

CITY OF CORAL GABLES

CITY ATTORNEY'S OFFICE

MEMORANDUM

TO: Mayor and City Commissioners
FROM: Miriam Soler Ramos, City Attorney
CC: City Manager, Deputy City Attorney, Assistant City Attorneys
RE: Potential legal challenge to House Bill 1 (HB 1)
DATE: October 26, 2021

The Preemption:

The Combating Violence, Disorder, and Looting and Law Enforcement Protection Act, also known as HB 1, impacts a municipality's ability to control its budgets—a core local power. HB 1 provides the Governor and his cabinet the power to line-edit municipal budgets with binding legal effect whenever a reduction to the law enforcement budget is challenged by the state attorney, member of the City Commission, or possibly a county sheriff. Any municipal budget that is challenged is then reviewed by the Administration Commission, a commission made up of the Governor and his cabinet members. The Administration Commission will then review, amend, or modify the law enforcement items of a municipality's budget. **HB 1 gives the Governor and his cabinet nearly broad discretion to preempt the municipal budget.**

Southern Poverty Law Center, Public Rights Project, Community Justice Project, and Jenner & Block (as *pro bono* counsel) are moving forward with a facial challenge to House Bill 1 on behalf of the following municipalities as plaintiffs: City of Gainesville, City of Miramar, City of Wilton Manors, Lake Worth Beach, City of North Miami Beach, City of Lauderdale, City of North Miami, and City of Tallahassee.

The Lawsuit:

The facial challenge is based on five claims: HB 1 violates separation of powers, non-delegation doctrine, single subject rule, is an unfunded mandate, and violates home rule.

The **separation of powers** argument is based on the fact that HB 1 assigns two fundamentally legislative powers to the executive branch. First, it gives the Governor and his cabinet the ability through the municipal budget revision process to reduce appropriations of public funds, which is a power that belongs exclusively to the legislative branch. *See, e.g., Florida House of Representatives v. Martinez*, 555 So. 2d 839, 845 (Fla. 1990). Second, HB 1 gives the Governor and his cabinet the ability to revise municipal decisions with binding effect, even though the ability to limit municipal power is also an exclusively legislative authority.

The **non-delegation doctrine** holds that any delegation of legislative functions must be accompanied by “some minimal standards and guidelines ascertainable by reference to the enactment establishing the program.” *Askew v. Cross Key Waterways*, 372 So. 2d 913, 925 (Fla.

1978). The nondelegation doctrine aims to prevent the executive “from acting through whim, showing favoritism, or exercising unbridled discretion.” *S. All. for Clean Energy v. Graham*, 113 So. 3d 742, 748 (Fla. 2013). But HB 1 does not provide any such guidelines that instruct the executive how to review municipal reductions to the law enforcement budget, so the executive can act with unchecked discretion. The lack of standards allows the Administration Commission to make arbitrary decisions about municipal budgets with no meaningful oversight or guiding principles, in direct violation of the nondelegation doctrine.

The **single subject rule** was violated because the Florida Constitution prohibits a law from addressing multiple unconnected issues and requires a bill’s title to express the subject of the legislation. Fla. Const. art. III, § 6. HB 1 combines two distinct and unrelated legal objectives into one law: Section 1 institutes a process for executive review of local budgeting decisions and the other provisions of the law impose criminal penalties on individuals for protest-related activities.

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

The final challenge is that HB 1 violates **Home Rule** because municipalities have the power to adopt a home rule charter which grants them broad powers to meet municipal needs. Fla. Const. art. VIII, § 2(b); *Thomas v. State*, 614 So. 2d 468, 472 (Fla. 1993). Among these powers include the ability to propose and pass budgets. *See City of Boca Raton v. Gidman*, 440 So. 2d 1277, 1281-82 (Fla. 1983); *City of Gainesville v. Bd. of Control*, 81 So. 2d 514, 518 (Fla. 1955). HB 1 impedes this function by creating a process through which the state can usurp control of the municipal budget and unilaterally revise the budget with binding effect on the municipality.