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

ALACHUA COUNTY EDUCATION ASSOCIATION, *et al.*, *Plaintiffs*, v. DONALD J. RUBOTTOM, in his official capacity as chair of the Florida Public Employees Relations Commission, *et al.*, *Defendants.*	Case 1:23-cv-00111-MW-HTC

DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' SECOND MOTION FOR A PRELIMINARY INJUNCTION

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INTRODUCTION

Plaintiffs have abandoned their request for preliminary relief as to Section 1. Plaintiffs have also abandoned their request for preliminary relief on the grounds that Section 3 violates the First Amendment and, therefore, it can never be implemented against them. They now argue that preliminary relief is necessary only because Section 3 violates the Contracts Clause as to their existing CBAs.

Other unions sought similar preliminary relief down the street in Judge Marsh's courtroom. They relied on the theory that Section 3 violates the Florida Constitution's parallel Contracts Clause. Judge Marsh found against them on every factor. *See Miami Beach Municipal Employees AFSCME Local 1443 v. PERC*, 23-CA-1492 (Cir. Ct. Leon Cnty. June 30, 2023) ("*Miami Beach*") (attached). He concluded that "Section 3 does not substantially impair any contract" for several independent reasons. *Id.* at 8. First, the unions' "collective bargaining agreements expressly contemplate changes in state law and agree to be bound by those changes." *Id.* Second, Section 3 "does not disturb any of the core provisions of the Union Plaintiffs' CBAs. It affects only an ancillary provision in each CBA that describes how the employees' bargaining

representatives receive membership dues." *Id.* at 9. And third, "[t]he Union Plaintiffs have ample other ways to safeguard their interests in the collection of dues." *Id.* As for irreparable harm, Judge Marsh concluded that the "Plaintiffs' contention that they will lose dues rests on a false premise." *Id.* That is because "Section 3 does not bar Plaintiffs from receiving dues; it bars them from receiving dues via deductions from government-administered paychecks." *Id.*

Judge Marsh's analysis is instructive here because Florida courts have adopted an "approach to contract clause analysis similar to United States Supreme Court." *Scott v. Williams*, 107 So. 3d 379, 401 (Fla. 2013). As Plaintiffs explain it, however, the Court should follow two Sixth Circuit's decisions. *See Michigan State AFL-CIO v. Schuette*, 847 F.3d 800 (6th Cir. 2017) (Sutton, J.); *Toledo Area AFL-CIO Council v. Pizza*, 154 F.3d 307 (6th Cir. 1998) (Boggs, J.). But Plaintiffs are incorrect (at 1) that their "claim is indistinguishable from claims" in those cases. To start with, the Sixth Circuit later found—in opinions by the same authors as *Schuette* and *Pizza*—that §1983 does not provide a cause of action under the Contracts Clause. *See Kaminski v. Coulter*, 865 F.3d 339, 347 (6th Cir. 2017) (Boggs, J.). So *Schuette* and *Pizza* would have come out the

other way had the defendants in those cases raised the cause-of-action defect. *See Laborers' Int'l Union of N. Am., Loc. 860 v. Neff*, 29 F.4th 325, 334 (6th Cir. 2022) (Sutton, J.) (rejecting a union's plea to apply *Schuette* to a Contracts Clause claim because the Sixth Circuit later held §1983 does not authorize such a claim). The PERC Defendants have raised that defect here, and it independently bars Plaintiffs' claims. *See id.*

Yet even setting that aside, the Sixth Circuit's cases are of limited value. Each state regulates collective bargaining differently. Those differences, binding precedent explains, are critical to determining whether a new law "interferes with a party's reasonable expectations." *Sveen v. Melin*, 138 S. Ct. 1815, 1822 (2018). For its part, Florida has extensively regulated (1) the collective bargaining process for decades (a point Plaintiffs concede), (2) CBAs in general, and (3) dues checkoffs in particular. The Eleventh Circuit has held that sort of regulation defeats a Contracts Clause claim. *See S&M Brands, Inc. v. Georgia ex rel. Carr*, 925 F.3d 1198, 1203 (11th Cir. 2019).

In addition, as in *Miami Beach*, each of the four CBAs at issue here expressly contemplate changes in the law and account for those changes. The Supreme Court has held such provisions defeat any "reasonable

expectations" in keeping contractual benefits that are outlawed. *Energy Rsrvs. Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 416 (1983). Such contractual provisions were not an issue in *Schuette* and *Pizza*. Ruling against Plaintiffs, then, is in line with the Sixth Circuit *and* follows Eleventh Circuit and Supreme Court precedent.

For these and other reasons outlined below, the Court should deny Plaintiffs' motion for a preliminary injunction.

BACKGROUND

The Court is already familiar with Florida's history regulating collective bargaining and the timeline leading up to SB256's passage. The PERC Defendants do not repeat that background here. They note only that the unions added several new Plaintiffs and Defendants to this lawsuit in their Second Amended Complaint.

There are two new union Plaintiffs: Pinellas Classroom Teachers Association ("Pinellas CTA") and Hernando United School Workers ("Hernando USW") that have joined the prior Plaintiffs in their motion for a preliminary injunction. There are four new employer defendants, which are the counterparties to four of the moving Plaintiffs' CBAs: (1) the Board of Trustees of the University of Florida; (2) the School Board

of Alachua County; (3) the School Board of Pinellas County; and (4) the School Board of Hernando County. These four Defendants have stated that they "do not intend to participate in the briefing or hearing on the Second Motion for Preliminary Injunction." Dkt. 71, at 2.

Plaintiffs also added the Lafayette Education Association and an individual union member, Malini Schueller, as Plaintiffs. But neither of those Plaintiffs joined the motion for a preliminary injunction. Dkt. 63, at 1 (noting that only the other Plaintiffs moved for a preliminary injunction).

ARGUMENT

A preliminary injunction is an "extraordinary and drastic remedy," particularly one aimed at Florida's duly enacted laws. *Citizens for Police Accountability Pol. Comm. v. Browning,* 572 F.3d 1213, 1217, 1221 (11th Cir. 2009). To obtain an injunction, Plaintiffs must prove "(1) a substantial likelihood of success on the merits; (2) irreparable injury absent an injunction; (3) the injury outweighs whatever damage an injunction may cause the opposing party; and (4) an injunction is not adverse to the public interest." *Id.* at 1217. Plaintiffs fail at each step.

I. Some Plaintiffs have standing to challenge Section 3's effect only on the four CBAs at issue.

Plaintiffs UFF and FEA are not parties to any of the four CBAs that Plaintiffs proffer so they do not have standing to challenge Section 3's effect on those CBAs. The PERC Defendants agree that Plaintiffs Alachua CEA, UFF-UF, Pinellas CTA, and Hernando USW have fixed the standing defect identified in the Court's prior decision.

However, Plaintiffs have standing to challenge only Section 3's effect on *them* and *their* four CBAs. Federal courts cannot address injuries that a law may be causing to other parties elsewhere. "[S]tanding is not dispensed in gross: A plaintiff's remedy must be tailored to redress the plaintiff's particular injury." *Gill v. Whitford*, 138 S. Ct. 1916, 1934 (2018) (cleaned up). Nor can the Court enjoin others who are not party to this lawsuit. *See Support Working Animals, Inc. v. Governor of Fla.*, 8 F.4th 1198, 1205 (11th Cir. 2021) (explaining that a judgment does not "bind … other parties not before this Court."). Nor have Plaintiffs asserted "associational standing" on behalf of any other parties. For these reasons, the Court's decision cannot reach past the CBAs before it.

II. Plaintiffs' challenge to Section 3 is unlikely to succeed.

Section 3 no longer grants access to the government's payroll apparatus for covered unions to collect their dues. *See* SB256 §3. Plaintiffs challenge this provision on several theories in their Second Amended Complaint but move for a preliminary injunction only on their Contracts Clause claim. That claim fails for multiple reasons.

A. Plaintiffs have no cause of action under §1983 or directly under the Constitution.

1. §1983 does not provide a cause of action for a Contracts Clause claim.

Under binding Supreme Court precedent, "an alleged Contracts Clause violation cannot give rise to a cause of action under § 1983.'" *Neff*, 29 F.4th at 334; *see Carter v. Greenhow*, 114 U.S. 317, 322 (1885). Section 1983 provides a cause of action for violations of the Constitution's individual "rights, privileges, or immunities." 42 U.S.C. §1983. But the Contracts Clause "does *not* protect an individual constitutional right"; it imposes a "structural limitation" on the States. *Kaminski,* 865 F.3d at 346 (discussing *Carter*). That structural limitation "is not a right redressable under [section] 1983." *APT Tampa/Orlando, Inc. v. Orange Cnty.*, 1997 WL 33320573, at *8 (M.D. Fla. 1997) (citing *Carter*); *Poirier v. Hodges*,

445 F. Supp. 838, 842 (M.D. Fla. 1978) (same). Because §1983 does not give them a cause of action, their claim is unlikely to succeed.

The Supreme Court's decision in *Carter* forecloses this avenue for Plaintiffs. It was suggested at the prior hearing that *Carter*'s holding was not clear. Whatever ambiguity there may have been in *Carter*, however, the Supreme Court cleared up two years later: "Accordingly, it was held in *Carter v. Greenhow*, 114 U. S. 317, 5 Sup. Ct. Rep. 928, that no direct action for the denial of the right secured by a contract, other than upon the contract itself, would lie under *any provisions* of the statutes of the United States authorizing actions to redress the deprivation, under color of state law, of any right, privilege, or immunity secured by the constitution of the United States." *Ex Parte Ayers*, 123 U.S. 443, 504 (1887) (emphasis added).

Carter is still good law and is dispositive here. *See, e.g.*, *APT Tampa/Orlando*, 1997 WL 33320573, at *8 (citing *Carter* and dismissing "with prejudice" a Contracts Clause claim brought under section 1983). As the Court knows, the circuits have either held that *Carter* forecloses

section 1983 claims for alleged Contracts Clause violations,[1] or have assumed a cause of action only to deny the claim on the merits,[2] *but see S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 887 (9th Cir. 2003) (finding a cause of action under §1983). The Court should follow their lead.

Plaintiffs previously pointed to a footnote in the Supreme Court's decision in *Dennis v. Higgins*—a case about section 1983 and the Commerce Clause—as giving *Carter* "a narrow reading." *Id.*; *see* 498 U.S. 439, 451 n.9 (1991). Dkt. 42, at 15-16. Yet that footnote does not undermine *Carter*'s holding. Nowhere in *Dennis* did the Supreme Court explicitly overrule its holding in *Carter* pertaining. Nor could *Dennis* have silently overruled *Carter*'s holding. "The [Supreme] Court has told [lower courts], over and over again, to follow any of its decisions that directly applies in a case, even if the reasoning of that decision appears to have been rejected in later decisions." *Evans v. Sec'y, Fla. Dep't of Corr.*, 699 F.3d 1249, 1263 (11th Cir. 2012). *Carter* directly applies here, and it must be followed.

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[1] *See Crosby v. City of Gastonia*, 635 F.3d 634, 640-41 (4th Cir. 2011); *Kaminski,* 865 F.3d at 346.

[2] *See, e.g.*, *Watters v. Bd. of Sch. Dirs. of City of Scranton*, 975 F.3d 406, 413 (3d Cir. 2020); *Dennis Melancon, Inc. v. City of New Orleans*, 703 F.3d 262, 279 n.14 (5th Cir. 2012); *Alarm Detection Sys., Inc. v. Vill. of Schaumburg*, 930 F.3d 812, 825 n.2 (7th Cir. 2019).

Plaintiffs' argument that *Dennis* confirms *Carter* was about "pleading" standards fails on its own terms. Fundamentally, this argument rests on interpreting what the dissent says about the majority. And the Supreme Court just said such inquiries are dubious. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2176 (2023) ("A dissenting opinion is generally not the best source of legal advice on how to comply with the majority opinion."). If that were not enough (and as the Court noted at the last hearing), Justice O'Connor was in the *Dennis* majority and, after assuming senior status, joined the Fourth Circuit's later decision in *Crosby*. There, the panel majority explained that *Carter* held §1983 does not provide a cause of action under the Contracts Clause, and *Dennis* didn't change that. *See Crosby*, 635 F.3d at 640 ("The Supreme Court in *Dennis* recognized a § 1983 cause of action for the deprivation of rights secured by the Commerce Clause; as such, the continuing vitality of *Carter* and its precedent with respect to the Contracts Clause was not before the *Dennis* Court."). "There is little doubt," that panel concluded, "that *Carter* stands even today for the proposition that an attempted § 1983 action alleging state impairment of a private contract will not lie." *Id.* at 641. Adopting Plaintiffs' reading of

Dennis would mean that Justice O'Connor (1) joined an opinion that implicitly overruled *Carter* and then (2) later joined an opinion holding there was "little doubt" that *Carter* is good law. That cannot be right.

This doesn't mean Plaintiffs have no way to litigate their Contracts Clause arguments. For example, Plaintiffs could file an action in state court (because there is no diversity) seeking specific performance to restart deductions. The employers' defense, of course, would be Section 3's passage and the parties would litigate whether Section 3 permissibly impaired the dues deduction provision of the particular contract. Indeed, the Supreme Court explained in *Carter* that is the proper vehicle through which a Contracts Clause claim should be litigated. "The remedy is not a private cause of action against the state official responsible for the contractual impairment, but rather 'a right to have a judicial determination declaring the nullity of the attempt to impair its obligation' *in a suit* 'to vindicate his rights *under a contract*.'" *Kaminski*, 865 F.3d at 346 (quoting *Carter*, 114 U.S. at 322) (emphasis added). In other words, "Plaintiffs' recourse for an alleged contractual impairment is to seek enforcement of the collective bargaining agreements, not a constitutional claim under § 1983." *Int'l Union, United Auto., Aerospace & Agric. Implement Workers*

of Am. (UAW), AFL-CIO v. McClelland, 2020 WL 5834750, at *3 (E.D. Mich. 2020).

This debate is not an idle formality. Different causes of action have different elements and different remedies. Plaintiffs bringing a §1983 claim, for example, can obtain attorneys' fees if they prevail. *See* 42 U.S.C. §1983. Those aren't typically available in actions based on contract. It is thus important that Plaintiffs proceed under the correct cause of action. That is not §1983.

2. Plaintiffs cannot bring a claim under the Contracts Clause itself.

Plaintiffs also assert a cause of action "directly under the Contracts Clause of the United States Constitution." Dkt. 63, at 1. Other unions have tried this tack away from §1983 in the same circumstances and failed. *McClelland*, 2020 WL 5834750, at *3 (rejecting "Plaintiffs attempt to avoid the import of *Kaminski* by arguing that the court has inherent authority in equity to issue a declaratory judgment that the state has violated the Contracts Clause."). With good reason. "[T]he federal courts, and this Circuit in particular, have been hesitant to find causes of action arising directly from the Constitution." *Hearth, Inc. v. Dep't of Pub. Welfare*, 612 F.2d 981, 982 (5th Cir. 1980); *see Bonner v. City of Prichard*, 661

F.2d 1206, 1209 (11th Cir. 1981) (en banc) (Fifth Circuit decisions before 1981 are binding in the Eleventh Circuit). The Supreme Court's willingness to find such causes of action in narrow circumstances "were necessitated primarily by the absence of alternative remedies. In each case, there simply was no other means of seeking redress." *Hearth*, 612 F.2d at 982. As a result, the Eleventh Circuit has explained, when a plaintiff has "an adequate remedy, we will not imply a judicially created cause of action under the Constitution." *GeorgiaCarry.Org, Inc. v. Georgia*, 687 F.3d 1244, 1253 n.15 (11th Cir. 2012), *abrogated on other grounds by New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). And as already explained, Plaintiffs have "an adequate remedy" for their alleged harm: an action in state court seeking specific performance of the contract. *See supra* 11-12. A direct claim under the Constitution is unavailable.

Plaintiffs previously argued that the "[t]he Supreme Court has repeatedly held that there is a direct cause of action available under §1331 to enjoin violations of the Contracts Clause." Dkt. 42, at 12. Yet the Supreme Court "held" the opposite long ago: Section 1331 "does not create causes of action, but only confers jurisdiction to adjudicate those arising

from other sources which satisfy its limiting provisions." *Montana-Dakota Utilities Co. v. Nw. Pub. Serv. Co.*, 341 U.S. 246, 249 (1951).

The rest of Plaintiffs' arguments on this point suffer from the same problem: conflating "jurisdiction" with a "cause of action." *See* Dkt. 42, at 13-14. Plaintiffs point to the Supreme Court statement in *Allen v. B&O Railroad*, 114 U.S. 311 (1885), for example, that "the circuit court 'indisputabl[y]' had jurisdiction" in a case involving the Contracts Clause. But whether a federal court has "jurisdiction" to consider an alleged claim is different than whether there is a "cause of action" supporting that claim. Just because Congress passed a general federal-question jurisdictional provision doesn't mean there is also a cause of action for every alleged federal claim. It just means that Congress gave federal courts jurisdiction to *consider* a complaint's claims "*arising under* the Constitution, laws, or treaties of the United States." 28 U.S.C. §1331 (emphasis added). And a federal court can have jurisdiction to conclude that a plaintiff has no cause of action. *Kaminski*, 865 F.3d at 343-45. One says nothing about the other.

Plaintiffs' cases all suffer from this defect. In *Allen*, for example, the parties litigated whether there was jurisdiction under the Eleventh

Amendment to enjoin state officials. 114 U.S. at 314-17. In what was a precursor to *Ex Parte Young*, the Court concluded that there was such "jurisdiction." *Id.* at 317. But again, that there was jurisdiction doesn't mean there was a valid cause of action in the first place. *See supra* Part II(A)(1). That was the case in *Redwine* too, which concluded there was jurisdiction to enjoin the state officer. But it remanded the case to "address … the merits of appellant's claim." *Georgia R.R. & Banking Co. v. Redwine*, 342 U.S. 299, 306 (1952); *see also Carter*, 114 U.S. at 308 (noting only that the district court had "rightful jurisdiction"); *Pennoyer v. McConnaughy*, 140 U.S. 1, 25 (1891) ("[I]t cannot be said, therefore, that this is a suit against the state, within the meaning of the eleventh amendment."). These decisions do not establish that Plaintiffs have a cause of action directly under the Contracts Clause.[3]

[3] Nor does the fact that the Supreme Court has addressed the *merits* of a Contracts Clause claim establish there is a cause of action directly under the Constitution. A defendant who does not argue the plaintiff's cause of action is defective waives that defense. *See, e.g.*, *Neff*, 29 F.4th at 334 (rejecting attempt to "point[] to a pre-*Kaminski* decision in which we affirmed an injunction against enforcement of a Michigan law on Contracts Clause grounds" because there was no argument "that the defendants had objected that the plaintiffs lacked a cause of action."). And *sub silentio* or drive-by decisions have no precedential effect. *In re Bradford*, 830 F.3d 1273, 1278 (11th Cir. 2016) (explaining that courts "are bound only by explicit holdings") (collecting cases).

Finally, Plaintiffs have suggested that *Ex Parte Young* itself creates a cause of action. *See* Dkt. 42, at 12-13 (pointing to *Ex Parte Young* as a source of their cause of action). *Ex parte Young* "does not create a substantive claim ….; it creates an exception to Eleventh Amendment immunity." *McClelland*, 2020 WL 5834750, at *3. "Put another way, *Ex Parte Young* provides a path around sovereign immunity *if* the plaintiff already has a cause of action from somewhere else." *Id.* (quoting *Michigan Corr. Org. v. Michigan Dep't of Corr.*, 774 F.3d 895, 905 (6th Cir. 2014)); *see also Cambridge Univ. Press v. Becker*, 863 F. Supp. 2d 1190, 1210 (N.D. Ga. 2012), *rev'd on other grounds Cambridge Univ. Press v. Patton*, 769 F.3d 1232, 1255 (11th Cir. 2014) ("*Ex Parte Young* does not create a cause of action; it enables a form of relief … which otherwise would be barred by the Eleventh Amendment or sovereign immunity."). *Ex Parte Young* is not an answer to Plaintiffs' problem either.

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That Plaintiffs have resorted to these shaky (at best) causes of action shows that their request for this "extraordinary and drastic remedy" should be denied. To rule in Plaintiffs' favor, the Court would have to credit a §1983 claim that most courts have agreed is foreclosed by

Supreme Court precedent—including one with a retired Supreme Court justice interpretating that precedent—*or* run against this Circuit's "hesitan[cy] to find causes of action arising directly from the Constitution." *Hearth*, 612 F.2d at 982. Both of those paths mean that Plaintiffs are not "likely to succeed on the merits." And that is the only inquiry before the Court on this factor.

B. Section 3 does not substantially impair existing contract rights.

Even if Plaintiffs had a cause of action, Section 3 does not substantially impair existing contract rights. *Sveen*, 138 S. Ct. at 1822. The Contracts Clause "is not an absolute [prohibition]" on laws affecting contract rights. *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 428 (1934). A state law must cause a "*substantial* impairment of a contractual relationship." *Sveen*, 138 S. Ct. at 1817 (quoting *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978)) (emphasis added). Whether any impairment is "substantial" turns on the extent to which the law "interferes with a party's reasonable expectations," "prevents the party from safeguarding or reinstating his rights," and "undermines the contractual bargain." *Id.* If the contract is not substantially impaired, the inquiry ends. *Id.*; *see also Spannaus*, 438 U.S. at 245.

1. Plaintiffs have no "reasonable expectation" of maintaining dues deduction, which independently defeats their claim.

1. The "reasonable expectations" factor is dispositive under binding precedent because the CBAs "do[] not give rise to any reasonable contractual expectations that implicate the Contract Clause." *S&M Brands, Inc.*, 925 F.3d at 1203. "If an industry is already heavily regulated, regulatory changes that abrogate industry players' contract rights are less likely to be considered substantial impairments." *Id.* (citing *Kansas Power*, 459 U.S. at 413). "And when the subject matter of the contract itself is already subject to state regulation, the substantial-impairment case is even weaker." *Id.* Plaintiffs' CBAs fall squarely under both of these factors.

Florida has "heavily regulated collective bargaining for decades," and Plaintiffs were "on notice that future statutory changes were likely." *Fraternal Ord. of Police*, 45 F.4th at 961. Plaintiffs previously conceded that "Florida has long regulated the general field of labor relations." Dkt. 42, at 21. Rightfully so.[4]

[4] Relying on a Seventh Circuit decision, Plaintiffs previously argued that "the mere regulation" of "labor relations 'is never a sufficient condition for rejecting a challenge based on the contracts clause.'" Dkt. 42, at 20 (quoting *Chrysler Corp. v. Kolosso Auto Sales, Inc.*, 148 F.3d 892, 895 (7th Cir. 1998)). That view contradicts the Eleventh Circuit's which has explained that courts

The "subject matter of the contract itself" is also "already subject to state regulation" because the CBAs themselves are extensively regulated from start to finish. Only those organizations that PERC has certified can even engage in CBA negotiations, and even then the certifications are subject to PERC revoking them based on certain criteria. *See* Fla. Stat. Ann. §§447.305, 447.307 (outlining certification requirements); *id.* §447.308 (revocation). Florida also sets the issues over which the parties are allowed to bargain. *See id.* § 447.309(1) (explaining that the parties "shall bargain collectively in the determination of the wages, hours, and terms and conditions of employment of the public employees within the bargaining unit."); PERC, *Scope of Bargaining* (Oct. 2021) (outlining the topics that are subject to collective bargaining), https://perc.myflorida.com/pubs/Scope_of_Bargaining.pdf.

Florida likewise regulates the formation of the contract itself. *See, e.g.*, Fla. Stat. Ann. §447.309(1) ("[T]he bargaining agent for the organization and the chief executive officer of the appropriate public employer or employers, jointly, shall bargain collectively in the

look at whether the "*industry* is already heavily regulated" *and* whether "the subject matter of the contract itself is already subject to state regulation." *S&M Brands*, 925 F.3d at 1203 (emphasis added).

determination of the wages, hours, and terms and conditions of employment of the public employees within the bargaining unit."). Florida also regulates the process for when the parties are at an "impasse" and cannot come to an agreement. *See* Fla. Stat. Ann. §447.403. For its part, PERC has issued rules that outline specifically how a CBA can be ratified and how unions must provide employees notice of that ratification. *See* Fla. Admin. Code §60CC-4.002(1). PERC regulations also outline how employees vote whether to ratify the CBA. *Id.* §60CC-4.002(3)-(5). And generally speaking, PERC regulates this entire process as well as implementation of CBAs via its unfair-labor practice jurisdiction. *See, e.g.*, Fla. Stat. Ann. §447.501(2)(c) ("A public employee organization [is] prohibited from [r]efusing to bargain collectively or failing to bargain collectively in good faith with a public employer.").

Even once a CBA is ratified, Florida law makes clear that every provision of a CBA is subject to changes in the law. The law has long provided that "[i]f any provision of a collective bargaining agreement is in conflict with any law, ordinance, rule, or regulation," then "the conflicting provision of the collective bargaining agreement shall not become effective." Fla. Stat. Ann. §447.309(3).

Finally, not only has Florida regulated the "subject matter of the contract itself." It has also regulated the *exact* contractual provision at issue—dues deductions—for decades. Florida law previously allowed dues deductions, to be sure, but it qualified Plaintiffs' ability to use them. From the beginning, dues deductions were subject to revocation *at will* by public employees. *See* Fla. Stat. Ann. §447.303 (2022). That means Plaintiffs' use of dues deductions was always out of their control.

In these circumstances, "[i]t is hard to say that such a contract could give rise to *any* reasonable contractual expectations that would implicate the Clause." *S&M Brands*, 925 F.3d at 1203; *Spannaus*, 438 U.S. at 242. (explaining that contract rights "carry with [them] the infirmity of the subject-matter."). The extensive regulatory framework in Florida distinguishes this case from the Sixth Circuit's decision in *Pizza*, where "Ohio simply allude[d] to the fact that labor agreements and elections are heavily regulated." *Pizza*, 154 F.3d at 325. Unlike here, Ohio did "not point to any specific regulations that it claims placed the affected unions and workers on notice that their contractual right to wage checkoffs might be extinguished during the term of the CBAs they negotiated." *Id.*

Instead, Florida's regime aligns with *Kansas Power* in the same way the Sixth Circuit thought Ohio's didn't. *Id.* (explaining that "although the State [in *Kansas Power*] was not regulating prices for intrastate gas at the time the agreements were made, the State had previously regulated the price of natural gas and had been regulating the production, distribution and sale of natural gas for seventy-five years."). That distinction meant those plaintiffs' "reasonable expectations had not been impaired by the Kansas Act." *Id.* (quoting *Kansas Power*, 459 U.S. at 416 (alteration accepted)). The same is true here.

Plaintiffs were aware of the regulatory landscape when negotiating their collective bargaining agreements. And the Contracts Clause does not "ossify" yesterday's regulations. *S&M Brands*, 925 F.3d at 1203. The Eleventh Circuit (and the Supreme Court) have found similar regulation of the industry generally, and regulation of the contract at issue specifically, to be dispositive without looking at any other factors. *Id.* This Court should do the same.

2. There is a second, independent reason why this factor is dispositive: "the contracts expressly recognize the existence of extensive regulation by providing that any contractual terms are subject to relevant

present and future state and federal law." *Kansas Power*, 459 U.S. at 416. Such a provision, the Supreme Court has explained, "could be interpreted to incorporate all future [regulatory changes], and thus dispose of the Contract Clause claim." *Id.* "Regardless of whether this interpretation is correct, the provision does suggest that [the plaintiff] knew its contractual rights were subject to alteration by state … regulation." *Id.* As a result, a plaintiff's "reasonable expectations have not been impaired" by a change in the law when its contracts specifically contemplate such changes. *Id.*

All of the Plaintiffs' CBAs contain such provisions. The UFF-UF agreement, for example, provides that "[a] provision of this Agreement shall be invalid and have no force or effect if it [i]s rendered invalid by reason of any subsequently enacted legislation." Dkt. 15-2, Gothard Decl. Ex. 1 at 136, §32.1(a)(2); *see also* Dkt. 63-2, Burnett Decl. Ex. 1, Art. I §4 (Hernando USW) ("Nothing in this Agreement shall require either party to act in violation of any federal, state or local law or Board policy or regulations, which shall take precedence when inconsistent with this

Agreement.").[5] As in *Kansas Power*, then, these provisions mean that Plaintiffs' "reasonable expectations have not been impaired." *See also Miami Beach* ¶23 ("Local 1554's and Local 3293's collective bargaining agreements expressly contemplate changes in state law and agree to be bound by those changes.").

Plaintiffs respond (at 15) that their "CBAs' severability clauses" do not "serve as evidence" of their reasonable expectations. In their view, "[e]ach clause is generic in nature and simply includes words to the effect that, in the event that a provision in the CBA is held to be unlawful or unenforceable during its term, the remainder of the CBA remains lawful and enforceable." But Plaintiffs confuse generic severability clauses with the type of clauses at issue in *Kansas Power*. A generic severability clause provides that the rest of the contract remains in force if one provision is found unlawful. What *Kansas Power* was addressing, on the other hand,

[5] *See also* Dkt. 63-3, Blankenbaker Decl. Ex. 1, Art. 1, §A (Pinellas CTA) ("[I]f any provision of this Agreement or any application of this Agreement to any teacher covered hereby shall be found contrary to law, such provision or application shall have effect only to the extent permitted by law."); Dkt. 15-6, Ward Decl. Ex. 2, at 1 §2 (Alachua CEA) ("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.").

were clauses that anticipate changes in the law and arguably incorporate the effect of those changes into the contract.

Of course, Plaintiffs' CBAs have generic "severability clauses" too, and Plaintiffs point to them on this issue. *See* Dkt. 63-1 (PI Br.), at 15-16; *see also* UFF CBA §32(b) ("If any provision is invalid for the reasons set forth in 32.1(a), it shall not affect the remainder of the Agreement, and all other terms and provisions shall continue in full force and effect.").[6] But they also have *Kansas Power* clauses, and it is those clauses on which Defendants rely. *See supra* 23-24 & n.5. Plaintiffs' two authorities on this point miss the mark because, as Plaintiffs themselves admit (at 15-16), they addressed "generic severability clause[s];" they were not *Kansas Power* clauses. *See Cummings, McGowan & W., Inc. v. Wirtgen Am., Inc.*, 160 F. App'x 458, 462 (6th Cir. 2005); *Chiles v. UFF*, 615 So. 2d 671, 673 (Fla. 1993).

[6] *See also* Hernando USW CBA Art. I, §4 ("In the event that any of the provisions of this Agreement shall be held in violation of any federal, state or local law by a court of final appeal, such determinations shall not in any way affect the remaining provisions of this Agreement, unless otherwise provided by law."); Alachua CEA CBA Art. I, §3 ("If any provision of this contract or any application of this contract is held to be contrary to law, the provision or application will be invalid, except to the extent permitted by law. All other provisions or applications will continue in effect for the term of the contract."); Pinellas PCTA CBA Art. I, §A ("[A]ll other provisions or applications of this Agreement shall continue in full force and effect.").

2. Section 3 allows Plaintiffs other ways to safeguard their asserted rights.

Section 3 also does not substantially impair the collective bargaining agreements because it allows other ways for Plaintiffs to safeguard their interests. *Sveen*, 138 S. Ct. at 1822. Plaintiffs can collect their dues in any other manner they see fit. Their preferred method is through a union-specific, automated collections platform called "eDues." *See* PI Br. 6, 24; Dkt. 15-1, at 30. As FEA *itself* acknowledges, "eDues is easy." *See* Dkt. 41-9 (Ex. H), at 3. "Most members complete the switch to eDues in about 5 minutes by using their online banking credentials or their account number and bank routing number." *Id.* FEA also believes eDues is superior to payroll deduction. "Paying union dues via payroll deduction allows school districts and school board members to view employees' membership status, opening educators to targeting and retaliation." *Id.* at 11. Not so with eDues. "Paying union dues via bank transfer allows members to keep their union membership private from administrators." *Id.*

But there is no requirement that Plaintiffs collect their dues through just one platform. Other Florida labor organizations use Unionly, which is another payment platform designed for unions to collect

dues via credit card. *See* Dkt. 41-10 (Ex. I); *see also* Unionly, Online Dues Payment Platform ("The Online Dues Payment Platform Built for Organized Labor."), https://perma.cc/S7Z4-8F8H. They are also free to collect dues just as any other service provider collects payments, whether it be by ACH withdrawal, credit card, PayPal, Venmo, check, or cash, as other Florida labor organizations have done. *See, e.g.*, Dkt. 41-11 (Ex. J) (accepting PayPal and credit cards).

For these reasons, Plaintiffs have "ample other ways to safeguard their interests in the collection of union dues." *Miami Beach* ¶23. A state law does not substantially impair contracts when the parties can avoid its impact by taking simple steps, especially where the parties have "several months to do so" before the law takes effect. *Sveen*, 138 S. Ct. at 1824; *see also Spannaus*, 438 U.S. at 249 & n.23. Plaintiffs' members are already required to submit written consent to have dues deducted from their paychecks. *See, e.g.*, Alachua CBA 5-6; UFF CBA 10. Asking their members to sign up for eDues is a similarly small burden.

Plaintiffs acknowledge they are in the process of moving their members to eDues. And they have made substantial progress on that front. UFF previously estimated that "fewer than 35% of UFF's active faculty

members will have authorized dues payment via eDues by June 30, 2023." Dkt. 15-2, Gothard Dec. ¶19. Just six weeks later that number was already at 52%. Dkt. 63-4, Second Roeder Decl. ¶9(b). ACEA did not previously provide its numbers but is even higher than UFF at 60%, while Pinellas is already at 43% *Id.* ¶¶9(a), (c).[7] Section 3 thus has not substantially impaired Plaintiffs' CBAs because they are showing that they can avoid its effects by switching to eDues.

Plaintiffs respond (at 18-19) that their ability to transition to eDues does not qualify as safeguarding their rights. This factor, they argue, "inquires only into the ability of a party to easily prevent the deprivation of rights in the first instance." PI Br. 18. But the Supreme Court has explained that this factor looks at whether the law prevents the party from "safeguarding *or* reinstating [its] rights." *Sveen*, 138 S. Ct. at 1821-22 (emphasis added). The example Plaintiffs give where a party can "restore the *status quo ante* … by filing a notice document with the state within a reasonable grace period," PI Br. 18, is a version of "reinstating" rights.

[7] Hernando USW apparently didn't engage in any attempts to switch off dues deduction and is still sitting at 0% as a result. *Id.* ¶¶9(c)-(d). It only just started the switch over to eDues for its 175 employees. Dkt. 63-2, Burnett Decl. ¶¶12, 15. That Hernando USW sat on its hands this entire time is not PERC's fault.

Plaintiffs' ability to switch to eDues is an example of "safeguarding" their rights to dues payments. Such "safeguarding" options defeat a Contracts Clause claim. *See, e.g.*, *Williams v. Alameda Cnty.*, 2022 WL 17169833, at *14 (N.D. Cal. 2022) (moratorium on evictions did not prevent landlords from safeguarding their rights because they could pursue breach of contract actions for damages rather than their preferred path of eviction).

3. Section 3 does not undermine the collective bargaining agreements.

Section 3 also does not "undermine[] the contractual bargain." *Sveen*, 138 S. Ct. at 1822. This factor analyzes the particular affected provision in the context of the entire "contractual bargain," not just the provision by itself. In *Sveen* for example, it was "[t]rue enough that in revoking a beneficiary designation, the law makes a significant change." *Id.* at 1822. That was because "the 'whole point' of buying life insurance is to provide the proceeds to the named beneficiary." *Id.* But the "whole point" of these CBAs was not to provide the Plaintiffs' dues deductions.

The core of any collective bargaining agreement is the terms between the employees and their employer. The CBAs here cover a broad range of subjects of critical importance to teachers, including how they are paid and evaluated, their health insurance benefits, class size, and

the schools' reduction-in-force policy. *See, e.g.*, Dkt. 15-6, Ward Decl. Ex. 2 at 80-86 (Alachua CBA); Dkt. 15-2, Gothard Decl., Ex. 1 at 2 (UFF CBA).

Section 3 touches none of those subjects. "I[t] affects only an ancillary provision in each agreement that describes how the employees' bargaining representatives receive membership dues." *Miami Beach* ¶23; *see also* Calloway Decl. ¶7 ("In my career, I have never heard a teacher express interest in whether a collective bargaining agreement allows the union to collect dues from paychecks."). Interference with such "minor contractual provision[s] is not a substantial impairment under the Contracts Clause." *Heights Apartments, LLC v. Walz,* 30 F.4th 720, 728 (8th Cir. 2022). Those provisions do not guarantee Plaintiffs any revenue. *See* Alachua CBA 5-6; UFF CBA 10-11; *contra Sveen*, 138 S. Ct. at 1822. They merely obligate employers to collect payroll deductions from employees who opt-in and pass along the proceeds. Section 3 operates no differently than if employees withdrew consent for automatic deductions, which teachers have long had the right to do under state law and their agreements. *See, e.g.*, Alachua CBA 5-6; UFF CBA 10-11; Fla. Stat. Ann. §447.303 (2022).

In response to this, the Plaintiffs point to *Pizza* (at 13) and argue the Sixth Circuit held "[t]hat the provision was important to the union was sufficient." The analysis cannot turn on whether the aggrieved party thinks the bargain has been undermined. Otherwise, this factor would be satisfied in every single case. The correct view is the affected provision is analyzed in the context of the entire contract, and under that analysis Section 3 has not "'undermine[d] the contractual bargain.'"[8]

Finally, Plaintiffs quote a prior PERC case and suggests (at 13) that it has taken the position that stopping dues deductions will always "financially strangle the organization." PI Br. 13 (citing *Florida Pub. Emps. Council 79*, 31 FPER ¶257, 2005 WL 6712050 (2005)). But that is not what PERC has said. Referencing a previous decision, PERC explained that "[t]he Commission has recently noted that an employer's act of ceasing dues deduction or failing to remit dues to an employee organization

[8] *Pizza* also addressed a different type of deduction: "wage checkoffs for political causes," 154 F.3d at 322, not the unions' own dues. And the law "obliterate[d] the *affected workers*' contractual expectation that the state will allow them to use this highly effective method of political fundraising for the term of the CBA." *Id*. at 323. (emphasis added). That distinction matters because CBAs are primarily for the benefit of the employees, not the unions. *See supra* 19-20, 29-30. And though the unions here added an individual plaintiff to this lawsuit, *see* Dkt. 48 ¶28, that plaintiff did not join the motion for a preliminary injunction or otherwise attest dues deductions had similar import to her, *see* Dkt. 63, at 1 (listing only the unions as moving for a preliminary injunction).

has the practical effect of creating labor instability by allowing an employer to financially strangle the organization." *Florida Pub. Emps. Council 79*, 31 FPER ¶257, 2005 WL 6712050 (2005) (citing *Professional Association of City Employees v. City of Jacksonville*, 29 FPER ¶14, 2003 WL 26069010 (2003)). What PERC meant was that the employer *in that prior case* "financially strangled" that particular union. That made sense because, in that prior case, the employer did not just stop dues deduction; it kept the employees' dues for itself to cover a debt that the union owed the employer. It was "[t]he City's *seizure of the employees*' dues" that "ha[d] the practical effect of … allowing the City to *financially strangle* the employees' duly elected certified bargaining agent." *Jacksonville*, 2003 WL 26069010 (emphasis added). In other words, the City didn't just cut off the union's access to its payroll and leave it to find an alternate way to collect the dues; it cut off the City's access to the dues *entirely* by keeping them. Section 3, of course, does nothing of the sort. Plaintiffs remain free to collect at will and have already made substantial progress on that front.

C. Section 3 is justified by a significant and legitimate purpose.

Even if Section 3 substantially impairs the CBAs in the record, the impairment is justified by a significant and legitimate public purpose. *See Sveen*, 138 S. Ct. at 1822. The Contracts Clause "does not operate to obliterate the police power of the States." *Spannaus*, 438 U.S. at 241. Under the police power, Florida has "great latitude" to pass laws aimed at promoting the "lives, limbs, health, comfort, and quiet of all persons." *Metro. Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 756 (1985). A law that falls within the state's police power does not violate the Contracts Clause, even if it substantially impairs a contract. *See, e.g., Flanigan's Enter. Inc. v. Fulton Cnty.*, 242 F.3d 976, 989 (11th Cir. 2001).

"Normally, [courts] defer to a state's judgment as to the necessity of a measure in question." *Linton by Arnold v. Comm'r of Health & Env't, State of Tenn.*, 65 F.3d 508, 519 (6th Cir. 1995). This is particularly true where, as here, "no appreciable danger exists that the governmental entity is using its regulatory power to profiteer or otherwise serve its own pecuniary interests." *Houlton Citizens' Coal. v. Town of Houlton*, 175 F.3d 178, 191 (1st Cir. 1999). Moreover, these contracts are not with the state itself, which passed SB256 (rather than, for example, a

municipality that issues an ordinance that modifies its own agreements with contractors). Yet even if the State were a direct party to the contracts, courts still owe "meaningful deference" to the state's judgment when it passes laws that alter public contracts. *United Auto., Aerospace, Agr. Implement Workers of Am. Int'l Union v. Fortuno*, 633 F.3d 37, 44 (1st Cir. 2011); *Baltimore Tchrs. Union, Am. Fed'n of Tchrs. Loc. 340, AFL-CIO v. Mayor & City Council of Baltimore*, 6 F.3d 1012, 1019 n.10 (4th Cir. 1993) (same). In all events, Plaintiffs bear the burden to show Section 3 lacks a legitimate purpose. *United Auto*, 633 F.3d at 43-45. They have not carried that burden.[9]

At this stage, Florida asserts the significant and legitimate public purpose of increasing transparency and ensuring public employees are fully informed about the dues they are paying their unions. *See infra* 35-36, 41.[10] Courts have readily concluded that similar public purposes

[9] Plaintiffs cite an Eighth Circuit case (at 19) for the proposition that the burden is on the Defendants on this point. Yet that case did not identify which party has the burden. *See Heights Apartments*, 30 F.4th at 730. The First Circuit, however, has analyzed the issue extensively and concluded the burden is on the plaintiff. *United Auto*, 633 F.3d at 43-45.

[10] Contrary to Plaintiffs' contention otherwise, PERC does not argue that an interest supporting Section 3 is that it makes employees aware of how their "dues are used." PI Br. 20. That is an interest that supports the disclosure requirements that Section 1 mandates. *See* Dkt. 41, at 6, 25 (explaining that

justify state laws that substantially impair public contracts. *See Watters*, 975 F.3d at 413 (school district's economic hardship justified state law suspending teachers without pay despite tenure contract); *Buffalo Teachers Fed'n v. Tobe*, 464 F.3d 362, 371 (2d Cir. 2006) (same for teacher wage freezes). If states can pass laws suspending teachers or reducing their pay to alleviate the *government*'s financial difficulty without running afoul of the Contracts Clause, then surely Florida can pass a law seeking to bring some transparency to its *public employees'* financials without constitutional infirmity. *See Houlton Citizens*, 175 F.3d at 191 (greater deference owed when state does not seek to "serve its own pecuniary interests").

Plaintiffs argue that Section 3 doesn't fit the State's interest because a paystub "shows employees the amount of dues deducted from their paychecks in each pay period." PI Br. 21. True enough. Yet that fact has not stopped the problem that employees are often not aware of those deductions. "[I]t is common for teachers to forget that they have authorized the union to collect their dues directly from their paycheck."

Section 1 is justified because employees are "often in the dark on how the union spends their dues.").

Calloway Decl. ¶8. And that "often leads to teachers not knowing how much they pay their unions in dues each year." *Id.* Dues deduction happens before the employee's money is deposited into his or her account so it is less likely to be seen; a direct ACH payment from that account (or other form of payment) doesn't suffer from that same problem.

Plaintiffs briefly argue that Section 3's purpose is not legitimate because it does not apply to public safety employers. PI Br. 22. They invite the Court to conclude that Florida's aim is to favor unions that supported the Governor. The Court should reject that invitation. The reason for the exception is that Florida has long treated its first responders differently in employment regulation because of the nature of their jobs in protecting the public, as the PERC Defendants previously outlined. *See* Dkt. 41, at 7-9. That "policy has stood inviolate for almost [five] decades whether the employer is a municipality, a county, a school board, or the state." *Broward Cnty. Police Benevolent Ass'n, Inc. v. School Bd. of Broward Cnty.*, 32 PFER ¶11, 2006 WL 6824956 (2006). The exemption also recognizes that these employees typically work long shifts that keep them away from "one centralized location" where, unlike other public employees, they could readily meet with union representatives to pay their

dues. *See, e.g.*, Floor Statement, Committee on Governmental Oversight and Accountability 48:03 (March 7, 2023), https://tinyurl.com/yvy7e7u5. And when exercising the police power, "the legislature must be allowed leeway to approach a perceived problem incrementally." *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 316 (1993); *see Williamson v. Lee Optical*, 348 U.S. 483, 489 (1955) ("Evils in the same field may be of different dimensions and proportions, requiring different remedies."); *see Fraternal Ord. of Police*, 45 F.4th at 961 (law abrogating rights to bargained-for disciplinary procedure for police only did not violate the Contracts Clause). Section 3 fits the State's interest.

III. The equitable factors do not support preliminary relief.

A preliminary injunction is "not to be granted unless the movant clearly establishes the burden of persuasion as to the four requisites." *Am. C.L. Union of Fla., Inc. v. Miami-Dade Cnty. Sch. Bd.*, 557 F.3d 1177, 1198 (11th Cir. 2009). "Failure to show any of the four factors is fatal." *Id.* The equitable factors independently weigh against preliminary relief.

A. Plaintiffs face no irreparable harm.

Plaintiffs' primary argument is that they will lose dues. PI Br. 23-24. That "contention … rests on a false premise." *Miami Beach* ¶25. "Section 3 does not bar the Plaintiffs from receiving dues; it bars them only

from receiving dues via government-administered paychecks." *Id.* Members still owe those dues, and they can pay those dues just like they pay countless other bills every day. If members miss any payments, then Plaintiffs are still entitled to recover them from their members. *See* Second Am. Compl. ¶81 (acknowledging they are entitled to any back dues because they have a cause of action to recover them). "[R]ecoverable monetary loss does not constitute irreparable injury." *Lifestar Ambulance Serv., Inc. v. United States*, 365 F.3d 1293, 1296 n.5 (11th Cir. 2004).

Plaintiffs claim (at 24) that "there is no realistic possibility that the unions will be able to collect past-due amounts." But they provide no factual support or explanation why. That silence is telling. A person who misses a credit card payment, for example, still owes the credit-card company that payment. The same is true here. Now, if the problem is that the members don't want to pay the dues that they owe Plaintiffs, then that suggests they never knew they were paying those dues in the first place. And Section 3 is doing the work that it was intended to do: bringing transparency to the fact that employees are paying dues and the amounts they are paying.

In any event, Plaintiffs' own declarations make clear they have plenty of runway to get the rest of their members signed up for eDues or alternative forms of payment. UFF has "one year" and Alachua has "six months," while Pinellas CTA and Hernando USW have "three months" before they "significantly diminish [their] reserves." Gothard Decl. ¶22; Ward Decl. ¶21; Blankenbaker Decl. ¶16; Burnett Decl. ¶17. It is not clear what Plaintiffs' identical use of "significantly diminish [their] reserves" means—other than they would still have reserves left over after those time periods. But it makes no difference. There is enough time to avoid any harm given the progress they've already made by signing up roughly half of their members.

To be sure, Pinellas CTA and Hernando USW have less time and Hernando USW apparently has only recently started transitioning its 175 members to eDues. Burnett Decl. ¶¶12, 15. That should have counseled these Plaintiffs to file a lawsuit and seek preliminary relief earlier. UFF-UF and Alachua already did so once. That Pinellas CTA and Hernando USW did not cuts against them because "a party's failure to act with speed or urgency in moving for a preliminary injunction necessarily

undermines a finding of irreparable harm." *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2016).

Plaintiffs previously argued they will suffer *per se* irreparable harm. *See* Dkt. 15-1, at 32. They appear to have wisely dropped that argument. If they try to revive it in reply, the Court should reject it. Contracts Clause violations do not constitute irreparable harm *per se*; they require a further showing of injury. *See, e.g., New Jersey Retail Merchants Ass'n v. Sidamon-Eristoff*, 669 F.3d 374, 388-89 (3d Cir. 2012) (evaluating the specific way in which the purported violation caused irreparable harm). This rule aligns with binding precedent. The "*only*" constitutional violations that the Eleventh Circuit has said constitute *per se* irreparable injury are of "the first amendment" and the "right of privacy." *KH Outdoor*, 458 F.3d at 1272 (quoting *Northeastern Fla. Chapter of the Ass'n of Gen. Contractors of America v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990)) (emphasis added). Unlike those constitutional provisions, the Contract Clause provides no "individual constitutional right" to burden. *See Kaminski,* 865 F.3d at 346.

B. The equities weigh against preliminary relief.

"Finally, where the government is the party opposing the preliminary injunction, its interest and harm merge with the public interest." *Swain v. Junior*, 958 F.3d 1081, 1091 (11th Cir. 2020). The state would be harmed by an injunction because "any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Hand v. Scott*, 888 F.3d 1206, 1214 (11th Cir. 2018) (quoting *Maryland v. King*, 567 U.S. 1301, 1301 (2012) (Roberts, C.J., in chambers)); *see also Miami Beach* ¶30 ("[I]t is in the public interest to implement policy such as Section 3 of SB 256 passed by the duly elected state legislators and signed into law by the governor."). SB256 is also meant to bring transparency to public workers who are often in the dark as to the dues they are sending unions automatically via their paychecks. Calloway Decl. ¶8; *Cf. Nat'l Head Start Ass'n v. Dep't of Health & Hum. Servs.*, 297 F. Supp. 2d 242, 251 (D.D.C. 2004) (noting "that the public's interest in transparency is predominant"). These equities thus weigh against an injunction.

CONCLUSION

This Court should deny Plaintiffs' motion for preliminary injunction.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(F), undersigned counsel for the Defendants certifies that the foregoing Defendants' Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction, excluding those portions excluded by Local Rule 7.1(F), consists of 8,775 words.

/s/ Bryan Weir
Bryan Weir

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2023, I electronically filed the foregoing via CM/ECF, which automatically serves all counsel of record for the parties who have appeared.

/s/ Bryan Weir
Bryan Weir