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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CIVIL ACTION

DELANEY REYNOLDS, et al., Plaintiffs, v. FLORIDA PUBLIC SERVICE COMMISSION, Defendant.	CIRCUIT CIVIL DIVISION CASE NO. 2024-019966-CA-01 Hon. Joseph Perkins

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO CHANGE VENUE AND MOTION TO DISMISS FIRST AMENDED COMPLAINT

Youth Plaintiffs, by and through undersigned counsel, hereby oppose Defendant's Motion to Change Venue and Motion to Dismiss First Amended Complaint.

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INTRODUCTION

Plaintiffs, six youth who have grown up, live, learn, and recreate in Miami-Dade County (the "County"), respectfully request that the Court deny the Motion to Change Venue and Motion to Dismiss First Amended Complaint ("Motion") brought by the Florida Public Service Commission ("Commission" or "Defendant").

Plaintiffs have deep, personal connections to their home County and wish to spend their lives and futures there. Yet because of excessive amounts of climate pollution,[1] the Plaintiffs have been exposed to oppressive heat, First Amended Complaint ("FAC") ¶¶ 150, 167; endured rising sea levels that are inundating their communities and likely to destroy their homes within their lifetimes, FAC ¶¶ 121, 132; and experienced significant disruptions to their education, health, and well-being. FAC ¶¶ 31-33, 42-43, 49, 60. Through its actions that reach into the County, the Commission is contributing to these concrete and particularized injuries to Plaintiffs' lives and prospects for a livable future. FAC ¶¶ 24-62, 83-117. Plaintiffs have sued the Commission seeking a declaration that the Commission's pattern and practice of committing Florida's electricity system to long-term dependence on out-of-state fossil fuels violates their constitutional rights to life guaranteed by Article I, sections 2 and 9 of the Florida Constitution.

Specifically, Plaintiffs challenge the Commission's practice of determining the long-term energy planning documents produced by Florida's utilities, known as 10-Year Site Plans, are "suitable" under § 186.801(2), Fla. Stat. By and through its annual and routine approval of these 10-Year Site Plans—the only form of long-term energy planning conducted by Florida utilities and overseen by any Florida agency—the Commission has perpetuated and entrenched a fossil

[1] As defined in the Complaint, the term "climate pollution" encompasses greenhouse gas ("GHG") emissions, including carbon dioxide ("CO_2"), methane, and nitrous oxide. Climate pollution from fossil fuel development and combustion, predominantly CO_2, is the primary cause and driver of anthropogenic climate change.

fuel-dependent electricity sector that produces nationally and globally significant amounts of climate pollution, stymies the growth of renewable energy, and causes and contributes to Plaintiffs' constitutional injuries.

Contrary to the Commission's Motion, Plaintiffs are not asking the Court to step into the Commission's shoes and make 10-Year Site Plan suitability determinations itself. Rather, Plaintiffs ask the Court to resolve this constitutional controversy arising under Article I, sections 2 and 9 of the Florida Constitution and questions of statutory construction concerning § 186.801, Fla. Stat. *See* § 86.021, Fla. Stat. The legal standard Plaintiffs ask the Court to apply in evaluating the constitutionality of the Commission's conduct—strict scrutiny—is straightforward, judicially manageable, and routinely applied. As such, this declaratory judgment action implicates none of the political question or separation of powers concerns the Commission advances and instead presents legal questions which fall squarely within the purview of Florida's judiciary. Plaintiffs respectfully ask the Court to exercise its authority under the Florida Constitution and the Declaratory Judgement Act to review the constitutionality of the Commission's conduct that is causing concrete, actual, and ongoing harm to young Floridians.

STANDARD OF REVIEW

In Florida, a legally sufficient complaint consists of "a short and plain statement" of the Court's jurisdiction, setting forth "the ultimate facts showing the pleader is entitled to relief." Fla. R. Civ. P. 1.110(b). When a defendant challenges a complaint by a motion to dismiss, the Court's review is restricted: it "must accept the material allegations as true and is bound to a consideration of the allegations found within the four corners of the complaint."[2] *Murphy v. Bay Colony Prop.*

[2] The Commission's claim that Plaintiffs' Complaint is "rife" with "unsupported and unreasonable inferences," Def. Br. at 8, is supported by citation to one single allegation in Count II that contains Plaintiffs' interpretation of § 186.801, Fla. Stat. Def. Br. at 8 (citing only FAC ¶ 247). The Commission's identification of ¶ 247 only highlights the legal

Owners Ass'n, 12 So. 3d 924, 926 (Fla. 2d DCA 2009).

ARGUMENT

I. Plaintiffs Have Properly Invoked the Sword Wielder Doctrine to Defeat the Commission's Home Venue Privilege

Venue for this suit is proper in Miami-Dade County under the Sword-Wielder Doctrine ("SWD") exception to the common law home venue privilege. It is well-established that the SWD "comes into play in those cases where a plaintiff is seeking direct judicial protection from an agency's unlawful invasion of a constitutional right and the agency's action has taken place, is occurring, or is threatened in the county where the suit is filed." *Hancock v. Wilkinson*, 407 So. 2d 969, 970 (Fla. 2d DCA 1981). When a State agency unlawfully invades the exercise of a constitutional right, precedent dictates venue is proper in the county where the agency's decision or action affects the plaintiffs—here, Miami-Dade—not where the agency decision was made. *See Graham v. Vann*, 394 So. 2d 178, 179 (Fla. 1st DCA 1981) ("Parties seeking relief from alleged threats to their personal and property rights by the operation of unconstitutional acts of an agency of the state may bring suit in the county where the alleged wrongs are threatened or alleged to have been committed.") (per curiam); *Spradley v. Parole Comm'n*, 198 So. 3d 642, 647-48 (Fla. 2d DCA 2015) ("Our review of the case law indicates that courts apply the sword-wielder principle to allow venue in the county where the plaintiff's person or affected property is located. . . . The issue, then, is not where the [agency] makes the decision, but where it affects the plaintiff.") (collecting cases).

A. The Commission's Actions Constitute a "Sword Thrust" in Miami-Dade County Against Which Plaintiffs Bring This Action as a Defensive Shield to Protect Their Constitutional Rights

controversy and the need for the court to construe the meaning of § 186.801, Fla. Stat. *See* §§ 86.011, .021, Fla. Stat.; *see also infra* §§ I.B, II.B. The Commission's approach also highlights the factual disputes between the Parties *See, e.g.,* Def. Br. at 28-29 (disputing Plaintiffs are suffering imminent injuries in fact).

The Commission argues that because it makes 10-Year Site Plan suitability determinations in Tallahassee, such conduct cannot implicate Plaintiffs' constitutional rights in the County. Def. Br. at 13. This reasoning misapplies the SWD by focusing solely on where the State action takes place, ignoring the consequences of that conduct, which raises mixed questions of law and fact. *See, e.g.,* FAC ¶¶ 6-7, 18, 62, 84-85, 87, 92-93, 118 (allegations as to how Plaintiffs' lives are being harmed in the County, which the Commission disputes). The Commission's conduct reaches into the County through its determination that the 10-Year Site Plans of the County's principal electric utility, Florida Power & Light ("FPL"), are suitable and can be implemented, without requiring any assessment of climate change, the identification of alternatives, or exercising other aspects of its statutory authority that would lessen the constitutional infringement. *See, e.g.*, § 186.801(2), Fla. Stat.; *see also* FAC ¶¶ 77-78, 83-91, 117, 207-08. As a factual matter that the Commission disputes, FPL's 10-Year Site Plans are the only long-term energy planning done in Florida that will dictate and control the mix of the County's electricity for the next ten years. FAC ¶¶ 22, 83-91. FPL's 10-Year Site Plans have consistently predicted, and FPL has ultimately delivered and locked in high amounts of fossil fuels and climate pollution from FPL's operations in the County and from its delivery of predominantly fossil fuel-powered electricity to County residents. FAC ¶¶ 83-91, 100. The Commission has consistently found FPL's 10-Year Site Plans to be suitable, even though they are serving to inhibit the County from achieving its own climate goals. FAC ¶ 91; *see also* §§ 366.032(1) (precluding counties from taking "any action that restricts or prohibits" "the types or fuel sources of energy production" which may be delivered to county residents and assigning the Commission to exclusive authority to dictate renewable energy use), 366.91 (promoting development of renewable energy in the public's interest), 366.92 (legislative intent to promote development of renewable energy and lessen gas dependence), Fla. Stat.

In its Motion, the Commission incorrectly characterizes as dispositive that it does not directly regulate Plaintiffs and is not implementing a statute or regulation against the "Plaintiffs themselves." Def. Br. at 13. But the Commission's purported test finds no support under Florida law. For example, in *Pinellas County v. Baldwin*, the Second District Court of Appeal held the SWD applied to a landowner's case alleging inverse condemnation of their property in violation of Article X, section 6 of the Florida Constitution stemming from actions Pinellas County took in Hillsborough County which caused landowner's adjacent Hillsborough County property to permanently flood. 80 So. 3d 366, 368-69 (Fla. 2d DCA 2012). *Pinellas County v. Baldwin* did not involve any direct government enforcement of a statute or regulation directed against the landowner. Nevertheless, venue was proper where the governmental taking of property occurred, not in Pinellas County where the government presumably made the land management decisions that resulted in the taking. *See also Graham*, 394 So. 2d at 180 (holding the SWD applies to prisoners' claims that conditions to which they were subjected violated their constitutional rights because they sought to "obtain direct judicial protection from an alleged unlawful invasion of their constitutional rights . . . in the county where these rights are allegedly being violated"); *Spradley*, 198 So. 3d at 647-48 (proper venue would be in the county where the plaintiff was located, Union County, because "[e]ven though the Commission made its decision at its Tampa meeting, it directed the 'blow' toward Mr. Spradley in Union County").[3] Plaintiffs adequately allege that the Commission's conduct reaches into their home County and violates their constitutional rights in

[3] The First District Court of Appeal distinguished *Graham v. Vann* as being factually distinct because it involved "more than mere implementation of a statutory scheme." *State Department of Highway Safety and Motor Vehicles v. Sarnoff*, 734 So. 2d 1054 (Fla. 1st DCA 1998) (holding SWD does not apply to challenge of implementation of a motor vehicle inspection statute and imposition of a $10.00 fee under that statute). *Graham v. Vann* and *Spradley v. Parole Comm'n* still stand for the proposition that venue is appropriate in the county where the alleged violation of plaintiffs' constitutional rights occurred. *Id.* at 1056. The situation here is much more analogous to *Graham* and *Spradley* than *Sarnoff* because approval of FPL's 10-Year Site Plans is affirmative conduct that reaches into the County, Plaintiffs are young people and thus not able to simply move away from their home County at will, and agency conduct that infringes the constitutional rights to life is hardly analogous to collection of a $10.00 fee.

that County, and they should be allowed to present facts to prove those allegations. *See infra* § I.D.[4]

B. The Commission's Conduct Is Active, Not Passive

The Commission's annual suitability determinations—comprising final, written documents issued after internal review and analysis and a workshop open to the public—constitute affirmative conduct that reaches into and harms Plaintiffs' constitutional rights in the County. FAC ¶¶ 6-7, 18, 62, 84-85, 87, 92, 118. The Commission claims it is not the "prime mover as [it] relates to Plaintiffs" because its suitability determinations do not "specifically approve any project by any public utility," raising both factual and legal issues. Def. Br. at 14. As detailed *infra* § II.B, Plaintiffs have alleged facts showing how the Commission's suitability determinations influence and control determinations in the downstream regulatory approval of power plants; for example, the role 10-Year Site Plans data play in the Commission's determination of need proceedings, *see* FAC ¶¶ 4-5, 79-82, 87, 114-15, a prerequisite before a proposed power plant project can proceed to certification, Def. Br. at 11; *see also* § 403.507(4)(b), Fla. Stat. The Commission's contention that its determination of need proceedings under § 403.519, Fla. Stat., are "not contingent on or tied to the PSC's [10-Year Site Plan] review," Def. Br. at 10, is contradicted by well-pled allegations in the Complaint, FAC ¶¶ 5, 80, 114-15, which are bolstered by numerous real-world examples in which 10-Year Site Plan data was identical to information submitted by the utilities in support of their determination of need applications.[5] In sum, Plaintiffs have adequately alleged

[4] *See also Worldwide Appraisal Servs., Inc. v. Dep't of Bus. & Pro. Regul.*, 905 So. 2d 968, 970 (Fla. 5th DCA 2005) (trial court conducted evidentiary hearing on request for temporary injunction and motion to dismiss for improper venue in case where plaintiff invoked SWD); *Zoberg v. Hu*, 359 So. 3d 860 (Fla. 3rd DCA 2023) (trial court "held a two-day evidentiary hearing" on motion to transfer venue to determine whether defendants had made the requisite showings to support their improper venue and forum non conveniens arguments).

[5] *See, e.g.*, Order PSC-16-0032-FOF-EI at 6 (Jan. 19, 2016) ("FPL's load forecasts in this proceeding are the same forecasts FPL presented in its 2015 Ten-Year Site Plan."); Order PSC-14-0577-FOF-EI at 4 (Oct. 10, 2014) (Duke Energy Florida's load forecast used in the determination of need proceeding "is the same forecast that appears in

that the Commission's suitability determinations are active because they shape and constrain the ultimate composition of Florida's electricity sector and constitute the sort of affirmative conduct to which the SWD applies.[6]

None of the SWD cases relied upon by the Commission involved private individual plaintiffs asserting violations of personal, fundamental constitutional rights—as Plaintiffs do here. Def. Br. at 12, 14; *see Jacksonville Elec. Auth. v. Clay Cnty. Util. Auth*., 802 So. 2d 1190, 1193 (Fla. 1st DCA 2002) (plaintiff was a public utility and "no basic or fundamental constitutional deprivation was alleged which would support application of the sword-wielder doctrine"); *Fla. Pub. Serv. Comm'n v. Triple "A" Enter., Inc.*, 387 So. 2d 940 (Fla. 1980) (plaintiff was a moving company that pursued an as-applied constitutional claim attacking the constitutionality of portions of the Florida Statutes as applied to their operation); *Dep't of Transp. v. City of Miami*, 20 So. 3d 908, 911 (Fla. 3rd DCA 2009) (plaintiff was municipality that invoked a provision of the Florida Constitution which "does not vest the City of Miami with a constitutional right of any kind"). Moreover, the cases the Commission relies upon involved passive conduct—*i.e.*, failures to act. In *Department of Transportation v. City of Miami*, for example, DOT failed to remove unhoused

DEF's 2014 Ten-Year Site Plan."); Order PSC-2018-0150-FOF-EI at 14 (Mar. 19, 2018) (FPL's used "the same updated forecasts that were used in FPL's 2017 TYSP" for load, fuel costs, and environmental compliance costs in support of its determination of need application.).

[6] The Commission also argues that its 10-Year Site Plan suitability determinations have no connection with the certification of new electrical power plants under Florida's Electrical Power Plant Siting Act, §§ 403.501-.518, Fla. Stat., Def. Br. at 9-10, yet the 10-Year Site Plan statute expressly provides that the Commissions suitability findings "shall be made available to the Department of Environmental Protection for its consideration at any subsequent electrical power plant site certification proceedings." § 186.801(2), Fla. Stat. *Compare* § 186.802(2)(a), Fla. Stat. (requiring the Commission's review of utility 10-Year Site Plans to consider "[t]he need, including the need as determined by the commission, for electrical power in the area to be served") *with* § 403.507(4)(a), Fla. Stat. (provision of Florida Electrical Power Plant Siting Act requiring the Commission to prepare a report for the Department of Environmental Protection "as to the present and future need for electrical generating capacity to be supplied by the proposed electrical power plant" which must include the Commission's determination of need pursuant to § 403.519, Fla. Stat.).

individuals located under a causeway for which the DOT held the right-of-way.[7] 20 So. 3d at 911. Here, Plaintiffs are seeking "direct judicial protection from an alleged unlawful invasion of their constitutional rights . . . in the county where the alleged wrongs are imminently threatened or alleged to have been committed." *Graham*, 394 So. 2d at 180. Thus, venue is proper in the County.

C. The Commission's Conduct Presents a Real and Imminent Invasion of Plaintiffs' Fundamental Right to Life in Miami-Dade County

Venue is also proper in the County because the invasion of Plaintiffs' constitutional rights is both real and imminent. *See Graham*, 394 So. 2d at 180. Plaintiffs allege how the Commission's conduct "affirmatively worsens the already dangerous climate-related impacts impairing Plaintiffs' lives and prospects for a livable future, thereby infringing upon Plaintiffs' fundamental right to life." FAC ¶ 22; *see also id*. ¶¶ 6-7, 18, 62, 84-87, 92, 101, 103, 114, 118, 225, 243. Plaintiffs allege (1) the Earth's climate system is dangerously destabilized by the *current* concentration of GHGs in the atmosphere; (2) there is a strong scientific consensus that *every additional ton* of climate pollution added to the atmosphere adds to global heating and worsens Plaintiffs' injuries in the County; (3) Plaintiffs' harms will escalate in the future with each further increment of warming; and (4) the Commission's conduct in systematically determining utilities' 10-Year Site Plans to be suitable has resulted in a fossil fuel-dependent electricity sector in Florida generating nationally and globally significant amounts of climate pollution. FAC ¶¶ 92-117; 209-16; *see also* § IV, *infra.* These are factual allegations central to the SWD factor of whether the Plaintiffs are seeking protection from an invasion of their constitutional rights occurring in the county where suit is brought.

[7] As explained *supra* § I.A, the Commission's reliance on *Department of Transportation v. City of Miami* for the proposition that it cannot be considered to have taken affirmative action for purposes of the SWD because it is not "enforcing any regulation against the Plaintiffs," Def. Br. at 14, falls flat because that is not a requirement under SWD jurisprudence. *See Pinellas Cnty.*, 80 So. 3d at 369 (SWD determined to apply in absence of any regulatory or enforcement proceeding against plaintiff).

Plaintiffs are experiencing a range of constitutional injuries in the County—including exposure to extreme heat and heatwaves, extreme rainfall and flooding that disrupts travel and hampers mobility, sea level rise and associated coastal flooding, exposure to extreme storms that threaten life and property, and the degradation and loss of important ecosystems and biodiversity—which harm their physical health and safety, disrupt recreational activities and daily routines, damage their property, degrade their aesthetic enjoyment of nature, harm their mental health, and markedly diminish their abilities to lead safe, productive lives. FAC ¶¶ 25, 27, 31-34, 38-39, 42, 45, 48-49, 50, 55-60, 164; *see also* § II.A, *infra*. Due to Plaintiffs' youth and the County's status as "ground zero"[8] for climate change, Plaintiffs are particularly vulnerable to these serious harms and thus seek protection from governmental conduct that reaches into the County and knowingly makes these injuries worse. FAC ¶¶ 7-8, 55, 121, 171. The ongoing impacts to Plaintiffs' physical safety and security, disruption to their overall ability to live fruitful lives and safeguard their lives from outside threats, and ability to make important decisions concerning their future—including whether they will be able to remain in the County long term—will increase if the Commission's interpretation and application § 186.801, Fla. Stat., continues as-is. FAC ¶¶ 62, 90, 111, 127, 165, 167-68, 176, 186. For these reasons, venue is appropriate in the County.

D. An Evidentiary Hearing Regarding Venue Is Necessary to Resolve Disputed Facts

The Court should hold an evidentiary hearing on venue because there are facts in dispute that control the Court's analysis of the SWD's applicability. For example, the Commission

[8] *See, e.g.*, Greg Iacurci, *Miami is 'Ground Zero' for Climate Risk. People Are Moving to the Area and Building There Anyway*, CNBC.COM (Apr. 26, 2024), https://www.cnbc.com/2024/04/26/miami-is-ground-zero-for-climate-risk-people-move-there-build-there-anyway.html (quoting City of Miami Chief Resilience Officer Sonia Brubaker stating that Miami is "ground zero for climate change"); *Miami-Dade County Mayor Levine Cava Releases Climate Action Strategy Progress Report on Earth Day*, MIAMIDADE.GOV, (Apr. 24, 2023), https://www.miamidade.gov/global/release.page?Mduid_release=rel1682338378079720 (quoting Miami-Dade County Mayor Levine Cava as stating that "it is more evident than ever that Miami-Dade is ground zero for climate change and that the effects are being felt by our community here and now").

disputes Plaintiffs' factual allegations as to how and whether it is violating their constitutional rights to life in the County. *See* Def. Br. at 12-15. In particular, the Commission disputes Plaintiffs' factual allegations that they are currently experiencing concrete and particularized injuries here. *Compare id*. at 15-16 (arguing Plaintiffs do not face real threat of imminent danger from the challenged conduct); *id*. at 28 (disputing Plaintiffs are suffering imminent injuries in fact) *with* FAC ¶¶ 24-62 (detailing concrete and particularized harm to Plaintiffs' physical safety and security, as well as recreational, economic, conservation-related, and aesthetic interests as a result of climate change impacts occurring in the County). To support their allegations, Plaintiffs plan to offer narrowly focused testimony as to the nature of their injuries and the harmful climate impacts—such as extreme heat and sea level rise—exacerbated by the Commission's conduct. The Commission also disputes facts involving the import and impact of the Commission's 10-Year Site Plan suitability determinations. *Compare* Def. Br. at 14 (claiming its suitability determinations do not influence site-specific projects) *with* FAC ¶¶ 83-91, 114-17 (alleging how the 10-Year Site Plans control and influence the ultimate electricity mix provided to consumers in the County).

Further, the Commission's motion to change venue and motion to dismiss are based on Fla. R. Civ. P. 1.140(b)(1) and (b)(6). As such, Rule 1.140(d) applies and provides the defenses set forth in Rule 1.140(b) must be heard and determined before trial on application of any party unless the court orders the hearing and determination be deferred until trial. The Third District Court of Appeal has observed that where—as here—the facts relating to a motion to change venue are in dispute, the trial court shall hold an evidentiary hearing to resolve the factual dispute and resolve the legal issue as to the appropriate venue. *Fla. High Sch. Athletic Ass'n, Inc. v. Johnson*, 279 So. 3d 794, 796 (Fla. 3rd DCA 2019).

In sum, whether venue is appropriate in the County under the SWD is a mixed question of law and fact that requires an evidentiary hearing to resolve. Since Plaintiffs' arguments regarding the SWD are premised upon allegations that the Commission's conduct violates Plaintiffs' constitutional right to life by contributing to and worsening climate change impacts in the County, and since the Commission disputes Plaintiffs are suffering current injuries and impending future injuries, an evidentiary hearing would assist the Court in making factual findings.

II. Plaintiffs Have Plead Allegations Sufficient to Demonstrate Standing

Relying almost exclusively on federal precedent interpreting Article III of the Federal Constitution, which has no counterpart in the Florida Constitution, the Commission argues Plaintiffs lack standing. However, it is well-established that Florida courts do not rigidly follow federal standing doctrine. *Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 403 (Fla. 1996). "Unlike the federal courts, Florida's circuit courts are tribunals of plenary jurisdiction." *Dep't of Revenue v. Kuhnlein*, 646 So. 2d 717, 720 (Fla. 1994) (citing Art. V, § 5, Fla. Const.). As the Florida Supreme Court recently observed, "[a]s it relates to standing, the Florida Constitution is textually distinct from the Federal Constitution because it does not contain an explicit cases and controversies clause," and accordingly, "federal law does not control standing requirements in state courts." *Planned Parenthood of Sw. & Cent. Fla. v. State*, 384 So. 3d 67, 89-90 (Fla. 2024) (Sasso, J., concurring); *see also Pet Supermarket, Inc. v. Eldridge*, 360 So. 3d 1201, 1205 (Fla. 3d DCA 2023).

Standing "requires a would-be litigant to demonstrate that he or she reasonably expects to be affected by the outcome of the proceedings, either directly or indirectly." *Hayes v. Guardianship of Thompson*, 952 So. 2d 498, 505 (Fla. 2006). To demonstrate standing, a party must have "a sufficient stake in a justiciable controversy, with a legally cognizable interest which would be affected by the outcome of the litigation." *Weiss v. Johansen*, 898 So. 2d 1009, 1011

(Fla. 4th DCA 2005). Accordingly, standing "often depends on the nature of the interest asserted." *Hayes*, 952 So. 2d at 505. Plaintiffs have alleged sufficient facts to establish standing under both Florida and Federal law.

A. Plaintiffs Have Sufficiently Alleged a Stake in the Controversy Because They Have Alleged Concrete, Particularized and Actual Present and Future Injuries

Injuries for purposes of standing may be "aesthetic, conservational, recreational, [or] economic." *Peregood v. Cosmides*, 663 So. 2d 665, 668 (Fla. 5th DCA 1995); *id*. n.4 (collecting cases, including "individual environmental injury" and constitutional rights cases); *see also Coalition*, 680 So. 2d at 403 n.4 (finding group of school students had alleged "a continuing injury as a result of being denied an adequate education"). Plaintiffs have alleged sufficient facts regarding their injuries that include disruption to their education from extreme weather events;[9] exposure to extreme heat causing adverse health impacts and forcing the curtailment of outdoor sports and recreation activities;[10] degradation of the County's unique environment and natural resources, particularly coral reefs;[11] disruption of religious activities;[12] exposure to extreme flooding that has disrupted travel;[13] exposure to extreme tropical storms and hurricanes that

[9] FAC ¶¶ 31, 33, 42-43, 49, 60.

[10] FAC ¶¶ 25 (Plaintiff Delaney's forced alteration and curtailment of her bike commute due to extreme heat); 34 (Plaintiff Gabriela's forced re-scheduling of planned beach trips due to extreme heat and suffering headaches and exhaustion due to heat exposure); 38 (Plaintiff Jasmine's exposure to extreme heat in her neighborhood which suffers from the urban heat island effect); 44 (Plaintiff Julie's suffering nausea as a result of high heat, and having track and tennis practices and games disrupted by heat); 48 (impacts to Plaintiff Vanessa's summer softball practices due to heat, and suffering exhaustion, dizziness, and blurry vision from heat exposure); 59 (Plaintiff Peter's suffering heat exhaustion during college club soccer games and practices).

[11] FAC ¶¶ 27 (Plaintiff Delaney and flooding of Matheson Hammock Park); 28 (Plaintiff Delaney is an avid snorkeler and has been moved to tears witnessing the extensive coral bleaching and mortality occurring in Miami-Dade County's coral reefs due to increased ocean temperatures and acidification); 35 (Plaintiff Gabriela's coastal community has experienced toxic algae blooms that have resulted in fish kills); 57 (Plaintiff Peter is a diver and spear fisher and has witnessed toxic algae blooms and coral bleaching).

[12] FAC ¶ 51 (Plaintiff Vanessa and her family are practicing Catholics and have had outdoor mass ceremonies cancelled by increasing heavy rainfall events).

[13] FAC ¶¶ 32 (Plaintiff Gabriela's school commute disrupted by flooding); 39 (Plaintiff Jasmine and her family trapped in their apartment for one week due to flooding); 42 (Plaintiff Julie's neighborhood prone to extreme flooding, which, on one occasion, trapped Julie's mother in her car for eight hours); 49 (Plaintiff Vanessa's travel to and from school and extracurricular activities disrupted by flooding); 58 (Plaintiff Peter's island community has experienced disruptive flooding).

threaten physical safety, have forced evacuations, and damaged property;[14] exposure to rising seas;[15] and economic injuries.[16] Plaintiffs are also experiencing harms to their mental health stemming from loss and distress that their homes, communities, and cherished ecosystems in the County will be swallowed by the rising sea or otherwise degraded beyond recognition in the coming years as climate change impacts intensify. FAC ¶¶ 28, 36, 40, 42-43, 46-47, 52, 57, 61. For example, Plaintiff Vanessa is reluctant to have children of her own for fear of the world into which she would be bringing new life. FAC ¶ 52. These allegations are sufficient to satisfy the injury element of standing. *See Juliana v. United States*, 947 F.3d 1159, 1168 (9th Cir. 2020) (district court correctly found injury prong of Article III standing in climate change case met where "[a]t least some plaintiffs claim concrete and particularized injuries" from, among other harms, water scarcity, flooding impacts, and forced evacuations); *Conserv. Law Found., Inc. v. Acad. Express, LLC*, No. 23-1832, 2025 WL 560059 at *6 (1st Cir. Feb. 20, 2025) (holding that exposure to air pollution constituted injury-in-fact for purpose of establishing Article III standing) (cleaned up).

The Commission ignores these detailed allegations of concrete and particularized injuries and instead focuses on Plaintiffs' allegations of additional future harm, arguing they are not

[14] FAC ¶¶ 31 (Plaintiff Delaney's home has been damaged during tropical storms and hurricanes); 33 (Plaintiff Gabriela had to flee her home and seek refuge in her father's workplace for nearly a week during Hurricane Irma in 2017); 43 (Plaintiff Julie's neighborhood was severely affected by Hurricane Irma in 2017 and her family lost power for two weeks); 50 (Plaintiff Vanessa was forced to evacuate during Hurricane Irma and suffered significant damage to her family's home, including roof leakages); 60 (Plaintiff Peter was forced to evacuate his home due to Hurricane Irma). Florida's hurricanes are also exposing Plaintiffs to increased electricity bills. FPL, the electric utility serving Miami-Dade County, in addition to seeking a nearly $9 billion increase to customers' base rates over the next four years, is charging customers approximately $12 per month on their 2025 electricity bills "for costs associated with 2024 hurricanes." Emily Mahoney, *Florida Power & Light Seeks a $9B Rate Hike. It may be the Largest Request in U.S. History*, MIAMIHERALD.COM (Mar. 03, 2025), https://www.miamiherald.com/news/state/florida/article301232014.html.

[15] FAC ¶¶ 55 (Plaintiff Peter's community on Key Biscayne has an average elevation of less than 5 feet above sea level); 58 (Plaintiff Peter's community has experienced significant coastal erosion).

[16] FAC ¶ 45 (Plaintiff Julie and her family care for rescued animals and have had to purchase mobile air conditioning units and ventilators to protect the animals and the family from high heat).

"certainly impending" enough to confer standing. Def. Br. at 28-29. This argument is unavailing. For one, no Florida state court has expressly adopted federal precedent establishing a "certainly impending" standard for future injuries in relation to standing. *See Peregood*, 663 So. 2d at 668 n.4 (noting injury for purposes of standing can be based on future injury and citing *Blum v. Yaretsky*, 457 U.S. 991, 1000 (1982), in which the U.S. Supreme Court held that nursing home residents had standing to sue over threatened transfers to lower-level care facilities because the threat of transfer was "quite realistic." 457 U.S. at 1001).

Even if Florida law incorporated a "certainly impending" requirement for future injuries, Plaintiffs meet that pleading burden because strong scientific consensus confirms any future harms will certainly worsen so long as climate pollution continues. FAC ¶¶ 62, 127, 129, 167, 209, 216, 228. As Plaintiffs allege, the Earth's climate system is *currently* destabilized due to the existing concentrations of climate pollution in the atmosphere and that existing harms to Plaintiffs "will escalate with every increment of global warming." FAC ¶ 216; *see also id.* ¶¶ 209-15. For instance, the County, which has already experienced an increase of 48 days per year with temperatures reaching above 90°F since 1960 (from 85 days per year to 133 days per year in 2022), will endure 41 additional calendar days per year with a heat index over 100°F by 2053. FAC ¶¶ 150, 167. Sea levels in Miami have already risen 9 inches since 1930, with an additional 17 inches of rise by 2040, 3.3 feet by 2070, and 7.6 feet by 2120 anticipated. FAC ¶¶ 121, 132.[17] The County's coral reefs Plaintiffs depend upon for their safety and recreation are projected to disappear within Plaintiffs' lifetimes under current ocean warming and acidification trends. FAC ¶¶ 182, 186.

The Commission also assumes Plaintiffs' injuries are "shared by all citizens" and are not particularized to Plaintiffs. Def. Br. at. 29. This argument fails because "it does not matter how

[17] These amounts of sea level rise will permanently inundate Plaintiff Peter's home and the entire community on Key Biscayne, where the average elevation is less than 5 feet above sea level. FAC ¶ 55.

many persons have been injured," so long as the plaintiffs' injuries are "concrete and personal." *Massachusetts v. EPA*, 549 U.S. 497, 517 (2007) (internal quotation marks omitted) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 581 (1992) (Kennedy, J., concurring)); *Juliana*, 947 F.3d at 1168 (rejecting identical generalized grievance arguments). "The fact that an injury may be suffered by a large number of people does not of itself make that injury a nonjusticiable generalized grievance. The victims' injuries from a mass tort, for example, are widely shared, to be sure, but each individual suffers a particularized harm." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 n.7 (2016). Here, Plaintiffs' extensive allegations cataloguing the ongoing and worsening climate change impacts in the County where they live, FAC ¶¶ 120-93, demonstrate an injury-in-fact for the purposes of standing under Florida law.

B. Plaintiffs' Injuries Are Causally Linked to the Commission's Conduct

The causation prong of the standing inquiry requires plaintiffs to show a causal connection linking the injury to the conduct being challenged. *State v. J.P.*, 907 So. 2d 1101, 1113 n.4 (Fla. 2004). Proximate causation is not a requirement of Article III standing, which only requires that "the plaintiff's injury be fairly traceable to the defendant's conduct." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 134 n.6 (2014); *Lujan*, 504 U.S. at 560. Importantly, courts do not require that the defendant's action be the sole source of injury. *Dep't of Com. v. New York*, 588 U.S. 752, 768 (2019); *Fed. Election Comm'n v. Cruz*, 596 U.S. 289, 297 (2022). Causation may be found even if there are multiple links in the causal chain—even harms that "flow indirectly from the action in question can be said to be 'fairly traceable' to that action for standing purposes," *Wilding v. DNC Servs. Corp.*, 941 F.3d 1116, 1125 (11th Cir. 2019) (quoting *Focus on the Family v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1273 (11th Cir. 2003)), so long as the line of causation between the defendants' conduct and the injury is not too attenuated. *See Loggerhead Turtle v. Cnty. Council of Volusia Cnty.*, 148 F.3d 1231, 1247 (11th Cir. 1998).

"[S]tanding is not defeated merely because the alleged injury can be fairly traced to the actions of both parties and non-parties." *Id*. (citing *Lujan*, 504 U.S. at 560); *see also Conserv. Law Found.*, 2025 WL 560059 at *8 ("A plaintiff can satisfy traceability by showing 'that defendant's conduct is one among multiple causes' of the alleged injury.") (quoting 13A Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice & Procedure § 3531.5 (3d ed. 2008)).

Plaintiffs allege a causal connection between their injuries and the Commission's conduct of systematically approving the fossil fuel-dependent 10-Year Site Plans of Florida's electric utilities. The Commission possesses exclusive oversight and regulatory authority over Florida's electric utilities and this work encompasses its annual review and suitability determinations concerning utilities' 10-Year Site Plans—which are the exclusive long-range electricity system planning process in Florida overseen by any state agency. FAC ¶¶ 22, 63-67. Each year, utilities submit a Plan to the Commission that estimates power generating needs over the coming 10-year period, the general location of proposed power plant sites, and the type of energy sources to be used in meeting the forecasted demand, which the Commission reviews and classifies as either "suitable" or "unsuitable" based on consideration of a number of statutory factors. FAC ¶¶ 74-75, 77; § 186.801, Fla. Stat. Each year since at least 1999, the Commission has determined that *every 10-Year Site Plan it has reviewed* is "suitable." FAC ¶¶ 9, 69, 84, 96, 103. This constitutes the only mechanism by which an arm of state government approves the mix of energy generation sources utilities are providing and project to provide as electricity to Florida consumers. Importantly, the counties themselves are legislatively prohibited from requiring an energy mix other than what the Commission approves via the 10-Year Site Plans. § 366.032(1), Fla. Stat.

Since 1999, the Plans approved as suitable by the Commission have consistently and accurately forecasted increasing reliance on gas as an electricity generation source. FAC ¶¶ 103-

07, 109. As of May 2024, Florida's dependence on imported gas to generate electricity is more than 30% above the national average. FAC ¶ 106. This dependence on out-of-state gas for Florida's electricity sector results in nationally and globally significant levels of GHG emissions—more than some industrialized countries' entire economies. FAC ¶¶ 92-93; 94 (the 94.3 million metric tons of CO_2 produced by Florida's electricity sector in 2019 is more than the economy-wide CO_2 emissions of countries like Chile, Greece, and Portugal in 2019); 95 (in 2021, Florida's electricity sector produced 91.2 million metric tons of CO_2 pollution, more than the economy-wide CO_2 pollution produced by Columbia in 2021, a country with nearly 30 million more people than Florida). Florida's electricity sector is responsible for a sizeable share of national electric sector CO_2 emissions and of Florida's overall CO_2 emissions. FAC ¶¶ 97 (in 2021, Florida's electricity sector was responsible for 5.9% of U.S. power sector CO_2 emissions); 99 (from 1999 to 2021, Florida's electric power sector emitted approximately 47% of statewide total CO_2 pollution). Florida utilities, operating under 10-Year Site Plans deemed suitable by the Commission, have locked in significant reliance on gas to the detriment of renewable sources of energy. FAC ¶¶ 105-09.

The emissions from Florida's gas-dependent electricity sector "worsen[] already dangerous conditions" in the County and "worsen the existing harms Plaintiffs are suffering, and cannot escape, in Miami-Dade County." FAC ¶¶ 224-25. The injuries Plaintiffs experience here are not static and "will worsen with each increment of additional heating." FAC ¶¶ 209; 216. These factual allegations, which the Court must accept as true at this stage, demonstrate a fairly traceable connection between the Commission's rubber-stamping of 10-Year Site Plans, the gas-dependence

of Florida's electricity sector, the resultant emissions, and Plaintiffs' injuries.[18]

The Commission again attempts to import an Article III standing hurdle never adopted by a Florida court by averring that Plaintiffs must satisfy a heightened pleading requirement here because Plaintiffs challenge the action of a regulatory agency and are not themselves regulated by the Commission. Def. Br. at 29-30. Even under Article III, "entire classes of administrative litigation" have "traditionally been brought by unregulated" but "adversely affected parties." *Corner Post, Inc. v. Bd. of Governors of the Fed. Rsrv. Sys.*, 603 U.S. 799, 827, 833 (2024) (Kavanaugh, J., concurring); *id.* at 833-37 (collecting cases). Plaintiffs can satisfy Article III causation by showing that "third parties will likely react in predictable ways that in turn will likely injure the plaintiffs." *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 383 (2024) (internal quotation marks and citations omitted); *see also id*. at 384 (government regulations can affect someone "downstream or upstream" from the directly regulated entity). Here, the FAC alleges that "[p]roceeding from the Commission's determination that their 10-Year Site Plans are suitable, Florida's electric utilities seek, and secure" approval for proposed fossil fuel-fired power plants or capacity expansions identified in their 10-Year Site Plans. FAC ¶ 114. The FAC identifies sixteen instances in which the Commission formally determined there was a need for a major fossil fuel-fired power plant pursuant to § 403.519, Fla. Stat., following such power plants being "initially proposed in a 10-Year Site Plan determined to be suitable by the Commission." FAC ¶ 115. Causation exists because Plaintiffs' injuries result not from unforeseen decisions of third

[18] The Eastern District of Pennsylvania case of *Clean Air Council*, on which the Commission relies heavily, is unpersuasive because it involved Article III standing requirements and the specific injuries alleged (exacerbation of allergy and asthma symptoms), the government conduct challenged (proposed rollback of environmental regulations), and the alleged causal chain at issue are markedly different from the instant case. *See Clean Air Council v. United States*, 362 F. Supp. 3d 237, 247-48 (E.D. Pa. 2019). Instead, the Ninth Circuit's ruling in *Juliana v. United States* is far more instructive. There, the Ninth Circuit held that the district court correctly found the Article III causation requirement satisfied for purposes of the summary judgment stage where plaintiffs had produced evidence concerning the substantial amount of GHG emissions resulting from United States' fossil fuel production, extraction, and transportation. *See Juliana*, 947 F.3d at 1169.

parties, but from government conduct causing a predictable chain of events. *See Dep't of Com.*, 588 U.S. at 768 (finding traceability because "[r]espondents' theory of standing [] does not rest on mere speculation about the decisions of third parties; it relies instead on the predictable effect of Government action on the decisions of third parties"). It is highly probable that if a utility receives a determination that its 10-Year Site Plan is suitable, it has the regulatory certainty needed to act in accordance with that Plan. *See* FAC ¶ 114.

Moreover, the 10-Year Site Plan process serves an important "gatekeeping" function whereby utilities cannot pursue or seek subsequent regulatory approval for proposed projects or otherwise move forward to implement proposed projects unless and until the project is contained in a 10-Year Site Plan deemed suitable by the Commission. FAC ¶¶ 4-5, 79-82, 87, 114; § 186.801(2), Fla. Stat. (stating that when a site for a proposed power plant is not within the utility's current 10-Year Site Plan, the Plan must be amended to include the new site). The Commission disputes this interpretation of § 186.801, Fla. Stat., arguing that the 10-Year Site Plans are a meaningless pro-forma exercise disconnected from downstream regulatory proceedings, and that its own determinations of suitability or unsuitability have no consequence whatsoever. Def. Br. at 6, 34. The Commission's argument illustrates the legal controversy at bar and flies in the face of basic cannons of statutory interpretation in which courts should avoid rendering all or part of a statute meaningless and that the legislature does not intend to "enact purposeless and therefore useless, legislation." *Unruh v. State*, 669 So. 2d 242, 245 (Fla. 1996) (internal quotation marks omitted) (quoting *Sharer v. Hotel Corp. of Am.*, 144 So. 2d 813, 817 (Fla. 1962)). It is illogical to suggest that the Florida Legislature enacted a comprehensive long-range energy planning process only for the detailed data and information contained in the utilities'

Plans and the agency's determination of suitability or unsuitability to have no practical consequence or weight in later regulatory proceedings.[19]

While the 10-Year Site Plan process is different than formal determination of need proceedings under § 403.519, Fla. Stat., or ultimate power plant certification under the Florida Electrical Power Plant Siting Act, §§ 403.501-.518, Fla. Stat., the 10-Year Site Plan process is intertwined with these proceedings. In particular, the Commission acknowledges its determination of need orders are "a prerequisite to" a power plant certification proceeding. Def. Br. at 11; § 403.507(4)(b), Fla. Stat. (the Commission's affirmative determination of need is a "condition precedent" to the issuance of the Department of Environmental Protection's project analysis and conduct of certification hearings under the Florida Electrical Power Plant Siting Act). Much of the information considered by the Commission during determination of need proceedings under § 403.519, Fla. Stat., is identical to that submitted to, reviewed, and found suitable by the Commission during the 10-Year Site Plan process.[20] In fact, *the utilities themselves routinely use 10-Year Site Plan data in support of their applications for determinations of need*, which the Commission then grants.[21] The well-pleaded facts set forth in Plaintiffs' FAC demonstrate how, since 1999, utilities' actual reliance on gas as an electricity generation fuel source has grown in

[19] The Commission's insistence that a determination that a utility's 10-Year Site Plan is unsuitable would have no practical effect is contradicted by its own regulations, which state that "Plans that have been previously classified by the Commission as unsuitable may be classified suitable based on additional data," Fla. Admin. Code R. 25-22.071(5), and so it is a plausible reading of the statute and rule that, following a determination of unsuitability, some sort of back-to-the-drawing-board process is required of the utility, during which time the Commission could exercise its authority to suggest alternatives to the unsuitable Plan. *See* § 186.801(2), Fla. Stat.

[20] *Compare* § 403.519(3), Fla. Stat. (requiring the Commission to consider need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, the need for fuel diversity and supply reliability, whether the proposed plant is the most cost-effective alternative available, and whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available) *with* § 186.801(2), Fla. Stat. (requiring the Commission's 10-Year Site Plan reviews to evaluate the need for electrical power in the area to be served, the effect on fuel diversity in the state, possible alternatives to the proposed plan, the amount of renewable energy resources the utility produces or purchases, and the amount of renewable energy resources the utility plans to produce or purchase over the 10-year planning horizon and the means by which such production or purchases will be achieved).

[21] *See supra* § I.B.

direct correlation with the Commission's systematic approval of 10-Year Site Plans. FAC ¶¶ 92-95, 103-07, 109.

Plaintiffs have adequately alleged a fairly traceable causal connection between the Commission's systematic approval of utilities' long-term energy planning documents and the resulting fuel composition of Florida's electricity sector. *See Conserv. Law Found.*, 2025 WL 560059 at *9 (observing causation concerning harms from pollution from idling busses was a question of fact and leaving it to the district court to "engage in the requisite factfinding and apply the proper legal standards to these facts.").

C. Declaratory Relief Would Redress Plaintiffs' Injuries

Redressability is established when a plaintiff shows their injury is "likely to be redressed" by the relief sought. *Peregood*, 663 So. 2d at 668; *see also Spokeo*, 578 U.S. at 330 ("likely to be redressed by a favorable judicial decision") (citing *Lujan*, 504 U.S. at 560-61). A plaintiff's burden to demonstrate redressability is "relatively modest" when contesting a motion to dismiss or a motion for summary judgment. *Bennett v. Spear*, 520 U.S. 154, 171 (1997).

Plaintiffs' choice to seek declaratory relief at this stage and reserve their right to further supplemental or injunctive relief following any order from this Court granting declaratory relief is fully consistent with the Declaratory Judgment Act, Florida precedent, and suffices to establish standing. *Coalition for Adequacy & Fairness in School Funding, Inc. v. Chiles* confirms that declaratory relief alone suffices for redressability under Florida law. 680 So. 2d at 403 n.4, 404 (finding the school students had alleged a "continuing injury as a result of being denied an adequate education" and that given the purpose of declaratory judgments to afford parties relief from insecurity as to rights, status, and other equitable or legal relations, "the instant case properly seeks declaratory relief"). So too here. Plaintiffs allege a continuing injury to their fundamental right to life guaranteed by Article I, sections 2 and 9 of the Florida Constitution stemming from the

Commission's conduct. FAC ¶¶ 224, 227, 242-43. Declaratory relief is the proper vehicle to afford Plaintiffs relief from the insecurity and uncertainty with respect to their rights and resolve the controversy regarding the constitutionality or unconstitutionality of the Commission's ongoing course of conduct. *See Martinez v. Scanlan*, 582 So. 2d 1167, 1170 (Fla. 1991) (purpose of the Declaratory Judgment Act is to "afford relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations, and it should be liberally construed").

Moreover, federal case law is clear that declaratory relief is sufficient to redress ongoing injuries for purposes of the higher bar of Article III standing. *See, e.g.*, *Duke Power Co. v. Carolina Env't Study Grp., Inc.*, 438 U.S. 59, 77-78 (1978); *Franklin v. Massachusetts*, 505 U.S. 788, 803 (1992); *Fed. Election Comm'n v. Akins*, 524 U.S. 11, 25-26 (1998); *MedImmune, Inc. v. Genentech, Inc*., 549 U.S. 118, 127-34 (2007); *Reed v. Goertz*, 598 U.S. 230, 234 (2023). The U.S. Supreme Court has long acknowledged the important role of declaratory relief in resolving persisting constitutional controversies. *See Evers v. Dwyer*, 358 U.S. 202, 202-04 (1958) (ongoing governmental enforcement of segregation laws created actual controversy for declaratory judgment); *Utah v. Evans*, 536 U.S. 452, 463-64 (2002) (declaratory relief changes the legal status of the challenged conduct, sufficient for redressability). In *Brown v. Board of Education*, "the consideration of appropriate relief was necessarily subordinated to the primary question—the constitutionality of segregation in public education."[22] 347 U.S. 483, 495 (1954). Even as a freestanding remedy, a declaratory judgment carries an expectation that even non-defendant government officials "would abide by an authoritative interpretation of the . . . constitution[.]"

[22] Relatedly, the U.S. Supreme Court recently recognized that nominal damages are the corollary to declaratory judgments and satisfy the redressability prong of standing. In *Uzuegbunam v. Preczewski*, the Supreme Court held nominal damages, "a form of declaratory relief in a legal system with no general declaratory judgment act," "satisfies the redressability element of standing" under Article III. 592 U.S. 279, 285, 292 (2021). Because declaratory relief and nominal damages are corollaries, and because declaratory relief is no less capable of providing actual redress than nominal damages, *Uzuegbunam* further reinforces the rule that declaratory relief sufficiently redresses an ongoing or impending injury for purposes of Article III standing.

Utah, 536 U.S. at 463-64 (quoting *Franklin*, 505 U.S. at 803 (opinion of O'Connor, J.)); *accord Badger Catholic, Inc. v. Walsh*, 620 F.3d 775, 782 (7th Cir. 2010) ("[A] declaratory judgment is a real judgment, not just a bit of friendly advice . . . ."); *Comm. on Judiciary of U.S. House of Representatives v. Miers*, 542 F.3d 909, 911 (D.C. Cir. 2008) ("[W]e have long presumed that officials of the Executive Branch will adhere to the law as declared by the court. As a result, the declaratory judgment is the functional equivalent of an injunction.").

The Commission argues that declaratory relief cannot satisfy the redressability prong of standing because Plaintiffs cannot show "**but for** the TYSP suitability determination, fossil-fueled power plants could not be approved by the Siting Board or built and utilized by utility companies." Def. Br. at 35 (emphasis original). This demands too much. Proximate or "but-for" causation is not a requirement of standing, either for the causation or redressability prongs, which are in effect two sides of the same inquiry. *Lexmark Int'l*, 572 U.S. at 134 n.6; *Walters v. Fast AC, LLC*, 60 F.4th 642, 650 (11th Cir. 2023) (same); *see also Food & Drug Admin.*, 602 U.S. at 380 (causation and redressability are "flip sides of the same coin").

Plaintiffs need not show that the requested declaration would stop every single future fossil fuel project or resolve their every concern to satisfy redressability, Def. Br. at 32-33, because remedies need not guarantee complete redress for all of plaintiffs' injuries. *Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982); *Made in the USA Found. v. United States*, 242 F.3d 1300, 1310 (11th Cir. 2001) (A "partial remedy would be sufficient for redressability."). A plaintiff has standing if they can demonstrate that the requested relief would "slow or reduce" harm or would "minimize[e] the risk" of harm. *Massachusetts*, 549 U.S. at 525 (citing *Larson*, 456 U.S. at 244 n.15); *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 155 (2010) (court found that judicial order prohibiting growth and sale of "all or some" of the genetically engineered alfalfa would remedy challengers'

injuries by "eliminating *or minimizing the risk* of gene flow to conventional and organic alfalfa crops.") (emphasis added).

A declaration that the Commission's conduct is unconstitutional would resolve the legal controversy and at least provide partial redress of Plaintiffs' injuries by declaring unconstitutional state conduct which facilitates long-term fossil fuel dependency and hinders the widespread adoption of renewable energy sources. FAC ¶¶ 66, 74, 79-82, 92, 96-99, 104-05, 114-17. It is presumed the Commission would abide by such a declaration and would alter its conduct to conform to what this Court declares is necessary to prevent infringement of the Plaintiffs' constitutional rights to life. *See Reed*, 598 U.S. at 234. How the Commission responds to declaratory relief would be within its discretion and could include requiring the utilities to provide alternatives to their fossil fuel-dependent site plans, § 186.801(2), Fla. Stat., or including climate pollution as part of its analysis on "[t]he anticipated environmental impact of each proposed electrical power plant site" identified in the 10-Year Site Plans. §§ 186.801(2)(c), 366.92, Fla. Stat. As detailed *supra* § II.B, the extent to which the 10-Year Site Plan process and the Commission's systematic determinations of suitability has guided and shaped the ultimate composition of Florida's electricity sector, and the effect of determinations of unsuitability, are mixed questions of law and fact that should be considered by the court upon a fully developed factual record, not a motion to dismiss.

III. Plaintiffs Have Established a Justiciable Controversy Under the Declaratory Judgment Act, § 86.011, Fla. Stat.

Plaintiffs seek a declaration that the Commission has violated their fundamental rights guaranteed by the Florida Constitution. FAC at 74 (Prayer for Relief). This Court has jurisdiction over such questions under the Declaratory Judgment Act, which provides in relevant part:

> The circuit and county courts have jurisdiction within their respective jurisdictional amounts to declare rights, status, and other equitable or legal relations whether or

> not further relief is or could be claimed. . . . The court may render declaratory judgments on the existence, or nonexistence:
>
> (1) Of any immunity, power, privilege, or right; or
>
> (2) Of any fact upon which the existence or nonexistence of such immunity, power, privilege, or right does or may depend, whether such immunity, power, privilege, or right now exists or will arise in the future. Any person seeking a declaratory judgment may also demand additional, alternative, coercive, subsequent, or supplemental relief in the same action.

§ 86.011, Fla. Stat.

Parties seeking declaratory relief must allege that: (1) there is a bona fide, actual, present practical need for the declaration; (2) the declaration deals with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; (3) some immunity, power, privilege, or right of the complaining party is dependent upon the facts or the law applicable to the facts; (4) there is some person or persons who have, or reasonably may have an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law; (5) the antagonistic and adverse interest are all before the court by proper process or class representation; and (6) the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity. *Santa Rosa Cnty. v. Admin. Comm'n, Div. of Admin. Hearings*, 661 So. 2d 1190, 1192-93 (Fla. 1995) (citing *May v. Holley*, 59 So. 2d 636, 639 (Fla. 1952)). The Declaratory Judgment Act is to be liberally construed to afford parties relief from insecurity and uncertainty with respect to their rights and status. *Roth v. The Charter Club, Inc.*, 952 So. 2d 1206, 1207 (Fla. 3d DCA 2007). The test for the sufficiency of a complaint for declaratory judgment "is not whether the plaintiff will succeed in obtaining the decree he seeks favoring his position, but whether he is entitled to a declaration of rights at all." *X Corp. v. Y Pers.*, 622 So. 2d 1098, 1101 (Fla. 2d DCA 1993).

The Commission's arguments sidestep the well-established declaratory relief criteria in Florida. *See* Def. Br. at 16 (focusing on Article III injury and causation). The Commission further argues Plaintiffs have not alleged an adverse interest because Plaintiffs "do not allege they are regulated by the Commission or parties to the TYSP review." Def. Br. at 16-17. Direct regulation of a plaintiff by the defendant is not required to demonstrate an adverse interest for purposes of bringing a justiciable declaratory relief claim. Instead, the interest must be adverse *with respect to the subject matter* at issue in the case. *See, e.g.*, *Martinez*, 582 So. 2d at 1170 ("adverse and antagonistic interest in the subject matter, either in fact or law"); *Depaola v. Town of Davie*, 872 So. 2d 377, 381 (Fla. 4th DCA 2004) (adverse interests "with respect [to the issue] to which the declaration is sought") (cleaned up). [23]

Here, there is an adverse interest with respect to the effect and constitutionality of the Commission's continued course of conduct in systematically finding all 10-Year Site Plans suitable. *See, e.g.*, FAC ¶¶ 225, 243. The Commission's reliance on *Apthorp v. Detzner* is unavailing because there the plaintiff had no need for the declaration sought because the challenged conduct was never implemented. 162 So. 3d 236, 241 (Fla. 1st DCA 2015). *Apthorp v. Detzner* thus stands for the proposition that challenging the constitutionality of a statute in a vacuum, without any allegations as to the ongoing conduct, how it has been implemented, and how it injures the plaintiff will not suffice for declaratory judgment. *Id*. at 242.

[23] The Commission's suggestion that allegations related to the need for court action are moot since the Commission has already made its suitability determinations on utilities' 2024 10-Year Site Plans falls flat since the Commission's 10-Year Site Plan review and suitability determinations are recurring, annual events. *See* Def. Br. at 16 n.7; FAC ¶¶ 5, 21, 82-83 (indicating the Commission issues suitability determinations on utilities' 10-Year Site Plans each year). Far from mooting any of Plaintiffs' claims or allegations, the fact the Commission determined all 2024 10-Year Site Plans to be suitable yet again only crystalizes the need for this Court to take up this case and issue a declaration as to the legality of the Commission's course of conduct as eight out of the ten reporting electric utilities Plans project gas to supply >50% of their net electricity generation in 2033, with seven utilities projecting gas to supply >60% of their net electricity generation in 2033 and three utilities project renewables to supply less than 5% of their net electricity generation in 2033. FAC ¶ 112.

Under established Florida case law, specific allegations as to how a defendant's ongoing (i.e. not moot) conduct violates the plaintiff's constitutional rights are sufficient to establish an antagonistic interest for purposes of a justiciable declaratory judgment claim. *See Depaola*, 872 So. 2d at 379 (finding firefighter who had asserted violation of his due process rights via termination of employment with the Town of Davie had established adverse interests with the town for purposes of his declaratory judgment claim); *Coalition*, 680 So. 2d at 403 n.4 (Public school students could seek a declaratory judgment as to whether the State had failed to provide adequate resources for a uniform system of free public schools as provided for in Article IX, section 1 of the Florida Constitution since plaintiffs had alleged "that they are suffering a continuing injury as a result of being denied an adequate education."). In sum, Plaintiffs have demonstrated their entitlement to declaratory relief under the Declaratory Judgment Act.

IV. Plaintiffs Have Sufficiently Plead a Cause of Action Based on Article I, Sections 2 and 9 of the Florida Constitution

Plaintiffs' constitutional claims are grounded in the principle that certain basic and inalienable rights, including the right to enjoy and defend life secured by Article I, section 2 and the right to life preserved in Article I, section 9 of the Florida Constitution "are woven into the fabric of Florida history." *Shriner's Hosps. for Crippled Children v. Zrillic*, 563 So. 2d 64, 67 (Fla. 1990). The Commission concedes that Article I, section 2 protects individual's basic rights to live their lives without undue government interference, and that the right to enjoy and defend life is "fundamental and personal to the individual." Def. Br. at 36 (citing *Grissom v. Dade Cnty.*, 293 So. 2d 59, 62 (Fla. 1974)). When construing provisions of Florida's Constitution, the "fundamental object" sought by Florida courts is to "ascertain the intent of the framers and the provision must be construed or interpreted in such manner as to fulfil the intent of the people, never to defeat it." *Gray v. Bryant*, 125 So. 2d 846, 852 (Fla. 1960). Constitutional provisions "must never be

construed in such manner as to make it possible for the will of the people to be frustrated or denied." *Id*.; *Amos v. Mathews*, 126 So. 308, 316 (Fla. 1930). If the constitutional text is "clear, unambiguous, and addresses the matter in issue, then it must be enforced as written." *Fla. Soc. of Ophthalmology v. Fla. Optometric Ass'n*, 489 So. 2d 1118, 1119 (Fla. 1986). Florida's Declaration of Rights "embrace a broad spectrum of enumerated and implied liberties that conjoin to form a single overarching freedom . . . Each right is, in fact, a distinct freedom guaranteed to each Floridian against government intrusion. Each right operates in favor of the individual, against government." *Traylor v. State*, 596 So. 2d 957, 963 (Fla. 1992). "Each right and each citizen, regardless of position, is protected with identical vigor from government overreaching, ***no matter what the source***." *Id*. (citing *Boynton v. State*, 64 So. 2d 536, 552 (Fla. 1953) (en banc) (emphasis added)).

Plaintiffs have sufficiently alleged that the Commission's pattern and practice of determining utility 10-Year Site Plans are suitable has contributed to conditions that pose a risk to the Plaintiffs' lives, health, and safety in violation of their fundamental rights to life. *See, e.g.*, FAC ¶¶ 24-62, 118-93; *supra* § II.A. While this case presents a novel factual context, that does not defeat Plaintiffs' right to life theory. Instead, addressing issues concerning the existence or infringement of rights within novel factual contexts was precisely why the Florida Legislature created the Declaratory Judgment Act. *deMarigny v. deMarigny*, 43 So. 2d 442, 445 (Fla. 1949) ("The principal objective of the legislature in adopting the act providing for declaratory judgments or decrees was to establish a means whereby one might obtain a judicial declaration of rights *never before determined*[.]") (en banc) (emphasis added). Further, the novelty of Plaintiffs' claims weighs in favor of resolving the case on a fully developed factual record, not on a motion to dismiss.

The Declaration of Rights in Florida's Constitution "protect each individual within our borders from the unjust encroachment of state authority—***from whatever official source***—into his or her life." *Traylor*, 596 So. 2d at 963 (emphasis added); *Boynton*, 64 So. 2d at 552 (The Declaration of Rights of the Florida Constitution was "inserted and adopted primarily for the purpose of guaranteeing to the people the enjoyment of certain inalienable rights and for the protection of the people against arbitrary power from whatever source it may emanate."). The explicit right to life is to be viewed through "the intent of the framers ***as applied to the context of our times***." *Shriner's Hosps.*, 563 So. 2d at 67 (emphasis added); *see also J.P.*, 907 So. 2d at 1109 (applying strict scrutiny to claims invoking the Right of Privacy clause of Florida's Declaration of Rights "regardless of the nature of the [challenged] activity."). Florida courts have often looked to "advances in science and technology" when evaluating the scope of inalienable rights, and it should be no different here. *See, e.g.*, *D.M.T. v. T.M.H.*, 129 So. 3d 320, 338 (Fla. 2013).

The Commission incorrectly disregards the plain language of the Constitution and focuses on the factual context of Plaintiffs' claims to reframe them as asserting some right to a particular environmental system or type of energy generation.[24] Def. Br. at 35, 39. Plaintiffs have alleged, and the Commission ignores, specific facts detailing how the Commission's challenged conduct infringes their ability to live and enjoy their lives as those terms are defined under Florida law. For example, Plaintiffs allege the Commission is implementing its authority in a manner that harms their physical and mental health, FAC ¶¶ 34, 36, 40, 42-44, 46, 52, 59, 61, 128, 146, 148, 164,

[24] The Commission cherry picks one allegation from the Complaint to support their position that Plaintiffs are asking to be "entitle[d]" "to a certain type of energy generation or environmental condition." Def. Br. at 35 (citing only FAC ¶ 224). The Commission never references—let alone grapples with—any of the Plaintiffs' other allegations as to how the Commission's conduct contributes to the conditions that are impeding the Plaintiffs' ability to live, enjoy and defend their lives. *See, e.g.,* FAC ¶¶ 24-62. Plaintiffs are seeking protection from the Commission's invasion of their explicit right to life, not some heretofore unenumerated environmental right. As such, the out-of-state cases the Commission cites in support of their unenumerated right theory, Def. Br. at 39-40, are totally irrelevant and say nothing as to how this court should interpret and apply Florida's right to life.

172, 189; exposes them to life-threatening conditions, and increases their risk of death, FAC ¶¶ 30, 147, 157, 169, 187; disrupts education and activities critical to their culture, health and wellbeing, FAC ¶¶ 25, 27-28, 33, 38, 43, 51, 57, 60, 184; and interferes with their ability to make personal decisions such as whether to have and raise children of their own. FAC ¶ 52. If the Commission disputes these factual allegations, they can do so on the merits, but all of Plaintiffs' injuries implicate the right to life under the Florida Constitution.[25] *See Planned Parenthood*, 384 So. 3d at 76 (emphasizing the State's interest in protecting human life). Moreover, Plaintiffs' injuries to their lives, safety, wellbeing, and ability to defend themselves from harm will worsen if the Commission continues to deem fossil fuel-dependent 10-Year Site plans suitable. FAC ¶¶ 62, 90, 112, 127, 165, 168, 209-10, 212, 216.

The Supreme Court's analysis in *Planned Parenthood of Southwest & Central Florida v. State*, is instructive as to how to interpret the scope of a constitutional right. 385 So. 3d at 77-79. Courts should "ask how Florida voters would have understood the text of the provision and how that understanding would be informed by Florida's long history of" regulating the issue at hand.[26]

[25] The United Nations Office of the High Commissioner for Human Rights has recognized that "climate change threatens the effective enjoyment of a range of human rights including those to life . . . ." United Nations Office of the High Commissioner for Human Rights, *OHCHR and Climate Change*, OHCHR.ORG, https://www.ohchr.org/en/climate-change. Courts around the world have similarly acknowledge the link between government conduct that causes climate change and infringements to the right to life. *See, e.g.*, *Youth Verdict v. Waratah Coal* (Austl., Queensl. Land Ct. 2022), ¶¶ 1468, 1480, 1505 ("[T]he right can be violated by a life-threatening situation even if there is no loss of life," "climate change is one of the most pressing and serious threats to the right to life," and "[t]he evidence presents a clear and pressing threat to the right to life that is now experienced by people in Queensland and will only be exacerbated by increasing emissions, to which the Project would make a material contribution."); *Klimatická žaloba ČR v. Czech Republic* (Prague Mun. Ct. 2022) (holding that the Czech government interfered with plaintiffs' rights to life because "[g]lobal warming caused by the emission of greenhouse gases adversely affects the climatic conditions necessary for human life, thereby interfering with the right to a favourable environment guaranteed by Article 35(1) of the Charter."); *General Comment No. 36 on the International Convention on Civil and Political Rights Article 6 Right to Life* (U.N. Hum. Rts. Comm. 2019), ¶ 62 ("Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.").

[26] For over 170 years "Florida has worked to protect and conserve natural resources" and "has a long tradition of conservation." Florida Dep't of Env't Prot., *History of State Lands*, https://floridadep.gov/lands/lands-director/content/history-state-lands (last visited Feb. 21, 2025). Other sources of Florida law provide support for the notion that the right to life applies in the context of environmental harm. *See* Art. II, § 7(a), Fla. Const. ; *see also* Art.

Id. at 75. Courts can look to "dictionaries, contextual clues, or historical sources bearing on the text's meaning." *Id.* The basic right to enjoy and defend life now contained in Article I, section 2 was enshrined in Florida's original constitution of 1838, and repeated and retained in the 1861, 1865, 1885, and 1968 constitutions, and any amendments thereafter.[27] Talbot D'Alemberte, The Florida State Constitution (2nd ed. 2017). Article I, section 2 "picks up concepts embodied in the preamble to the federal Constitution and language from the Declaration of Independence." *Id.* James Wilson, signatory to the Declaration of Independence and original U.S. Supreme Court Justice, taught that "[by] the law, life is protected not only from immediate destruction, but from every degree of actual violence, and, in some cases, from every degree of danger." Lectures on the Law (1790-91), reprinted in 2 Collected Works of James Wilson, 1068. As reflected in period dictionaries, the common understanding of "life" at ratification of Florida's Constitution, as today, encompassed the entirety of a person's lifespan. Universal Dictionary of the English Language (Robert Hunter & Charles Morris eds., N.Y.C., Peter Fenelon Collier 1899) (defining "life" as "the period from birth to death" of a human being, *i.e.*, a person's longevity or lifespan); *accord* American Heritage Dictionary (5th ed. 2022) (defining "life" as "the interval of time between birth and death," "human existence, relationships, or activity in general," and "actual environment or

X, § 16, Fla. Const. (directing the conservation and management of Florida's marine resources "for the benefit of the state, its people, and future generations."); § 403.021, Fla. Stat. (finding "[t]he pollution of the air and waters of this state" "a menace to public health and welfare" and declaring a public policy to conserve the waters of the state and protect air quality to protect human health and safety); § 403.702, Fla. Stat.; § 373.016, Fla. Stat.; § 380.06, Fla. Stat. "In construing the Constitution every section should be considered so that the Constitution will be given effect as a harmonious whole." *Askew v. Game & Fresh Water Fish Comm'n*, 336 So. 2d 556, 560 (Fla. 1976); *see also State v. Kelly*, 999 So. 2d 1029, 1042 (Fla. 2008) (construing state constitutional provision "in light of" equal protection guarantee in Article I, section 2 of Florida Constitution).

[27] Art. I, § 1, Fla. Const. (1838) ("That all freemen, when they form a social compact, are equal; and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty . . . ."); Art. I, § 1, Fla. Const. (1861) (same); Art. I, § 1, Fla. Const. (1865) (same); Art. I, § 1, Fla. Const. (1868) ("All men are by nature free and equal, and have certain inalienable rights, among which are those of enjoying and defending life and liberty . . . ."); Art. I, § 1, Fla. Const. (1885) ("All men are equal before the law, and have certain inalienable rights, among which are those of enjoying and defending life and liberty . . . ."). The current text of Article I, section 2, provides "All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty . . . .". Art. I, § 2, Fla. Const.

reality; nature."). At no time did Floridians treat State government's right to threaten their lives as dependent on the factual context.

The contextual clues lend further support for the Plaintiffs' claim that injuries to their lives, health, and safety from the Commission's conduct challenged herein are encompassed within Article I, section 2. The right to life under Florida law broadly encompasses not just the right to live, but the "right to enjoy and defend life." Art. I, § 2, Fla. Const. Plaintiffs allege many examples of how the Commission's conduct is diminishing their enjoyment of life, and their ability to defend themselves from harm, even if it has not resulted in their actual death. *See, e.g.*, FAC ¶¶ 24-62. Thus, Florida voters would have understood, and continue to understand, that Florida's explicit protection of the right to enjoy and defend life guards against exposure to the life-threatening conditions alleged in the Complaint, whether such conditions arise from climate pollution or some other adverse condition or occurrence caused or sanctioned by the State.

The Commission also attempts to confine the due process right to life secured by Article I, section 9 only to situations in which the "government actively seek[s] to end a life, such as in death penalty cases." Def. Br. at 38. But, as described above, no such limitation on the right to life is supported by Florida law,[28] history, or tradition, and the Commission cites to no such authority. Due process was brought into the Florida constitution in 1865 and has been retained ever since. Talbot D'Alemberte, The Florida State Constitution (2nd ed. 2017).[29] Both Article I, sections 2 and 9 preserve Floridians' rights to life, and "the provisions must be read in pari materia to ensure a consistent and logical meaning that gives effect to each provision." *Zingale v. Powell*, 885 So.

[28] The one case that the Commission cites in support of theory that Article I, section 9 only applies "in the context of the government actively seeking to end a life, such as in death penalty cases," Def. Br. at 38, says no such thing. *See Barwick v. State*, 361 So. 3d 785, 790 (Fla. 2023).

[29] *See also* Art. I, § 8, Fla. Const. (1838) ("That no freeman shall be taken, imprisoned, or disseized of his freehold, liberties, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty, or property, but by the law of the land.").

2d 277, 283 (Fla. 2004) (cleaned up). Plaintiffs have adequately pled a violation of their rights to life preserved by the Florida Constitution in Article I, sections 2 and 9.

V. Plaintiffs' Constitutional Claims Do Not Raise Political Questions

Florida courts have a "distinct and extremely important responsibility . . . to safeguard the Constitution and protect individual rights." *In re Amendments to Rules Regulating The Fla. Bar 1-3.1(a) & Rules of Jud. Admin.-2.065 (Legal Aid)*, 598 So. 2d 41, 42-43 (Fla. 1992). In general, the judiciary has a "responsibility to decide cases properly before it, even those it would gladly avoid." *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 194 (2012) (internal quotation marks and citation omitted).

A "narrow exception" to this rule is the Political Question Doctrine, under which a court lacks authority to decide controversies that are more suited to the political branches. *Coalition*, 680 So. 2d at 408 (listing the six criteria articulated in *Baker v. Carr*, 369 U.S. 186 (1962) to gauge whether a case involves a political question). There should be "no dismissal for non-justiciability" unless one of the six *Baker* factors is "inextricable from the case at bar." *Baker*, 369 U.S. at 217. Courts cannot reject, on political question grounds, "a bona fide controversy as to whether some action denominated 'political' exceeds constitutional authority." *Id*. To determine whether a case presents political questions, courts engage in a "discriminating inquiry into the precise facts and posture of the particular case, and the impossibility of resolution by any semantic cataloguing." *Id*.

A. Plaintiffs' Claims for Declaratory Relief Do Not Implicate Any of the *Baker* Factors

Courts may not dismiss a case for raising a political question unless: (1) there is a "textually demonstrable *constitutional* commitment of the issue to a coordinate political department"; (2) the court lacks "judicially discoverable and manageable standards" for resolving it; (3) it is impossible to decide without "an initial policy determination of a kind *clearly* for nonjudicial discretion"; (4) it is impossible to decide without "expressing lack of respect due coordinate branches"; (5) there

is an "unusual need" to adhere to an already-made political decision; or (6) there is potential for "embarrassment" if varying departments produce conflicting answers to a question. *Baker*, 369 U.S. at 217 (emphasis added).[30] The *Baker* factors are "listed in descending order of both importance and certainty," and the Commission argues only factors (1)-(4) apply here. *Vieth v. Jubelirer*, 541 U.S. 267, 278 (2004) (plurality opinion).

1. The Text of the Florida Constitution Commits Questions of Fundamental Rights to the Judiciary

The Commission argues Article II, section 7 of the Florida Constitution "expressly allocates authority over policies concerning the environment and conservation of resources to the Legislature."[31] *See* Def. Br. at 18; Art. II, § 7(a), Fla. Const. ("Adequate provision shall be made by law for the abatement of air and water pollution . . . ."). The plain language of Article II, section

[30] As detailed *infra* § V.A.1, the first *Baker* factor concerns whether the issue has been committed *by the constitution* to a coordinate political branch. *See Nixon v. United States*, 506 U.S. 224, 240 (1993) (noting that *Baker* directs the Court to search for "a textually demonstrable constitutional commitment" and observing that oftentimes courts are "usually left to infer the presence of a political question *from the text and structure of the Constitution*") (White & Blackmun, JJ., concurring) (emphasis added). Florida courts, such as *Coalition for Adequacy & Fairness in School Funding, Inc. v. Chiles*, 680 So. 2d 400, 408 (Fla. 1996), cited by the Commission occasionally misstate the first *Baker* factor as a "textually demonstrable commitment of the issue to a coordinate political branch," rather than a textually demonstrable *constitutional* commitment. *See* Def. Br. at 17. Other more recent Florida cases have made clear the proper understanding that the first *Baker* factor is concerned principally with constitutional text. *See Warren v. DeSantis*, 365 So. 3d 1137, 1144 (Fla. 2023) ("Yet we have not explicitly applied the political question doctrine to our role in reviewing suspensions. . . . Our Constitution empowers the Senate with the authority to review suspensions. Art. IX, § 7(b), Fla. Const. That provision constitutes a 'textually demonstrable constitutional commitment of the issue to a coordinate political department.'") (Francis, J., concurring) (quoting *Zivotofsky*, 566 U.S. at 195); *DeSantis v. Fla. Educ. Ass'n*, 306 So. 3d 1202, 1215 (Fla. 1st DCA 2020) ("[C]ourts must refrain from answering political questions because it is not the judiciary's role to decide questions that revolve around policy choices and value determinations *constitutionally committed* for resolution to the halls of [the legislature] or the confines of the Executive Branch.") (internal quotation marks and citation omitted) (emphasis added).

[31] In assessing the first *Baker* factor, courts only consider *constitutional text*. Statutory language that the Commission points to, like that of the State Comprehensive Plan, Def. Br. at 18-19, is irrelevant for this inquiry. *See Baker,* 369 U.S. at 217 (asking if there is a "textually demonstrable *constitutional* commitment of the issue to a coordinate political department") (emphasis added); *Aktepe v. USA*, 105 F.3d 1400, 1402-03 (11th Cir. 1997) (quoting from *Baker* and observing that "*The Constitution* commits the conduct of foreign affairs to the executive and legislative branches of government.") (emphasis added); *United States v. Munoz-Flores*, 495 U.S. 385, 390 n.3 (1990) (In case involving whether statute requiring courts to impose a monetary special assessment on persons convicted of federal misdemeanors violated the Origination Clause of Art. I, § 7 of the United States Constitution, the federal government argued that the case presented a non-justiciable political question but conceded that "*no provision of the Constitution demonstrably commits* to the House of Representatives the determination of where a bill originated.") (emphasis added). If it were sufficient to render an entire topic area a non-justiciable political question by simply pointing to the existence of legislation that deals generally with that topic, no cases would be justiciable.

7(a) authorizes the Florida Legislature to regulate pollution pursuant to its police powers, but imposes no limit on a court's ability to declare fundamental rights, even if the conduct relates to the environment and energy planning. *See Planned Parenthood*, 384 So. 3d at 77 ("Our approach to interpreting the constitution . . . 'recognize[s] that the words of a governing text are of paramount concern.'") (quoting *Coates v. R.J. Reynolds Tobacco Co.*, 365 So. 3d 353, 354 (Fla. 2023)). No Florida court has endorsed a view of Article II, section 7 so broad as to trump individual rights secured by Article I; rather, Florida courts simply recognize the provision as an expression of the State's "obligation to conserve and protect" important natural resources. *See Walton Cnty. v. Stop Beach Renourishment, Inc.*, 998 So. 2d 1102, 1110 (Fla. 2008).

Here, Plaintiffs seek a declaratory judgment vindicating their fundamental rights secured by Florida's Declaration of Rights in the face of government conduct which Plaintiffs allege violate those rights—a request squarely within this Court's province. *See In re Advisory Opinion to Governor Request of June 29, 1979*, 374 So. 2d 959, 971 (Fla. 1979) (Sundberg, J., writing separately) ("The role of the judiciary in our form of government is unique in its accepted authority to declare acts of the coordinate branches invalid because they offend the terms or principles of our constitution."); *Satz v. Perlmutter*, 379 So. 2d 359, 361 (Fla. 1980) ("The judiciary is in a lofty sense the guardian of the law of the land and the Constitution is the highest law. A constitution would be a meaningless instrument without some responsible agency of government having authority to enforce it.") (quoting *Dade Cnty. Classroom Teachers Ass'n, Inc. v. Legislature*, 269 So. 2d 684, 686 (Fla. 1972)).

The Commission's reading of Article II, section 7(a) of the Florida Constitution impermissibly renders Article I, sections 2 and 9 meaningless because it suggests the State's commitment to the protection of life depends on factual context. That contradicts the plain

language of the Constitution and the will of Florida's citizenry, who sought to restrain government from *all* attacks on individuals' lives, liberties, and property. *See Gray*, 125 So. 2d at 852 ("[A constitutional] provision must never be construed . . . as to make it possible for the will of the people to be frustrated . . . ."); *see also Askew*, 336 So. 2d at 560 ("A construction which would leave without effect any part of the Constitution should be rejected."). Importantly, each of the personal liberties enumerated in the Declaration of Rights are considered fundamental, the protection of which is not contingent on the nature of the government conduct causing the harm. *J.P.*, 907 So. 2d at 1109; *see also supra* § IV.

The Commission's reading of Article II, section 7(a) is also inconsistent with Florida courts having heard and decided constitutional claims arising from environmental disputes. *Dep't of Cmty. Affs. v. Moorman*, 664 So. 2d 930, 933 (Fla. 1995) (exercising jurisdiction over takings and Article 1, section 9 due process claims arising out of denial of environmental permit). Florida's judiciary regularly hears challenges to environmental policies, particularly when they burden fundamental rights. *See, e.g.*, *Haire v. Fla. Dep't of Agric. & Consumer Servs*., 870 So. 2d 774 (Fla. 2004) (deciding substantive due process challenge to Citrus Canker Law that involved damage to citrus trees from environmental threat); *Moorman*, 664 So. 2d at 932-33 (indicating constitutional rights to equal protection, privacy, and due process continue to apply in case involving exercise of Article II, section 7(a) authority). To claim there is an exclusive commitment of environmental issues to the legislature—especially when the underlying claims raise questions of fundamental rights—flies in the face of plain constitutional language, the historical practices of Florida's judiciary, and separation of powers. *See Pub. Def., Eleventh Jud. Cir. of Fla. v. State*, 115 So. 3d 261, 271-72 (Fla. 2013) (safeguarding fundamental rights is paramount to preserving the judiciary as an independent, co-equal branch of government). Taken to its extreme, the

Commission's position would insulate from judicial review governmental conduct that killed its citizens simply if done through environmental means, a result which clearly contradicts the meaning and intent of Article I, sections 2 and 9.

2. There are Judicially Manageable Standards for Resolving Questions Concerning the Infringement of Fundamental Rights

Attempting to bootstrap this case to *Reynolds v. State*,[32] the Commission erroneously asserts that "[n]one of the constitutional . . . provisions on which Plaintiffs base their complaint" provide any discoverable or manageable standard for this Court to rely upon. Def. Br. at 19 (citing No. 2018-CA-819, 2020 WL 3410846 (Fla. Cir. Ct. June 10, 2020), *aff'd*, 316 So. 3d 813 (Mem) (Fla. 1st DCA 2021)). However, specifically referencing Florida, the U.S. Supreme Court has acknowledged that the political question doctrine does not bar constitutional claims in state courts when "[p]rovisions in state statutes and state constitutions can provide standards and guidance for state courts to apply." *Rucho v. Common Cause*, 588 U.S. 684, 719 (2019) (citing *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363 (Fla. 2015)). In this case, this Court possesses a "well developed and familiar" standard for resolving claims involving infringements of the fundamental, constitutional right to life—strict scrutiny, that can be applied to the Commission's clear and discrete exercise of its statutory authority to find 10-Year Site Plans suitable. *Baker*, 396 U.S. at 226; *J.P.*, 907 So. 2d at 1109 (when a governmental action "impairs the exercise of a fundamental right," the government's action "must pass strict scrutiny"). Government conduct withstands strict scrutiny only if it is necessary to promote a compelling governmental interest and

[32] In that *Reynolds* case, youth sued the State of Florida, the Governor, and several state agencies challenging the state's overarching "Fossil Fuel Energy System." The trial court dismissed the plaintiffs' common law public trust and state-created danger claims without any legal analysis other than calling them "inherently political questions that must be resolved by the political branches of government." 2020 WL 3410846. The Court of Appeals issued a per curiuam affiramance, without any written opinion. 316 So. 3d 813 (Mem) (Fla. 1st DCA 2021) This case has different legal claims, different defendants, and seeks different relief. As such, it is not relevant, let alone "the same" as the Commission suggests. Def. Br. at 3.

is narrowly tailored to advancing that interest. *Fraternal Order of Police, Miami Lodge 20 v. City of Miami*, 243 So. 3d 894, 899 (Fla. 2018). Plaintiffs' claims that the Commission's practices unlawfully infringe on their rights to life present no more of an adjudicatory hurdle than any of the many other fundamental rights cases that Florida courts regularly hear and decide. *See, e.g.*, *D.M.T.*, 129 So. 3d at 334-40; *see also State v. Robinson*, 873 So. 2d 1205, 1214-17 (Fla. 2004); *Chiles v. State Emps. Att'ys Guild*, 734 So. 2d 1030, 1031 (Fla. 1999). The statutes that the Commission is implementing in this case can also serve as a guidepost for the Court to consider when deciding Plaintiffs' constitutional claims. For example, the Court can look to whether the Commission's conduct is consistent with Florida's Renewable Energy Policy or the Legislature's directives in § 186.801, Fla. Stat., when assessing whether there is a compelling state interest or if the Commission is using the least restrictive means to advance that interest.

The Commission asserts, without citation, that Plaintiffs "request that this Court determine what is 'suitable'" for the Commission to pursue. Def. Br. at 19.[33] Not so. Plaintiffs seek a declaration that "[t]he Commission has violated Plaintiffs' fundamental and inalienable right to enjoy and defend life" through its systematic and ongoing practices. FAC at 74 (Prayer for Relief). It would then be incumbent upon the Commission to make future suitability determinations in a manner that does not infringe the constitutional right to life. Similarly, the Commission erroneously claims—again without citation—that Plaintiffs ask this Court to impose a vague balancing test weighing any number of statutory factors. Def. Br. at 21. Wrong again. Plaintiffs merely ask that this Court draw on longstanding and well-developed constitutional jurisprudence to answer a familiar question: Do the actions of a State agency unlawfully infringe Plaintiffs'

[33] To the extent that Plaintiffs' Complaint references the Commission's suitability criteria, *see, e.g.*, FAC ¶ 77 (citing § 186.801(2), Fla. Stat.), it only does so to illustrate that the Commission "has ample legal authority," *i.e.*, least restrictive means, to act in a manner that would not burden Plaintiffs' fundamental rights to life. *See* FAC ¶ 230.

fundamental rights, and if so, is the State's action narrowly tailored to advance a compelling state interest? *See Mitchell v. Moore*, 786 So. 2d 521, 527 (Fla. 2001); *J.P.*, 907 So. 2d at 1109-10; *see also Munoz-Flores,* 495 U.S. at 395 (finding the Court did not lack manageable standards when the "general nature of [its] inquiry" was "one that is familiar to the courts and often central to the judicial function"); *Saldano v. O'Connell*, 322 F.3d 365, 369 (5th Cir. 2003) (finding second *Baker* factor did not apply where "case law . . . will serve as the benchmark" for resolution). The Florida constitution, case law and statutes provide judicially manageable standards for this Court to apply in resolving Plaintiffs' right to life claims.

3. This Court may Grant Plaintiffs' Claims for Declaratory Judgment Without Making Initial Policy Decisions

Far from asking the Court itself to fashion new energy policy, Plaintiffs seek the traditional judicial exercise of reviewing ongoing conduct of a coordinate branch for compliance with well-established constitutional standards. Interpreting and applying the constitution is not policymaking. *See League of Women Voters*, 172 So. 3d at 414. Courts have long heard claims that agency conduct violates constitutional rights without opining on the adequacy, efficiency, or legislative prudence of the state's challenged actions. *See, e.g.*, *Dep't of Agric. & Consumer Servs. v. Mid-Fla. Growers, Inc.*, 521 So. 2d 101, 103 (Fla. 1988) (noting in challenge to state's citrus regulation that "it is a settled proposition that a regulation . . . may meet the standards necessary for exercise of the police power" and yet unlawfully violate a constitutional right); *Schick v. Fla. Dep't of Agric.*, 504 So. 2d 1318, 1322 (Fla. 1st DCA 1987) (finding landowner stated cognizable constitutional claim for inverse condemnation arising out of state's nematode eradication program). Here, the Legislature has already articulated Florida energy policy and the Commission's role in interpreting and applying state energy policy. *See* §§ 186.801, 366.92, Fla.

Stat. The question for this Court is not what that policy should be, but whether the Commission's interpretation and application of the already-established Legislative policy is constitutional.

The Commission also argues erroneously that resolution of Plaintiffs' constitutional claims would require this Court to oversee the minutiae of Florida's energy system, Def. Br. at 22, but Plaintiffs seek only declaratory relief construing the constitutionality of the Commission's conduct and resolving doubt as to their constitutional rights. FAC at 74 (Prayer for Relief). If granted, this relief maintains the Commission's statutory authority to make suitability determinations under § 186.801, Fla. Stat., and it will be incumbent on the Commission to bring their conduct into constitutional compliance. *See, e.g.*, *League of Women Voters*, 172 So. 3d at 413-14 (finding constitutional violation concerning congressional districts drawn to favor particular political party and incumbents and concluding that the appropriate remedy is "to require the Legislature to redraw the map, based on the directions set forth by this Court" and articulating "guidelines and parameters" for the Legislature to consider in "adopting a redrawn map that is devoid of partisan intent."); *Brown v. Plata*, 563 U.S. 493, 543 (2011) (finding constitutional violation but "accord[ing] the State considerable latitude to . . . make plans to correct the violations in a prompt and effective way").

Finally, the Commission errs when it argues the Court cannot review its actions simply because they are based on its "exercise of its discretion." Def. Br. at 23. First, the Commission has no discretion to interpret or implement statutes in a way that violates the fundamental rights of Floridians. *See* Art. V, § 21, Fla. Const. ("In interpreting a state statute or rule, a state court . . . may not defer to an administrative agency's interpretation of such statute or rule, and must instead interpret such statute or rule de novo."); *see also League of Women Voters*, 172 So. 3d at 400 (applying legislative deference only when there is no constitutional violation); *N. Fla. Women's*

Health & Counseling Servs., Inc. v. State, 866 So. 2d 612, 643 (Fla. 2003) ("[It is a] well established constitutional law principle consistently adhered to by this Court that the ordinary deference due legislation does not apply when a fundamental constitutional right . . . is implicated."); *see also Fla. Dep't of Children & Families v. J.B.*, 154 So. 3d 479, 481 (Fla. 3d DCA 2015) ("[T]he judicial branch must not interfere with the discretionary functions of the legislative or executive branches of government *absent a violation of constitutional or statutory rights*.") (internal quotation marks and citation omitted) (emphasis added). Second, the Commission's statutory obligation to determine whether 10-Year Site Plans are suitable is a mandatory duty. § 186.801(2), Fla. Stat. ("Within 9 months after the receipt of a proposed plan, the commission ***shall*** make a preliminary study of such plan and classify it as 'suitable' or 'unsuitable.'") (emphasis added); *id*. (the Commission "***shall review***" the items in § 186.801(2)(a)-(j), Fla. Stat., when reviewing utilities' Plans to determine their suitability) (emphasis added); *see also S.R. v. State*, 346 So. 2d 1018, 1019 (Fla. 1977) (use of "shall" is "normally meant to be mandatory in nature"). Accordingly, this Court is more than competent to review the constitutionality of an agency's actions.

4. Declaratory Relief in This Case Would Not Show Disrespect for the Legislature

The Commission asserts that Plaintiffs' requested relief—a declaratory judgment—would express a lack of respect for the legislature. Def. Br. at 23. They have it backwards. The Florida Legislature *itself* has granted this Court the specific authority to declare rights and construe statutes, so it is difficult to see how the exercise of this power could offend that branch. §§ 86.011, .091, Fla. Stat.; *see Chiles v. Phelps*, 714 So. 2d 453, 457 (Fla. 1998) ("[T]he constitutionality of a statute should be challenged by way of a declaratory judgment action in circuit court."). Further, Plaintiffs are not asking the court to make policy judgments or to engage in "managing" the 10-

Year Site Plan process, Def. Br. at 24, because that work has already been done by the Legislature. Plaintiffs ask the Court to apply case law to the present facts to determine the constitutionality of how the Commission's is implementing its statutory duties.[34] *See Bd. of Cnty. Comm'rs of Brevard Cnty. v. Snyder*, 627 So. 2d 469, 474 (Fla. 1993) ("[L]egislative action results in the *formulation* of a general rule . . . whereas judicial action results in the *application* of a general rule[.]"); *Locke v. Hawkes*, 595 So. 2d 32, 36 (Fla. 1992) (the "primary judicial function[] is to interpret . . . constitutional provisions"). Plaintiffs' access to Florida courts to raise alleged infringements of constitutional rights is squarely within the judicial authority conferred by the Florida Constitution and the Declaratory Judgment Act. *See Martinez*, 582 So. 2d 1167; *Kuhnlein*, 646 So. 2d 717.

The Commission misconstrues the respectful nature of the relationship between the judiciary and the coordinate branches. The core judicial function is to check encroachment upon individuals' fundamental rights by other branches of government. *See League of Women Voters*, 172 So. 3d at 414 (court has a responsibility to vindicate citizens' essential rights); *Rose v. Palm Beach Cnty.*, 361 So. 2d 135, 137 (Fla. 1978) ("[W]here the fundamental rights of individuals are concerned, the judiciary may not abdicate its responsibility and defer to legislative or administrative arrangements."). The Florida Constitution purposely established the judiciary as a co-equal branch with the duty to measure executive and legislative action against the Constitution. *Bush v. Schiavo*, 885 So. 2d 321, 329-30 (Fla. 2004). "Since the separation of powers exists for the protection of individual liberty, its vitality 'does not depend' on 'whether "the encroached-

[34] The Commission's reliance on *DeSantis v. Florida Education Ass'n*, 306 So. 3d 1202 (Fla. 1st DCA 2020), is misplaced as that case involved the public education provision in Florida's Constitution, Article IX, section 1 in the context of state action taken to respond to a public health emergency. There, the court found the terms "safe" and "secure" as used in Article IX, section 1(a) of the Florida Constitution lacked judicially discoverable and manageable standards. 306 So. 3d at 1216. Here, by contrast, Plaintiffs are asking the court to construe the meaning and application of *guaranteed fundamental rights* contained in Florida's Declaration of Rights to a clearly defined legal and factual circumstance. *See* FAC ¶¶ 235, 252.

upon branch approves the encroachment.'" *Nat'l Labor Relations Bd. v. Canning*, 573 U.S. 513, 571 (2014) (Scalia, J., concurring).

Resolving constitutional claims on the merits falls squarely within the judiciary's central purpose to protect individual rights. *State v. Kuntzwiler*, 585 So. 2d 1096, 1098 (Fla. 4th DCA 1991) (Glickstein, J., concurring specially) (quoting The Honorable Sol Wachtler, Chief Judge of the State of New York) ("Alexander Hamilton, another author of *The Federalist Papers*, contemplated in No. 17 that the state would remain the principal protector of individual rights—the 'immediate and visible guardian of life and property.'"). Ultimately, the Commission's suggestion that any exercise of judicial review could offend the coordinate branches undermines the very reason the judiciary exists in the first place; accordingly, it must be rejected.[35]

B. It Is Premature to Speculate Whether Any Potential Claim for Supplemental or Injunctive Relief Violates the Political Question Doctrine

The Commission focuses on a speculative form of injunctive relief that it believes Plaintiffs "really seek." Def. Br. at 24. But it is premature to guess as to whether Plaintiffs may seek injunctive relief in the future; indeed, the *Baker v. Carr* court, in undertaking its own political question inquiry, concluded that it "is improper now to consider what remedy would be most

[35] The Commission cites several cases raising "similar climate change claims," Def. Br. at 25-26, to argue that any case involving climate change presents a non-justiciable political question, ignoring the fact that all these cases challenged different governmental conduct, under different constitutional provisions and sought relief not requested here. *See Aji P. v. State*, Case No. 18-2-04448-1-SEA, Complaint at 71-72 (Wash. Super. Ct. King Cnty. Feb. 16, 2018) (systemic challenge to state energy system seeking to enjoin defendants from acting pursuant to policies, practices, or customs that violate plaintiffs' rights to clean environment and seeking to order defendants to prepare a complete and accurate accounting of Washington's GHG emissions; to order defendants to develop and submit to the Court an enforceable state climate recovery plan; and requesting the court to retain jurisdiction to "approve, monitor and enforce compliance" with the climate recovery plan and all associated orders); *Sagoonick v. State*, 503 P.3d 777, 795 (Alaska 2022), *reh'g denied* (Feb. 25, 2022) (finding the plaintiffs' *injunctive relief claims* presented non-justiciable political questions because relief would require the court to make legislative-like policy choices about the climate system); *Juliana*, 947 F.3d at 1171-72 (systemic challenge to national energy system, finding the redressability prong of Article III standing not met based on the nature of the "specific relief [plaintiffs] seek," *i.e.*, a comprehensive climate remedial plan) (emphasis added). Moreover, there is a currently-pending petition for writ of certiorari in the United States Supreme Court in *Juliana* concerning the redressability prong of federal Article III standing and whether the 9th Circuit erred in granting the government's petition for a writ of mandamus. *Juliana v. United States*, No. 24-645, 2024 WL 5125252 (U.S. Dec. 9, 2024).

appropriate if appellants prevail at trial." 369 U.S. at 198. *See Powell v. McCormack*, 395 U.S. 486, 517 (1969) ("We need express no opinion about the appropriateness of coercive relief in this case, for petitioners sought a declaratory judgment, a form of relief the District Court could have issued.").

Rather than try to hide-the-ball with an "impermissibly vague" request for relief, Def. Br. at 33, Plaintiffs have simply exercised their rights under the Declaratory Judgment Act to preserve their rights to seek "additional, alternative, coercive, subsequent, or supplemental relief." §§ 86.011(2), .061, Fla. Stat. At present, it is premature to assess the viability of injunctive relief without a fully developed factual record because: (1) such relief may never be sought; (2) such relief may ultimately not be needed; and (3) the nature of appropriate remedy can only "be determined by the nature and scope of the constitutional violation." *Milliken v. Bradley*, 433 U.S. 267, 280 (1977). What is important for purposes of this motion is that the Legislature has authorized the Plaintiffs to seek such relief under the Declaratory Judgment Act and for that reason it is not objectionable. The Court should reject the Commission's political question and separation of powers arguments and let Plaintiffs' declaratory relief claims proceed.

CONCLUSION

For the reasons set forth herein, Defendant's Motion to Change Venue and Motion to Dismiss Plaintiffs' First Amended Complaint should be denied.

Respectfully submitted this 14th day of March, 2025.

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TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Rules

Other Authorities

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of March, 2025, a true and correct copy of this document was electronically filed with the Clerk of Court and has been served on the parties through the Florida Courts E-Portal.

/s/ Mitchell A. Chester
Mitchell A. Chester