. 123 at 13–14, 19. Because this statement, even if reducible to admissible form, does not create a dispute of fact for purposes of either cross-motion for summary judgment, this Court need not, and so does not, address whether it should be excluded here.

These declarations, on their face, do not produce a dispute of fact. Unions, not their members, are parties to the CBAs. As a result, unions' views of the bargains they strike, including those bargains' salient points, are what matter for this factor. The declarations from the Union Plaintiffs' members are the only ones that speak to *unions*' view of the bargain. Those declarations indicate that payroll deduction was valuable to the Union Plaintiffs with CBAs when they negotiated their CBAs—partly because, in their view, they simplified dues collection for themselves, and partly because, in their view, payroll deduction was more convenient for their members. Calloway's declaration, in contrast, indicates that the teachers with whom he has interacted have not expressed interest in payroll deduction. For this analysis, public employees' interest in payroll deduction is of secondary importance.

Calloway's declaration would conflict with Plaintiffs' declarations, creating a dispute of fact, only if this Court stacked several inferences. For purposes of Plaintiffs' motion for partial summary judgment, this Court is bound to draw all logical inferences in the PERC Defendants' favor. But at least one of the inferences this Court would have to stack is illogical. Namely, it is illogical to infer that the views of the teachers with whom Mr. Calloway has interacted are representative of those of public employee union members as a whole, because *evidence* in the record contradicts that inference. *See* ECF No. 97-3 ¶ 18 ("I, like other UFF members, prefer the convenience and simplicity of payroll deduction to annual or semi-annual

payment via check or credit card, because I do not have to do anything incremental to pay my union dues, which makes it easy for me to remain in good standing with the UFF.") (first declaration of Andrew Gothard).

The PERC Defendants next argue that this factor "cannot turn on whether the aggrieved party thinks the bargain has been undermined. Otherwise, this factor would be satisfied in every single case." ECF No. 116-1 at 30. The PERC Defendants are correct—determining whether the bargain has been undermined is an objective analysis. Here, however, the undisputed evidence is that payroll deduction is the primary means by which the Union Plaintiffs take in most of their revenue. A ban on that means objectively undermines the bargain the Union Plaintiffs struck. Additionally, although the Union Plaintiffs' views of the value of payroll deduction are subjective, their views are also undisputed based on the evidence in the record.

Finally, the PERC Defendants point out that, although several declarants state that the Union Plaintiffs would have demanded alternative concessions had they not been able to secure payroll deduction in their CBAs, the Union Plaintiffs did not specify any such concession when the PERC Defendants asked them to via interrogatory, instead responding that "there is no way to answer this hypothetical question with specificity." *Id.* (citing ECF No. 115-14 at 9). To the PERC Defendants, this undercuts the Union Plaintiffs' portrayal of how much they value payroll deduction. ECF No. 116-1 at 30. Nonetheless, the fact that a union has no

list of alternative concessions ready in the event the employer seeks to eliminate a term that has been left undisturbed for years[20] does not imply that the union would not have demanded alternative concessions at all. That inference would not be logical. If a negotiator has no reason to believe the other party seeks to eliminate a valuable bargaining term, and if the other party never does, in fact, attempt to do so, imagining alternative concessions would be a waste of time. No reasonable factfinder would expect such fastidiousness. And again, to the extent the PERC Defendants ask this Court to judge credibility, this Court cannot do that at summary judgment.

In short, the undisputed evidence is that the payroll deduction ban substantially undermines the bargain in the Union Plaintiffs' CBAs by eliminating an agreed-upon method of dues collection—payroll deduction. The undisputed evidence is that payroll deduction was not only valuable, but "critical to the survival

[20] For example, payroll deduction has been permitted for members of Plaintiff UFF since at least 2017, predating the current CBA between Plaintiff UFF and the University of Florida Board of Trustees, which took effect in July 2021. *See* ECF No. 97-3 ¶¶ 5 ("I joined UFF-FAU by completing a UFF-FAU membership form that also authorized the FAU Board of Trustees to deduct membership dues from my salary via payroll deduction. I have been a member in good standing of UFF, FEA, NEA, and AFT since I joined UFF-FAU in 2017.") (first declaration of Andrew Gothard). Likewise, Article XXV of the current CBA between Plaintiff HUSW and Defendant School Board of Hernando County—which is effective from October 2022—permits reopening of negotiations "by mutual agreement . . . as needed," and those parties typically do reopen negotiations each year. ECF No. 97-6 ¶ 5; ECF No. 97-6 at 9, 41. Neither Plaintiff HUSW nor Defendant School Board of Hernando County proposed removing payroll deduction from the CBA in the negotiations immediately predating passage of the payroll deduction ban. ECF No. 97-6 ¶ 8.

of the unions at the time the bargains were struck." ECF No. 24–25. This factor, therefore, favors Plaintiffs.

b. Interference with Reasonable Business Expectations

For this factor, this Court starts where it left off in denying Plaintiffs' second motion for preliminary injunction. There, this Court rejected the PERC Defendants' argument that a party's existence in a heavily regulated industry does not mean the party lacks any reasonable business expectation. Nonetheless, this Court also recognized that the Union Plaintiffs operate in a heavily regulated realm in Florida and, indeed, that payroll deduction was itself the subject of state regulation when the Union Plaintiffs entered their CBAs. ECF No. 106 at 29. This lessened the extent to which the payroll deduction ban interfered with Plaintiffs' reasonable expectations. *Id.*

This Court also identified several clauses of the Union Plaintiffs' CBAs that accounted for changes to the statutory framework. *Id.* at 32–33. Some of these specified that, in the event a provision of the CBA became unlawful, the other provisions would remain effective. *Id.* at 32 (citing ECF No. 48-7 at 5, ECF No. 48-8 at 8). Others mandated reopening negotiations when legislative action invalidates a provision of the CBA. ECF No. 106 at 32–33 (citing ECF No. 48-2 at 6, ECF No. 48-4 at 137).

Finally, this Court noted that alternative methods of facilitating dues collection were available to the Union Plaintiffs and that Plaintiffs acted to implement those methods in the weeks before the payroll deduction ban became effective. Consequently, this Court concluded that the payroll deduction ban did not substantially interfere with Plaintiffs' reasonable business expectations. ECF No. 106 at 32–33.

Now, Plaintiffs raise new legal arguments to persuade this Court otherwise. First, they contend it was improper for this Court to consider the fact that Plaintiffs acted to implement alternative dues collection methods in the weeks before the payroll deduction ban became effective, because the parties' reasonable contract expectations must be assessed "at the time of contracting." ECF No. 123 at 20 (citations omitted). Next, they cite a published Eleventh Circuit case, *Vesta Fire Insurance Corp. v. State of Florida*, 141 F.3d 1427 (11th Cir. 1998), holding that new laws can substantially impair even contracts between parties in highly regulated areas—in that case, insurance. ECF No. 123 at 21 (citing *Vesta Fire Ins. Corp.*, 141 F.3d at 1433). They also portray the CBA provisions this Court found to have accounted for changes in the statutory framework as generic savings clauses, and they assert that those provisions neither preclude Plaintiffs from challenging new laws as unconstitutional nor incorporate changes in state law directly into the CBAs. ECF No. 123 at 21.

Plaintiffs are correct on their first point—this Court must assess the parties' reasonable business expectations at the time of contract formation. The undisputed evidence is that Plaintiffs did not expect to have to switch to a different dues collection method. Nonetheless, this factor of the substantial impairment analysis does not favor Plaintiffs.

To start, this Court recognizes *Vesta Fire Insurance Corp.*'s authority, but that case is distinguishable. The evidence before this Court is that the Union Plaintiffs' CBAs include clauses that account for changes in the statutory framework. If the insurance contracts in *Vesta Fire Insurance Corp.* contained analogous clauses, the Eleventh Circuit did not consider them in its analysis. Put another way, this Court, unlike the Eleventh Circuit in *Vesta Fire Insurance Corp.*, must consider not only the fact that the Union Plaintiffs operate in a highly regulated area—in which changes in the law are to be expected—but also that they include clauses accounting for those changes.

Among these are not only generic savings clauses, but also clauses that mandate renegotiation in the event a statute invalidates a term. *See, e.g.*, ECF No. 97-2 at 19 ("Both parties agree to reopen negotiations on those sections of this contract which have expired or have become invalid during the life of this contract through legislative action . . . ."); ECF No. 97-3 at 147 ("If a provision of this Agreement fails [because it] is rendered invalid by reason of any subsequently

enacted legislation . . . . the parties shall immediately enter into negotiations for the purpose of arriving at a mutually satisfactory replacement for such provision."). Such renegotiation clauses make sense only in contracts that, like CBAs, contemplate an ongoing relationship between two parties who acknowledge the possibility of changes in the law and are motivated to keep coming back to the table. *Cf. Sarasota Cnty. Sch. Dist. v. Sarasota Classified/Teachers Ass'n*, 614 So. 2d 1143, 1147 (Fla. 2d DCA 1993) ("A collective bargaining agreement is not, of course, an ordinary contract. Parties to a collective bargaining agreement normally contemplate a subsisting relationship of indefinite duration with frequent renewals."). And the renegotiation clauses here are broad enough to encompass a ban on payroll deduction.

In sum, the Union Plaintiffs with CBAs did not expect that payroll deduction would be eliminated, but they did expect the possibility of changes in the law more generally. In anticipation of those changes, they agreed to renegotiate. On balance, the payroll deduction ban does not interfere substantially with the reasonable business expectations of the Union Plaintiffs with CBAs. This factor favors the PERC Defendants and their position that the payroll deduction ban does not substantially impairs the Union Plaintiffs' CBAs.

c. Prevention from Safeguarding or Reinstating Rights

This Court begins again with what it held in denying Plaintiffs' second motion for preliminary injunction. The parties disagreed as to exactly which contractual right the Union Plaintiffs with CBAs had to show they could not safeguard or reinstate, with the Plaintiffs framing it narrowly as a right to payroll deduction and the PERC Defendants framing it broadly as a right to collect dues in the first place. This Court held that both conceptions were wrong. Looking to PERA's objective "to promote harmonious and cooperative relationships between government and its employees, both collectively and individually," § 447.201, this Court determined that the Union Plaintiffs' right was for the public employer with whom they had concluded a CBA to facilitate the collection of their dues, whether via payroll deduction or another method.

Framing the right thus, this Court noted it could conceive of other ways for the Union Plaintiffs with CBAs to safeguard or reinstate it. This Court recalled both the CBA clauses mandating renegotiation in case of changes in the law and Plaintiffs' efforts to implement alternative dues collection methods, such as eDues. Both, this Court concluded, demonstrated that the Union Plaintiffs with CBAs could indeed safeguard their contract rights. ECF No. 106 at 33–37.

The parties do not advance new evidence on this point, but both raise new arguments. Plaintiffs' chief argument is that this Court's re-framing of their right

conflicts with *Sveen*, which emphasized that courts must consider the parties' "original contract rights" as expressed in the contract. Thus, Plaintiffs urge, their framing of their right—a right to payroll deduction—is the one the law requires. ECF No. 123 at 22–23. Plaintiffs also argue that their efforts to mitigate damages cannot be considered as evidence that they can safeguard their original contract rights. *Id.* at 23–24. On this point, Plaintiffs indicate that public employers are not involved in the alternative payment methods the Union Plaintiffs with CBAs have adopted. *Id.* at 23. The PERC Defendants focus on Plaintiffs' second argument, arguing that binding caselaw demands that plaintiffs must attempt to mitigate damages. ECF No. 131 at 15–16. They imply that a plaintiff cannot safeguard or reinstate its rights only when those mitigation efforts prove fruitless. Finally, the PERC Defendants argue that, as this Court held, other means of facilitating dues collection exist. *Id.* at 17.

With the benefit of fuller briefing, this Court agrees with Plaintiffs that it must look to the contract itself to frame the right. *See Spannaus*, 438 U.S. at 246–47 (finding substantial impairment where statute modified compensation amount specified in employment contracts, thus "nullif[ying] express terms of the company's contractual obligation and impos[ing] a completely unexpected liability in potentially disabling amounts"); *DeBenedictis*, 480 U.S. at 504 ("In assessing the validity of petitioners' Contracts Clause claim in this case, we begin by identifying the *precise contractual right* that has been impaired . . . .") (emphasis added); *see*

also Sveen, 584 U.S. at 820 n.3 ("This Court has always approved statutes like this one, which enable a party with only minimal effort to protect his *original contract rights* against the law's operation.") (emphasis added).

The "express terms" of each CBA promise not merely unions' ability to collect dues or employers' obligation to facilitate dues collection, but payroll deduction specifically. *See Spannaus*, 438 U.S. at 246–47. Payroll deduction, then, is the right at issue. And because the payroll deduction ban "nullifies" the entitlement to payroll deduction, the Union Plaintiffs with CBAs can neither safeguard nor reinstate that contract right. *See id.* Therefore, this factor favors Plaintiffs.

To summarize, the undisputed facts before this Court reveal that the payroll deduction ban (1) substantially undermines the contractual bargain the Union Plaintiffs with CBAs struck with their respective public employers, (2) does not substantially interfere with the reasonable business expectations of the Union Plaintiffs with CBAs, and (3) prevents the Union Plaintiffs with CBAs from safeguarding or reinstating their contract rights. Having considered these factors, this Court concludes that the payroll deduction ban substantially impairs the CBAs. *See Sveen*, 584 U.S. at 819 (citations omitted). Therefore, this Court turns to whether the payroll deduction ban is drawn in an appropriate, reasonable way to advance a significant, legitimate public purpose.

2

Having concluded that the payroll deduction ban substantially impairs the CBAs, this Court must evaluate "whether the state law is drawn in an 'appropriate' and 'reasonable' way to advance 'a significant and legitimate public purpose.' " *Sveen*, 584 U.S. at 819 (citing *Energy Reserves Grp, Inc.*, 459 U.S. at 411–12).

The Supreme Court has explained that the level of scrutiny to be applied in this step is more "searching" than the "standards imposed on economic legislation by the Due Process Clause." *Pension Ben. Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 733 (1983) (citing *U.S. Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1, 17 n.3 (1977)). Those standards, in turn, do "not differ from the prohibition against arbitrary and irrational legislation." *R.A. Gray & Co.*, 467 U.S. at 733. Namely, "the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976). This "arbitrary and irrational standard" is the same as rational basis review, which this Court applies elsewhere in this Order. *See Glenn v. Brumby*, 663 F.3d 1312, 1315 (11th Cir. 2011) ("The Equal Protection Clause requires the State to treat all persons similarly situated alike or, conversely, to avoid all classifications that are 'arbitrary and irrational' . . . .") (citing *City of Cleburne*, 473 U.S. at 446–47).

All this is to say that, notwithstanding the semantic similarities between "drawn in an appropriate and reasonable way to advance 'a significant and legitimate

public purpose" (the standard for Contracts Clause claims) and "rationally related to a legitimate public interest" (the standard for rational basis review), the level of scrutiny this Court must apply for this step of the analysis is higher than rational basis review.

From here, this Court assesses whether the PERC Defendants have identified a "significant and legitimate public purpose." For purposes of the Contracts Clause, a public purpose is "significant" and "legitimate" in the context of its relation to the state's exercise of its police powers. *See Veix v. Sixth Ward Bldg. & Loan Ass'n of Newark*, 310 U.S. 32, 38–41 (1940) (weighing the impairment of a contract against the exercise of the "power of the state to protect its citizens by statutory enactments affecting contract rights"). Thus, a purpose of "remedying . . . a broad and general social or economic problem" is legitimate and significant. *Energy Reserves Grp., Inc.*, 459 U.S. at 412. A purpose of "providing a benefit to special interests," in contrast, is not. *Id.*; *see, e.g.*, *Equip. Mfrs. Inst. v. Janklow*, 300 F.3d 842, 861 (8th Cir. 2002) ("It is clear that the only real beneficiaries under the Act are the narrow class of dealers of agricultural machinery . . . . As the case law makes clear, such special interest legislation runs afoul of the Contract Clause when it impairs pre-existing contracts.").

The parties disagree on who bears the burden for the significant and legitimate purpose analysis. Plaintiffs argue that the State must show that the payroll deduction

ban has a significant and legitimate purpose, while the PERC Defendants argue that Plaintiffs must show that it does not.[21] Other circuits have come to conflicting answers on this question.[22] The parties themselves, however, have not acknowledged or engaged with this conflict.

This Court finds persuasive the reasoning in those cases allocating the burden to the State. *See, e.g.*, *Janklow*, 300 F.3d at 859; *Pizza*, 154 F.3d at 323 (citing *Energy Reserves Grp., Inc.*, 459 U.S. at 412). Their reasoning is consistent with the Eleventh Circuit's approach in the one published case where it reached this step of the Contracts Clause analysis, *Vesta Fire Insurance Corp*. There, the Eleventh Circuit observed that the State had come forward with a significant, legitimate public purpose, though it did not address the question of who bore the burden. *See* 141 F.3d

[21] *Compare* ECF No. 99-1 at 36 ("Since [the payroll deduction ban] substantially impairs the Plaintiffs' CBAs, the State must articulate a 'significant and legitimate public purpose' and must show that the law 'is drawn in an appropriate and reasonable way to advance' that interest.") (quoting *Sveen*, 584 U.S. at 819) (citing *Janklow*, 300 F.3d at 859), *with* ECF No. 116-1 at 31–32 ("Plaintiffs bear the burden to show [the payroll deduction ban] lacks a legitimate purpose.") (citing *United Auto., Aerospace, Agr. Implement Workers of Am. Int'l Union v. Fortuno*, 633 F.3d 37, 41–42 (1st Cir. 2011)).

[22] *See, e.g.*, *Pizza*, 154 F.3d at 323 ("The state must proffer a 'significant and legitimate' public purpose for the regulation warranting the extent of the impairment caused by the measure.") (citing *Energy Reserves Grp., Inc.*, 459 U.S. at 411); *CDK Global LLC*, 16 F.4th at 1280 (holding that the plaintiff "bears the burden of proving that the [challenged law] does not serve a valid public purpose or that it is not drawn in a reasonable and appropriate way" when state is not a party to the contract) (internal quotation marks omitted); *see also Buffalo Teachers Fed'n v. Tobe*, 464 F.3d 362, 365, 368 (2d Cir. 2006) (holding that plaintiffs must "produce evidence that the state's self-interest rather than the general welfare of the public motivated the state's conduct" when the State is not a party to the contract but also that "[w]hen a state law constitutes substantial impairment, the state must show a significant and legitimate public purpose behind the law").

at 1433–34 ("Assuming a substantial impairment to Plaintiffs' contracts exists, the State 'must have a significant and legitimate public purpose behind the regulation.' . . . . *Defendants have demonstrated a legitimate public purpose*[.]") (emphasis added) (quoting *Energy Reserves Grp., Inc.*, 459 U.S. at 412–13) (citing generally *Spannaus*, 438 U.S.; *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934)). Accordingly, this Court holds the PERC Defendants to the burden of identifying a significant, legitimate public purpose.

As noted *supra*, this standard differs from rational basis review. It also differs in that a mere "reasonably conceivable" public purpose does not suffice. The purpose must appear in the record. Both *Spannaus* and *Energy Reserves Group, Inc.* bear out this conclusion. In *Spannaus*, the Supreme Court, having found a substantial impairment, observed that "there is no showing in the record before us that this severe disruption of contractual expectations was necessary to meet an important general social problem." 438 U.S. at 247. It continued by examining "[t]he only indication of legislative intent in the record before" it, which was a statement from the district court about when the asserted purpose there "was brought to the attention of the [state] legislature." *Id.* at 247–48. Five years later, in *Energy Reserves Group, Inc.*, the Supreme Court distinguished that case from *Spannaus* by explaining that "there is little or nothing *in the record* here to support the contention that the Kansas Act is special interest legislation." 459 U.S. at 417 n.25 (emphasis added).

Taken together, *Spannaus* and *Energy Reserves Group, Inc.* suggest that the purpose must exist in the record and relate to legislative intent.[23] Post-hoc argument as to the statute's value, devoid of support in the record, is not enough. This contrasts with rational basis review, which does not require a purpose in the record at all. *Cf. Heller*, 509 U.S. at 320–21. Additionally, the standard must afford a court sufficient leeway to assess the justification's relation to the state's exercise of its police powers. *See Veix*, 310 U.S. at 38–41.

Therefore, this Court's task is to assess whether the PERC Defendants have identified a significant, legitimate public purpose and pointed to evidence in the record demonstrating that the Florida Legislature intended to further that purpose in enacting the payroll deduction ban. As this Court now explains, competing inferences can be drawn as to whether the Florida Legislature did, in fact, act to further the purpose the PERC Defendants put forward. Consequently, neither side is entitled to summary judgment as to this Count.

The PERC Defendants assert that "Florida's purpose for passing [the payroll deduction ban] is to increase transparency and ensure public employees are fully informed about the dues they are paying their unions." ECF No. 116-1 at 32 (citing

[23] Even circuits holding that a plaintiff has the burden to show the absence of a significant, legitimate government interest agree as much. *See Fortuno*, 633 F.3d at 45 (commenting that the relevant inquiry focuses on "the record of what and why the state has acted [as] laid out in committee hearings, public reports, and legislation") (quoting *Buffalo Teachers Fed'n*, 464 F.3d at 365) (citing *Mercado-Boneta v. Administracion del Fondo de Compensacion al Paciente*, 125 F.3d 9, 15 (1st Cir. 1997)).

ECF No. 116-1 at 19). Elsewhere, they argue that legislative history reveals "transparency" to be the reason for *all* the challenged amendments to PERA, with no reference to a particular provision. ECF No. 131 at 20. Plaintiffs, meanwhile, argue that the "transparency" purpose the PERC Defendants put forward is a post-hoc justification lacking support in the record. *See* ECF No. 99-1 at 38 (registering "grave concern that the Legislature was not even thinking that it was advancing the posited interest") (internal quotation marks omitted).

In support of their stated purpose of transparency, the PERC Defendants cite, as examples, two committee hearings in which the sponsor of a companion bill to the 2023 amendments to PERA answer questions on the record about the payroll deduction ban and other provisions. ECF No. 116-1 at 19 (citing Floor Statement, Constitutional Rights, Rule of Law and Government Operations Committee 8:45 (Mar. 16, 2023)); ECF No. 131 at 20 (citing Floor Statement, Constitutional Rights, Rule of Law and Government Operations Committee 8:45 (Mar. 16, 2023); Floor Statement, House State Affairs Committee 1:12:42 (Apr. 11, 2023)).

The problem for the PERC Defendants is that the cited excerpts of the hearings are not on all fours with their transparency justification. And the problem for Plaintiffs is that the cited excerpts are not so far removed from PERC Defendants' transparency justification that no reasonable factfinder could find that the Florida Legislature did not have it in mind. Each side asks this Court to interpret the cited

hearings in accordance with that side's chosen interpretation. In doing so, the parties talk past one another and urge this Court to draw competing inferences in their own favor. The summary judgment standard, however, commands that this Court draw only reasonable inferences in the *nonmovant's* favor for purposes of each motion. This Court cannot play lawyer for either side. Nor can this Court resolve these conflicting inferences at summary judgment. Moreover, the error of choosing one interpretation over another—or of looking into the record to define a significant, legitimate public purpose independently of the parties—would bleed into the tailoring portion of the Contracts Clause analysis, because each side raises arguments consistent with its own views as to that portion of the analysis, too.

As a result, neither Plaintiffs nor the PERC Defendants are entitled to summary judgment as to this Count. Summary judgment is not the appropriate setting to resolve Plaintiffs' Contracts Clause challenge to the payroll deduction ban. Trial, where the factfinder is free to weigh evidence and draw inferences in one direction or the other, is. This Court understands that the parties may wish to come forward without new evidence at trial and instead rely on the record they have created thus far. They are free to do so. The obstacle here is the incompatibility between the inferences the parties urge and the inferences this Court can draw on summary judgment.

Plaintiffs' motion for partial summary judgment and the PERC Defendants' motion for summary judgment are due to be denied as to Count IV.

C

In Count V, Plaintiffs challenge the payroll deduction ban as viewpoint discriminatory. They argue that the Florida Legislature enacted the payroll deduction ban "to stop facilitation of disfavored speakers and their political speech while continuing to facilitate favored speakers and their political speech." ECF No. 99-1 at 46.

The parties agree that permitting payroll deduction is a government subsidy of expressive activities (which, here, take the form of union activities). *Id.* at 42; ECF No. 116-1 at 34–35. "[A] legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right, and thus is not subject to strict scrutiny." *Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353, 358 (2009) (alteration in original) (citations omitted). "While in some contexts the government must accommodate expression, it is not required to assist others in funding the expression of particular ideas, including political ones." *Id.* Thus, a state's decision not to subsidize unions' speech "is not an abridgement of the unions' speech; they are free to engage in such speech as they see fit. They simply are barred from enlisting the State in support of that endeavor." *Id.* at 359. Instead, it triggers only rational basis review. *Id.* at 359.

Differential subsidization[24] "of First Amendment speakers" raises constitutional concerns "when it threatens to suppress the expression of particular ideas or viewpoints," or "if it targets a small group of speakers." *See Leathers v. Medlock*, 499 U.S. 439, 447 (1991).[25] Here, the payroll deduction ban does not, on its face, discriminate on the basis of viewpoint. It applies to unions certified as a bargaining representatives of most classes of public employees but exempts those certified as bargaining representatives for public safety employees. Thus, rather than "target[ing] a small group of speakers," *Leathers*, 499 U.S. at 447, it deprives *most* classes of unions of the subsidy of payroll deduction while permitting some classes of unions to keep it. In addition, one must look to the speaker, rather than the content

[24] This Court recognizes that *Leathers* involved tax exemptions, not subsidies. The Supreme Court, however, has explained that "tax exemptions . . . are a form of subsidy that is administered through the tax system." *Leathers*, 499 U.S. at 450 n.3 (quoting *Regan*, 461 U.S. at 544). Therefore, this Court sees little trouble with looking to *Leathers* here—as the parties themselves have done. *See* ECF No. 99-1 at 43; ECF No. 116-1 at 36.

Indeed, the PERC Defendants cite an excerpt from similar language in *Leathers*: "A government subsidy 'that discriminates among speakers does not implicate the First Amendment.' " ECF No. 116-1 at 36 (citing *Leathers*, 499 U.S. at 450). They ignore, however, the phrase immediately following: "unless [the subsidy] discriminates on the basis of ideas." *Leathers*, 459 U.S. at 450.

[25] In addressing whether differential taxation raises constitutional concerns, the Court in *Leathers* also noted that "for reasons that are obvious, a tax will trigger heightened scrutiny under the First Amendment if it discriminates on the basis of the content of taxpayer speech." 499 U.S. at 447. But this principle is less obvious when it comes to differential subsidization of speech, as some have argued that *Ysursa*'s holding "substantially broadened the reach of the [subsidized speech] doctrine," which "weakens First Amendment protections against content-based discrimination" by permitting subject-matter and speaker-based distinctions. Brian Olney, *Paycheck Protection or Paycheck Deception? When Government "Subsidies" Silence Political Speech*, 4 UC Irvine L. Rev. 881, 923 (2014).

of their speech, to determine whether the payroll deduction ban applies to them. *See Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 164 (2015) (holding that laws that are facially neutral but "cannot be justified without reference to the content of the regulated speech" are considered content-based for purposes of review). This is a classification based on speaker, not on viewpoint. And "a differential burden on speakers is insufficient by itself to raise First Amendment concerns." *Leathers*, 499 U.S. at 452.

The question becomes whether the subsidy, notwithstanding its application to speakers rather than speech, "is directed at, or presents the danger of suppressing, particular ideas." *See Leathers*, 499 U.S. at 453. This inquiry is not an invitation to look beyond the face of the statute, but instead focuses on whether the statute discriminates based on "what the person or business [is] advocating." *See id.* at 450–51 (construing *Regan*, 461 U.S., and *Cammarano v. United States*, 358 U.S. 498, 513 (1959)).

Here, the payroll deduction ban applies to non-public safety employee unions certified as bargaining representatives, "without reference to the content of the regulated speech[.]" *Reed*, 576 U.S. at 164. To borrow from Plaintiffs' asserted relation between application of the ban and broad political affiliation, the unions banned from payroll deduction will remain banned whether they contribute to Democratic causes, Republican causes, both, or neither. Likewise, payroll

deduction—the subsidy—remains available to public safety employee unions whether they contribute to Democratic causes, Republican causes, both, or neither. *Cf. Regan*, 461 U.S. at 548 (finding no viewpoint discrimination where qualifying veterans' organizations—which, unlike plaintiff, could both lobby and receive tax-deductible contributions—were entitled to tax-deductible contributions "regardless of the content of any speech they may use, including lobbying").

Plaintiffs point to no evidence in the legislative history that the Florida Legislature "intended to suppress any ideas." As they concede, binding caselaw suggests that they cannot rely on such evidence to establish legislative intent in the free-speech context. *See In re Hubbard*, 803 F.3d 1298, 1312 (11th Cir. 2015) ("[W]hen a statute is facially constitutional, a plaintiff cannot bring a free-speech challenge by claiming that the lawmakers who passed it acted with a constitutionally impermissible purpose."); ECF No. 99-1 at 47 (citing *In re Hubbard*, 803 F.3d at 1313). Plaintiffs contend, however, that "[t]he design and structure of [the payroll deduction ban]—in particular, its pervasive under-inclusiveness"—signals a viewpoint-discriminatory intent. ECF No. 99-1 at 44. Citing *Ysursa*, Plaintiffs also argue that "the First Amendment requires *evenhanded* application when the government eliminates avenues through which private parties engage in political speech." ECF No. 123 at 27 (citing *Ysursa*, 555 U.S. at 561 n.3).

Both arguments fail. Underinclusiveness, as mentioned *supra*, "raises a red flag" only when the challenged law is subject to heightened scrutiny. *See Williams-Yulee*, 575 U.S. at 449; *NIFLA*, 585 U.S. at 774 (assessing statute's underinclusive notice requirements in context of ends-means analysis under intermediate scrutiny). Relying on underinclusiveness to get to heightened scrutiny puts the cart before the horse. As for Plaintiffs' argument that the payroll deduction ban must be applied evenhandedly to be viewpoint neutral, *Ysursa* does not support that proposition. There, the Supreme Court observed that, if the ban in that case were "not enforced evenhandedly," the plaintiffs "could bring an as-applied challenge." 555 U.S. at 561 n.3. Plaintiffs do not bring an as-applied challenge here. Furthermore, Plaintiffs' argument clashes with Supreme Court cases permitting the State to subsidize some speakers and not others—a practice that is not evenhanded. *See, e.g.*, *Regan*, 461 U.S. at 550–51. Thus, based on this record, the payroll deduction ban "is not intended to suppress any ideas." *See Leathers*, 499 U.S. at 452.

As for whether the payroll deduction ban has the effect of suppressing ideas, the Supreme Court has explained that, in the context of subsidies, an indirect effect on the flow of ideas is not enough to trigger heightened scrutiny. In *Ysursa*, the majority engaged with Justice Breyer's argument in partial concurrence that the

subsidy at issue there[26] should be subject to heightened scrutiny because it "affects speech, albeit indirectly, by restricting a channel through which speech-supporting finance might flow." *Ysursa*, 555 U.S. at 360 n.2; *id.* at 367 (Breyer, J., concurring in part and dissenting in part). The majority rejected Justice Breyer's argument, stating, "A decision not to assist fundraising that may, as a practical matter, result in fewer contributions is simply not the same as directly limiting expression." *Id.* at 360 n.2.

There's the rub for Plaintiffs. They come forward with evidence that public-employee political action committees (PACs) affiliated with public-safety employees contributed all of their 2022 Florida campaign contributions to Republican causes. Their evidence also indicates that public-employee PACs affiliated with other public employees contributed ninety-six percent of their 2022 Florida campaign contributions to Democratic causes and four percent to Republican causes. ECF No. 97-17 ¶ 8; ECF No. 97-17 at 59–60. Meanwhile, the PERC Defendants come forward with evidence that public-employee PACs affiliated with other public employees contributed seventy-six percent of their 2022 Florida campaign contributions to Democratic causes and twenty-four percent to Republican causes. ECF No. 41-14 ¶ 8; ECF No. 41-14 at 5–6. It is reasonable to infer, for

[26] The subsidy at issue in *Ysursa* was also a payroll deduction. Specifically, the Idaho Legislature had passed a law banning payroll deduction by public employee unions for political contributions. *Ysursa*, 555 U.S. at 355–56.

purposes of both cross-motions for summary judgment, that these distributions are typical for each election cycle.

Plaintiffs also come forward with evidence demonstrating that the ban has reduced the dues the Union Plaintiffs with CBAs have collected. *See, e.g.*, ECF No. 97-10 ¶¶ 5–9 (second declaration of Carmen Ward). That, in turn, will cause a greater proportion of dues to go to operating costs, leaving a smaller proportion available for political speech. And Plaintiffs come forward with evidence that the Union Plaintiffs with CBAs will have to expend resources to ensure they can collect dues by alternative means, such as eDues. *See, e.g.*, *id.* ¶ 11.

This record demonstrates that, "as a practical matter," the payroll deduction ban will make it more difficult for Plaintiffs to sustain their political speech. *See Ysursa*, 555 U.S. at 360 n.2. It also demonstrates that public safety unions—which engage in political speech at cross-purposes with the Union Plaintiffs' political speech—will remain unaffected. These practical consequences, however, are "simply not the same as directly limiting expression," and so heightened scrutiny does not apply. *See id.* In short, the payroll deduction ban does not discriminate based on viewpoint.

Because the payroll deduction ban does not discriminate based on viewpoint, it receives rational basis review. *See Ysursa*, 555 U.S. at 359; *Regan*, 461 U.S. at 550–51. And as discussed with regard to Plaintiffs' equal protection challenge to the

payroll deduction ban, Count III, the payroll deduction ban survives rational basis review.

For Plaintiffs and others, this conclusion may seem counterintuitive. In politics and myriad other settings, speakers may be so closely associated with a certain message that, as a practical matter, discriminating against the speaker equates to discriminating against their speech. Nonetheless, the law this Court is bound to apply here distinguishes between laws targeting speakers and laws targeting speech. The payroll deduction ban applies to the Union Plaintiffs with CBAs, not to the messages they wish to convey. Even if the ban's implications, as a practical matter, limit their future speech—speech that contradicts the political branches' currently prevailing voices—the ban itself deprives the speakers of a subsidy, no matter their speech. According to the Supreme Court, this is not viewpoint discrimination, and without more, it does not violate the Constitution.[27]

Accordingly, the PERC Defendants are entitled to summary judgment as to Plaintiffs' viewpoint discrimination challenge to the payroll deduction ban, Count V. Plaintiffs' motion for partial summary judgment is due to be denied as to Count V.

[27] This Court recognizes that Plaintiffs' viewpoint discrimination claim could be considered a repackaging of their equal protection challenge to the payroll deduction ban. In addition to approaching the non-suspect, union-based classification—which, Plaintiffs concede, merits rational basis review—Plaintiffs appear to seek a higher level of scrutiny by focusing on the speech in which they seek to engage.

D

Count VI is an equal protection challenge to the payroll deduction ban. As with their equal protection challenge to the membership authorization form provision, Count III, Plaintiffs focus on the payroll deduction ban's distinction between most public employee unions, which are subject to the ban while they are certified bargaining representatives, and unions of public safety employees, which are not. ECF No. 99-1 at 47–48; ECF No. 123 at 28–30. Here, too, Plaintiffs agree that rational basis review applies but argue that no rational basis exists for such a distinction. ECF No. 99-1 at 47–48; ECF No. 123 at 28–30.

The PERC Defendants, on the other hand, cite the government's interest in ensuring union members know the amount of dues they pay to their unions, and they assert that the payroll deduction ban is rationally related to that interest. ECF No. 116-1 at 12, 19, 42–43. They argue that the ban's distinction between public safety unions and other public employee unions reflects the fact that public safety employees typically do not work in a centralized location, making it more difficult for them to meet with union officials to pay their dues. *Id.* at 20; ECF No. 131 at 26 n.3.

Like the membership authorization form provision, the payroll deduction ban survives Plaintiffs' equal protection challenge. The parties agree that rational basis review applies. The payroll deduction ban satisfies that level of scrutiny. The

government has a legitimate interest in ensuring public employee union members know the amount of their union dues. The payroll deduction ban means that the amounts members previously allocated for union dues hit their bank accounts instead, and it permits members to see the dues amount subsequently deducted from their accounts. It is "reasonably conceivable," *see Heller*, 509 U.S. at 320, that union members would use their bank accounts for various expenses—not just union dues. It is "reasonably conceivable" that, as a result, union members would check their bank accounts more often than they would review their pay stubs. Thus, it is "reasonably conceivable" that the payroll deduction ban would better inform union members of the amount of the dues they pay to their unions. That is all rational basis review requires. *See id.* As for the exemption of public safety employee unions, as mentioned *supra*, the Florida Legislature may permissibly "select one phase of one field and apply a remedy there, neglecting the others." *See Williamson*, 348 U.S. at 489.

As with their equal protection challenge to the membership authorization form provision, Plaintiffs argue that the payroll deduction ban constitutes no more than naked favoritism toward public safety employee unions, which remain able to deduct dues from members' payroll, and political hostility toward other unions. ECF No. 123 at 30. That argument fails here, too. Plaintiffs agree that rational basis review

applies, and a rational basis exists for the payroll deduction ban. This Court cannot look beyond the rational basis in search of true legislative intent.

Accordingly, Plaintiffs' motion for partial summary judgment is due to be denied, and the PERC Defendants' motion for summary judgment is due to be granted, as to Plaintiffs' equal protection challenge to the payroll deduction ban, Count VI.

E

In Count VII, Plaintiffs challenge the recertification rules as violating the Contracts Clause. Unlike with Count IV, Plaintiffs' Contracts Clause challenge to the payroll deduction ban, this Court has not previously addressed this Count. The "threshold issue" for a Contracts Clause claim, as mentioned *supra*, "is whether the state law has operated as a substantial impairment of a contractual relationship . . . ." *Sveen*, 584 U.S. at 819 (cleaned up) (citations omitted). Part of that inquiry turns on "whether a change in law impairs that contractual relationship." *Taylor*, 767 F.3d at 1133 (citing *Romein*, 503 U.S. at 186). Here, the parties disagree on whether the recertification rules impair the Union Plaintiffs' CBAs. This Court begins and ends its analysis there.

"For the most part, state laws are implied into private contracts regardless of the assent of the parties only when those laws affect the validity, construction, and

enforcement of contracts."[28] *Romein*, 503 U.S. at 189 (citing *U.S. Trust Co. of N.Y.*, 431 U.S. at 19 n.17). "These laws are subject to Contract Clause analysis because without them, contracts are reduced to simple, unenforceable promises." *Romein*, 503 U.S. at 189. Consequently, "changes in the laws that make a contract legally enforceable may trigger Contract Clause scrutiny if they impair the obligation of pre-existing contracts, even if they do not alter any of the contracts' bargained-for terms." *Id.* (citations omitted). Put another way, a new law impairs an existing contract only if it affects the contract's "validity, construction, [or] enforcement." *See id.*

As mentioned in the standing analysis *supra*, the recertification rules impose new requirements that unions certified as bargaining representatives must satisfy each year. A union must show that at least sixty percent of the bargaining unit it represents are dues-paying union members who have completed and submitted a membership authorization form. If a union cannot meet this sixty-percent threshold, it must petition for recertification and win a new certification election. This is a new requirement. Before the 2023 and 2024 amendments to PERA, unions were required

[28] The parties disagree as to whether the CBAs at issue here, being between public employee unions and public employers, are "private contracts," as in *Romein*, or government contracts—an issue this Court has not yet had to resolve. ECF No. 123 at 26; ECF No. 131 at 9. Given that both sides agree that *Romein* supplies the proper analysis, however, this Court assumes that this statement holds true for the CBAs, regardless of whether they are private contracts. Note 17 of *U.S. Trust Co. of New York*, which the Court in *Romein* cites, is not inconsistent with such an assumption.

to renew their registration with PERC each year, but most[29] could only be subject to a decertification election (as opposed to a full petition and election process) between one hundred fifty and ninety days before their CBA expired. The recertification rules, then, arguably dilute the value of the terms of public employee unions' CBAs setting out a multi-year duration. And a contract's duration goes to its validity and enforceability. If a contract expires or is nullified before its expiration, the parties can no longer enforce their rights under the contract in the event of a new breach.

Nevertheless, although the recertification rules effect this dilution, they stop short of touching the validity, construction, or enforcement of the CBAs. They create a new process that could result in decertification and will force unions to expend resources to avoid decertification. But it is decertification—nothing less—that thwarts the duration a CBA sets out, and the recertification rules do not themselves decertify. At best, they only increase the possibility of decertification at any point during the life of a CBA and, correspondingly, only create the possibility of impairment.

This would be a different case had the Florida Legislature passed a law stating that a union must show it has met the sixty-percent threshold with each re-

[29] As mentioned in the standing analysis *supra*, Plaintiffs ACEA, LEA, and PCTA are already subject to a fifty-percent threshold to avoid a full petition and election process. The recertification rules nonetheless dilute the value of their CBAs' multi-year duration by increasing the threshold to sixty percent and dictating that only dues-paying members who have submitted membership authorization forms may be counted toward the threshold. Additionally, public safety unions remain exempt from the recertification rules.

registration cycle to remain certified. The Florida Legislature has not done that, however. Instead, it has passed a law requiring a union certified as a bargaining representative to show it has met the sixty-percent threshold to avoid a recertification process—a process which might (but might not) result in decertification. Such a law does not "affect the validity, construction, [or] enforcement" of CBAs. *See id.*

Plaintiffs assert that the Union Plaintiffs with CBAs and their counterparties executed their CBAs with the expectation that, under existing Florida law, they would remain in effect for their full terms, subject only to a possible decertification election during the final months of the CBAs' terms. ECF No. 99-1 at 54. They argue that the recertification rules impair the CBAs for two reasons. First, the rules allow the recertification process to occur as often as annually. *Id.* at 54–55. Second, the rules change the trigger for possible decertification from signed statements from thirty percent of bargaining unit members who oppose continued certification to sixty percent of dues-paying members who favor certification and have submitted a membership authorization form. *Id.* at 55.

These are both undeniable consequences of the recertification rules. These consequences, in turn, yield (even facilitate) the possible downstream consequence of decertification. Even so, to run afoul of the Contracts Clause, a law must affect a contract's validity, construction, or enforcement. *Possibly* affecting its validity,

construction, or enforcement is not enough. And even under the recertification rules, decertification remains only possible—not certain.

Plaintiffs also analogize laws "conferring or revoking" a union's status as certified bargaining representative to "laws in the commercial sphere governing capacity to enter into and enforce contracts, in that a union possessing that status may enter into and enforce new CBAs and that a union lacking that status is barred from entering into new CBAs or enforcing an existing CBA." ECF No. 99-1 at 53. Again, the recertification rules only create a process that *could* lead to decertification—and, to use Plaintiffs' analogy, *could* affect capacity to enter into and enforce contracts. To violate the Contracts Clause, a law must have a certain, not merely likely, effect on the validity, construction, or enforcement of contracts. *See Romein*, 503 U.S. at 189. As should be clear by now, the recertification rules do not go so far.

The recertification rules' practical effects are plain. Each year, most of Florida's public employee unions will have to expend time and effort to either avoid or survive a recertification process that could end with the nullification of their CBAs. Florida's public safety unions, meanwhile, will remain free to carry on as before. Because the recertification rules do not touch the affected CBAs' validity, construction, or enforcement, however, they do not impair the CBAs. Accordingly, Plaintiffs' Contracts Clause challenge to the recertification rules, Count VII, fails.

The PERC Defendants are entitled to summary judgment as to Count VII, and Plaintiffs' motion for partial summary judgment is due to be denied as to Count VII.

VII

Having discussed the merits, this Court must address a final matter. Plaintiffs request a permanent injunction against the PERC Defendants to prevent them from enforcing the payroll deduction ban and the recertification rules. ECF No. 48 at 53–54. The parties do not dispute that Plaintiffs can, in the abstract, seek permanent injunctive relief against enforcement of these two provisions. They disagree, however, on whether Plaintiffs are entitled to permanent injunctive relief.

"To obtain a permanent injunction, the moving party must show that (1) it has suffered irreparable harm; (2) remedies at law will not provide adequate compensation for the injury; (3) on balance, an equitable remedy is warranted; and (4) a permanent injunction will not disserve the public interest." *West Virginia v. U.S. Dep't of Treasury*, 59 F.4th 1124, 1148 (11th Cir. 2023) (citation omitted). Here, the parties' respective arguments as to the fourth factor—whether a permanent injunction will disserve the public interest—assume that they prevail on the merits. *Compare* ECF No. 99-1 at 67–68 (arguing that the continued enforcement of unconstitutional statutes disserves the public interest), *with* ECF No. 116-1 at 77 (arguing that enjoining provisions that pass constitutional muster frustrates the policy goals that motivated them and, as a result, disserves the public) (citing *Hand*

v. Scott, 888 F.3d 1206, 1214 (11th Cir. 2018)). And this Court's determinations on the merits will influence its determinations on the other three permanent injunction factors as well.

Here, this Court has determined that the PERC Defendants are entitled to summary judgment on Count VII, Plaintiffs' sole challenge to the recertification rules. As a result, Plaintiffs are not entitled to a permanent injunction preventing the PERC Defendants from enforcing the recertification rules. Likewise, this Court has determined that the PERC Defendants are entitled to summary judgment on two of the three challenges to the payroll deduction ban, Counts V and VII. This Court, however, has *not* determined whether Plaintiffs have prevailed on the merits on their Contracts Clause challenge to the payroll deduction ban, Count IV. Instead, it has denied summary judgment as to Count IV for both sides.

Therefore, because Plaintiffs' entitlement to permanent injunctive relief hinges on whether they prevail on the merits of Count IV, and because it is yet unclear whether Plaintiffs will, in fact, do so, neither side is entitled to summary judgment as to Plaintiffs' request for permanent injunctive relief from the payroll deduction ban. To that extent, Plaintiffs' motion for summary judgment is due to be denied, and the PERC Defendants' motion for summary judgment is due to be granted in part and denied in part.

VIII

In sum, Counts I and II are due to be denied without prejudice for lack of standing, and the PERC Defendants are entitled to summary judgment as to Counts III, V, VI, and VII. Neither side is entitled to summary judgment as to Count IV, and so that Count will proceed to trial.

Accordingly,

IT IS ORDERED:

1. Plaintiffs' motion for partial summary judgment, ECF No. 98, is **DENIED**.
2. The PERC Defendants' motion for summary judgment, ECF No. 116, is **GRANTED in part and DENIED in part**.
3. Counts I and II of Plaintiffs' second amended complaint, ECF No. 48, are **DISMISSED without prejudice**.
4. Counts III, V, VI, and VII of Plaintiffs' second amended complaint, ECF No. 48, are **DISMISSED** as to the PERC Defendants.
5. This Court does *not* enter partial summary judgment under Federal Rule of Civil Procedure 54(b).
6. **On or before Wednesday, August 7, 2024**, the parties are directed to confer with each other and then coordinate with the Courtroom Deputy on a date and time for a telephonic scheduling conference to reset this case for trial. At the conference, the parties should be prepared to inform this Court whether they

intend to put on additional evidence at trial or if they intend to resubmit their evidence in written form and rely only upon argument at trial.

SO ORDERED on July 24, 2024.

s/Mark E. Walker
Chief United States District Judge