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SECOND JUDICIAL CIRCUIT
LEON COUNTY, FLORIDA
CIRCUIT COURT

DELANEY REYNOLDS, et. al,

Plaintiffs,

v.

THE STATE OF FLORIDA; RON DESANTIS, in his official capacity as Governor of the State of Florida; et al.,

Defendants.

CASE NO.: 18-CA-000819

JURY TRIAL REQUESTED

PLAINTIFFS' CONSOLIDATED RESPONSE TO THE DEFENDANTS' MOTIONS TO DISMISS[1]

[1] The various Defendants have filed separate Motions to Dismiss, containing overlapping and repetitive arguments. For the Court's convenience and for greater efficiency, the Plaintiffs are filing one Consolidated Response. Plaintiffs use the following abbreviations for the three separate Motions to Dismiss: Governor DeSantis' Motion to Dismiss: "Gov. Mtn,;" FDACS, Commissioner Nikki Fried and the Public Service Commission's Motion to Dismiss: "FDACS Mtn.;" and DEP's and BOT's Motion to Dismiss: "DEP Mtn."

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INTRODUCTION

The Plaintiffs, eight young Floridians ranging in age from 11 to 20, who assert their constitutionally-protected substantive due process and public trust rights are being violated, have filed an Amended Complaint which can – and should – be heard and decided by this Court. In a nutshell, the Plaintiffs' Amended Complaint alleges that the Defendants are collectively overseeing and operating an energy system that causes and contributes to dangerous climate change, which in turn is causing real harm to Plaintiffs' fundamental constitutional rights to life, liberty, property, pursuit of happiness, and access to essential public trust resources.

At this motion to dismiss stage, the Plaintiffs' allegations must be taken as true. *See* Section X (summarizing factual allegations in the Amended Complaint). The Court should not be distracted from its core responsibility to interpret the Constitution and act as a check on the other branches by the Defendants' various suggestions that the Defendants are immune from suit, that the Court's enforcement of the Plaintiffs' constitutional rights would constitute an improper interference into the Executive and Legislative Branches, or that this Court must make determinations about whether climate change is occurring – or how it can best be curtailed. Nor should the Court accept Defendants' various mischaracterizations about Plaintiffs' causes of actions and requested relief.

The Court, in our balance-of-powers system, acts as a check on the executive and legislative branches of governments for constitutional compliance, and the Defendants should be required to respond to well-framed allegations that they have ignored constitutional limitations or otherwise exceeded their authority. The Plaintiffs are *not*, despite the Defendants' suggestions to the contrary, asking the Court to write legislation, undertake administrative rulemaking, or otherwise intrude on proper legislative, executive, or regulatory prerogatives. Nor do Plaintiffs

allege Defendants have not done enough to address climate change. Rather, the Plaintiffs seek judicial review of Defendants' affirmative actions that make up the state's energy system and that cause and contribute to Plaintiffs' injuries. As a remedy, Plaintiffs request that the Court require the Defendants to comply with their constitutional obligations, cease unconstitutional conduct, and develop a plan, of their own discretion and devising, to come into constitutional compliance. Defendants take the extraordinary position that Florida courts have no jurisdiction to hear and decide constitutional due process and public trust claims, a proposition that contradicts decades of Florida jurisprudence and the very foundation of Florida's democratic system of government.

STANDARD OF REVIEW

In Florida, a legally sufficient Amended 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). The Plaintiffs' Amended Complaint satisfies this requirement. 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." *Murphy v. Bay Colony Property Owners Ass'n*, 12 So. 3d 924, 926 (Fla. 2d DCA 2009).

MEMORANDUM OF LAW

I. THE COURT HAS JURISDICTION OVER THIS CASE UNDER THE FLORIDA CONSTITUTION AND § 86.011, FLA. STAT.

The Plaintiffs seek a declaration of their rights under the Florida Constitution and public trust doctrine, and the Court has jurisdiction over such questions under Article V, Sections 3(b)(3) and 5(b), and the Declaratory Judgment Act:

> 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. No action or procedure is open to objection

> on the ground that a declaratory judgment is demanded. The court's declaration may be either affirmative or negative in form and effect and such declaration has the force and effect of a final judgment. 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. The Declaratory Judgment Act is liberally construed. *X Corp. v. Y Person*, 622 So. 2d 1098, 1100 (Fla. 2d DCA 1993). The fact that Plaintiffs also seek injunctive relief in Counts II and IV of their Amended Complaint in no way divests the Court of jurisdiction to hear a declaratory judgment action by operation of § 86.011(2) of that Act, in addition to Florida's practice of allowing alternative pleading under Fla. R. Civ. P. 1.110(g). The Defendants' motions ignore this express statutory jurisdictional provision, and fail to present a viable argument against its exercise.

Individual youth such as the Plaintiffs here are empowered to challenge unconstitutional government conduct by way of declaratory judgment since at least 1803, when Chief Justice Marshall explained that it is "emphatically the province and duty of the judicial department to say what the law is.'" *Mikolsky v. Unemployment Appeals Comm'n*, 721 So. 2d 738, 740, n.2 (Fla. 5th DCA 1998) (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803)). The test of a complaint's sufficiency when seeking declaratory judgment is not ultimate success, but rather to the entitlement to the declaration:

> Thus, to activate jurisdiction the party seeking a declaration must show that he is in doubt as to the existence or nonexistence of some right, status, immunity, power or privilege and that he is entitled to have such doubt removed. In this regard, the plaintiff must show a bona fide, actual, present, and practical need for the declaration.

X Corp., 622 So. 2d at 1101 (internal citations omitted); *Hialeah Race Course v. Gulfstream Park Racing Ass'n*, 210 So. 2d 750, 752 (Fla. 4th DCA 1968). The Plaintiffs have alleged real injuries, and they are entitled to a declaration of their rights under the Florida Constitution and the public trust doctrine.

II. PLAINTIFFS' SUBSTANTIVE DUE PROCESS CLAIMS ARE JUSTICIABLE.

The Plaintiffs seek to protect substantive due process rights guaranteed by Article I, §§ 1, 2, and 9 of the Florida Constitution. Contrary to the Defendants argument, under Florida law, the constitutional provisions that secure the Plaintiffs' substantive due process rights are self-executing. *Schreiner v. McKenzie Tank Lines, Inc.*, 432 So. 2d 567, 568 (Fla. 1983). Defendants cite to no authority supporting their argument that the core constitutional provisions at issue here have no meaning absent legislative implementation. Indeed, Defendants' position would subject Florida's core constitutional protections to legislative nullification contrary to the primacy of constitutional over statutory law. *Gray v. Bryant*, 125 So. 2d 846, 851 (Fla. 1960) ("[T]he modern doctrine favors the presumption that constitutional provisions are intended to be self-executing. This is so because in the absence of such presumption, the legislature would have the power to nullify the will of the people expressed in their constitution, the most sacrosanct of all expressions of the people.").

Florida courts have both the authority and obligation to hear substantive due process claims brought under the Florida Constitution:

> Substantive due process under the Florida Constitution protects the full panoply of individual rights from unwarranted encroachment by the government. To ascertain whether the encroachment can be justified, courts have considered the propriety of the state's purpose; the nature of the party being subjected to state action; the substance of that individual's right being infringed upon; the nexus between the means chosen by the state and the goal it intended to achieve; whether less restrictive alternatives were available; and whether individuals are ultimately

> being treated in a fundamentally unfair manner in derogation of their substantive rights.

Dep't of Law Enforcement v. Real Property, 588 So. 2d 957, 960 (Fla. 1991). Substantive due process claims can be brought as challenges to legislative acts or "non-legislative/executive acts," that "'typically arise from the ministerial or administrative activities of members of the executive branch.'"[2] *City of Lauderhill v. Rhames*, 864 So. 2d 432, 438 (Fla. 4th DCA 2003) (quoting *McKinney v. Pate*, 20 F.3d 1150, 1557 n.9 (11th Cir. 1994) (en banc)).

In this case, Plaintiffs allege violations to already-recognized, enumerated rights to life, liberty, property, and pursuit of happiness. Art. I, §§ 2, 9; (Compl. ¶¶ 51, 192, 197, 202). Defendants neither address nor dispute Plaintiffs' allegations regarding the infringement of their enumerated due process rights to life, liberty, property, and pursuit of happiness nor Plaintiffs' previously judicially recognized unenumerated rights to Plaintiffs' dignity, including their capacity to provide for their basic human needs, safely raise families, practice their religious and spiritual beliefs, maintain their bodily integrity, and lead lives with access to clean air, water, shelter and food. (*Id.* ¶ 192). For that reason alone, Plaintiffs' substantive due process claims should proceed to trial.

Plaintiffs also argue that their right to liberty necessarily encompasses a right to a stable climate system capable of sustaining human life.[3] Art. I, §§ 1, 2 (recognizing natural, inalienable

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[2] The cases cited by Defendants do not provide otherwise. DEP Mtn. at 20-21. In *Chakra 5, Inc. v. City of Miami Beach*, 254 So. 3d 1056, 1069 (Fla. 3rd DCA 2018), the court held that an alleged executive violation of a state-created property right, *not a deprivation of a constitutional right*, is what confines a claim to procedural, as opposed to substantive, due process. Here, Plaintiffs do not allege deprivation of any state-created property rights, but rather deprivation of their constitutional rights.

[3] The climate system is made up of earth's atmosphere (our gas-composed air), hydrosphere (our freshwater and oceans), cryosphere (our ice), biosphere (our living ecology and organisms like trees), and lithosphere (our land and soils). NOAA, Geophysical Fluid Dynamics Laboratory, Develop improved and more comprehensive Earth System Models, https://www.gfdl.noaa.gov/climate-and-ecosystems-comprehensive-earth-system-models/ (last visited Feb. 16, 2019); NOAA, *National Weather Service Glossary 'C'*, https://www.weather.gov/ggw/GlossaryC (last visited Feb. 16, 2019).

rights retained by the people); 9 (due process); (Compl. ¶¶ 189, 192, 202). To determine whether a right to a stable climate system is an inalienable attribute of liberty, a core function of the judiciary, the Court looks to whether it is either "fundamental to the Nation's scheme of ordered liberty . . . or . . . 'deeply rooted in this Nation's history and tradition.'" *McDonald v. City of Chicago*, 561 U.S. 742, 744 (2010) (quoting *Wash. v. Glucksberg*, 521 U.S. 702, 721 (1997)); *see also Obergefell v. Hodges,* 135 S.Ct. 2584, 2598 (2015) (finding no specific formula for identifying fundamental rights); *Crocker v. Pleasant*, 778 So. 2d 978, 983 (Fla. 2001); *Zurla v. City of Daytona Beach*, 876 So. 2d 34, 35 (Fla. 5th DCA 2004) (citation omitted); *City of Lauderhill*, 864 So. 2d at 438-39. Violations of substantive due process can also arise where the governmental action shocks the conscience. *Id.* (citations omitted); *City of Lauderhill*, 864 So. 2d at 438 (quoting *Woodwind Estates, Ltd. v. Gretkowski*, 205 F.3d 118, 123 (3rd Cir. 2000) ("A fundamental right that falls within the ambit of substantive due process may not be taken away by a state's executive or non-legislative acts 'for reasons that are arbitrary, irrational, or tainted by improper motive.'")). A thorough fundamental rights analysis involves an empirical inquiry and is often decided on appeal of merits decisions, not on a motion to dismiss. *Brown v. Bd. of Educ.*, 347 U.S. 483, 486 n.1 (1954) (four district court records); *Brown v. Plata*, 563 U.S. 493, 499-500 (2011) (two district courts); *Obergefell*, 135 S.Ct. 2584 (three final decisions for plaintiffs and one preliminary injunction);[4] *see also Grutter v. Bollinger*, 539 U.S. 306 (2003); *Lawrence v. Texas*, 539 U.S. 558 (2003); *Furman v. Georgia*, 408 U.S. 238 (1972); *Atkins v. Virginia*, 536 U.S. 304 (2002); *Roper v. Simmons*, 543 U.S. 551 (2005).

Judicial recognition of the right to a climate system that sustains human life is appropriate under the standards governing identification of constitutionally protected unenumerated rights in

[4] *See Perry v. Schwarzenegger,* 704 F.Supp.2d 921 (N.D. Cal. 2010) (holding bench trial).

Florida. The identification of fundamental rights "has not been reduced to any formula" and "history and tradition guide and discipline this inquiry but do not set its outer boundaries." *Obergefell*, 135 S. Ct. at 2589. The catalog of fundamental rights is intended to grow as society develops beyond the imaginations of the framers of Florida's and our Nation's Constitutions: "When new insight reveals discord between the Constitution's central protections and a received legal stricture, a claim to liberty must be addressed." *Id.* Important fundamental rights include those that are "preservative of all rights," *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886), or required "to enable the exercise of all rights, whether enumerated or unenumerated." *Juliana v. United States*, 217 F. Supp. 3d 1224, 1249 (D. Or. 2016); *see also Obergefell*, 135 S. Ct. at 2599 (enumerated liberty right inherently encompasses right to marry).

The right to a stable climate system that sustains human life is likewise "preservative of all rights" and deserving of fundamental status. "[A] stable climate system is quite literally the foundation of society, without which there would be neither civilization nor progress." *Juliana*, 217 F. Supp. 3d at 1250. Plaintiffs are not asserting a fundamental right to be free from pollution or for a healthy environment. Rather, Plaintiffs allege the Defendants' conduct has contributed to dangerous climate change such that the lives and liberties of Plaintiffs and the habitability of much of Florida are in peril. Remarkably, Defendants endorse the position that state government can knowingly deprive Florida children of a life-sustaining climate system, *the very foundation of all life*, without violating the Constitution. Defendants' causation and contribution to climate change through its energy system is precisely the type of "new insight" that "reveals discord between the Constitution's central protections and a perceived legal stricture," requiring that Appellants' "claim to liberty . . . be addressed." *Obergefell*, 135 S. Ct. at 2598.

Plaintiffs should be entitled to present factual and scientific evidence and argument to support their allegations that a stable climate system is fundamental to our ordered scheme of liberty and deeply rooted in our history and tradition. For example, in support of their allegations in the Amended Complaint, Plaintiffs can show that Defendants admit that for over 170 years "Florida has worked to protect and conserve natural resources" and "has a long tradition of conservation."[5] Other sources of Florida law provide support for the fundamental nature of a stable climate system. *See Crocker v. Pleasant*, 778 So. 2d 978, 986-87 (Fla. 2001) (looking to indicia in Florida statutes and case law to support finding of a constitutionally protected right). In fact, "[i]t shall be the policy of the state to conserve and protect its natural resources and scenic beauty." Art. II, § 7(a); *see also* Art. X, § 16 (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). A finding that the liberty right does not encompass a right to a stable climate system capable of supporting human life, which scientists say is needed to preserve the very existence of parts of Florida (Compl. ¶¶ 86-88), would render the aforementioned constitutional and statutory

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[5] Florida Dep't of Envtl. Prot., History of State Lands, https://floridadep.gov/lands/lands-director/content/history-state-lands (last visited March 5, 2019).

provisions meaningless. (*Id.* ("A construction which would leave without effect any part of the Constitution should be rejected.")).

Defendants' groundless arguments would dismantle the concept of inalienable rights settled since the Declaration of Independence (U.S. 1776). Inalienable rights like "Life, Liberty and the pursuit of Happiness," are natural rights, not bestowed by the laws of people, but "endowed by their Creator." Declaration of Independence para. 2 (U.S. 1776). The right of these children to live with the climate system that nature provides, "endowed by their Creator," free of government-sanctioned destruction, is the very foundation of, and preservative of, all of their inalienable natural rights. It is, in fact, the prerequisite to life itself. As James Madison said in 1818, "[d]eprived of it, they all equally perish."[6]; *see Timbs v. Indiana*, ___ S.Ct. ___, No. 17-1091, 2019 WL 691578, at *4 (Feb. 20, 2019) (considering whether infringement of asserted right would "undermine other constitutional liberties"). Florida law acknowledges the existence of such natural, inalienable rights that are "retained by the people." Art. I, § 1, Fla. Const.

Defendants submit no contrary authority that a right to a stable climate system exists, instead mischaracterizing the right as the "right to regulate others." DEP Mtn. at 20; *Timbs*, 2019 WL 691578 at *5 (Indiana did "not meaningfully challenge" whether the right was deeply rooted or fundamental to liberty); *cf. District of Columbia v. Heller*, 554 U.S. 570, 576 (2008) ("The two sides in this case have set out very different interpretations of the Amendment."); *id.* at 580-619 (reciting and extensively analyzing common law and the historical meaning of "bearing arms"); *cf. Obergefell*, 135 S.Ct. at 2593-2596 (reciting history of marriage). Although Defendants have not wrestled with the historic basis for the right to a stable climate system, to address whether this

[6] James Madison, Address to the Agricultural Society of Albemarle (May 12, 1818).

newly recognized claim is valid, this Court must perform that analysis and it should do so on a fully developed factual record.

Just as the right to marry is "fundamental to our very existence and survival," the same can be said for the climate right. *Loving v. Virginia*, 388 U.S. 1, 12 (1967); *id.* ("The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men."); *see also Obergefell*, 135 S.Ct. at 2594. In an 1893 legal proceeding, the United States argued that rights to basic survival resources are inalienable and to consume or destroy them is a "notion so repugnant to reason as scarcely to need formal refutation." Argument of the United States, *Fur Seal Arbitration* (U.S. v. Gr. Brit. 1893), *reprinted in* 9 Fur Seal Arbitration: Proceedings of the Tribunal of Arbitration (Gov't Printing Office 1895) (emphasis added).

To find that a climate system capable of sustaining human life is not implicit in ordered liberty requires this Court to defy the evidence, science, ecology, human evolution, and foundations of human civilization. There is no rational argument to conclude that our climate system, the foundation on which all of our human systems and institutions have been built, is not fundamental to people's lives, liberties, and property. As Theodore Roosevelt recognized:

> It is high time to realize the responsibility to the coming millions is like that of parents to their children, and that in wasting our resources we are wronging our descendants . . . . The function of our Government is to insure to all its citizens, now and hereafter, their rights to life, liberty and the pursuit of happiness. If we of this generation destroy the resources from which our children would otherwise derive their livelihood, we reduce the capacity of our land to support a population, and so either degrade the standard of living or deprive the coming generations of their right to life on this continent.

Theodore Roosevelt, *Special Message to the Senate and House of Representatives*, Jan. 22, 1909, available at https://www.presidency.ucsb.edu/documents/special-message-368. Plaintiffs' substantive due process claims are justiciable and adequately pled.

III. PLAINTIFFS' PUBLIC TRUST DOCTRINE CLAIMS ARE JUSTICIABLE.

Florida's "public trust doctrine," which has been interpreted and applied in a number of judicial decisions, is a long-standing and essential part of Florida's common and constitutional law. *Lee v. Williams*, 711 So. 2d 57, 60 (Fla. 5th DCA 1998) ("the public trust doctrine . . . is subject to judicial determination, at least where there is no contrary constitutional or legislative directive."); *see also Brickell v. Trammell*, 77 Fla. 544, 558, 82 So. 221, 226 (Fla. 1919) (finding the public trust doctrine traces to English common law and recognizing navigable waters and the lands thereunder as property of the state held in its sovereign capacity "for the use of all the people of the state for purposes of navigation, commerce, fishing, and other useful purposes afforded by the waters thereon."). In 1974, the Supreme Court of Florida recognized the propriety of protecting the public interest in, and utilization of, Florida's beaches and oceans:

> No part of Florida is more exclusively hers, nor more properly utilized by her people than her beaches. And the right of the public of access to, and enjoyment of, Florida's oceans and beaches has long been recognized by this Court.

City of Daytona Beach v. Tona-Rama, Inc., 294 So. 2d 73, 75 (Fla. 1974).

While Florida can authorize usage of the beaches or shores, such authorization "must be subject to reasonable use of the beach or shore for its primary and long-established public purposes, *for which the State holds it in trust*, and subject to lawful governmental regulations." *Id.* at 75 (emphasis added). The interest and rights of the public to Florida's beaches requires protection. *Id.* at 77. In terms of its impact on Plaintiffs' rights and interests here, Defendants' implementation of an energy system that foreseeably and substantially impairs Florida's public trust resources is in principle no different than were Defendants to physically barricade public access to these resources. Indeed, Plaintiffs *have* alleged denial of access to public trust resources as a result of Defendants' conduct. (Compl. ¶¶ 14, 19, 20, 24, 116, 137, 144, 166, 168, 170, 184). For purposes

of a public trust analysis, it does not matter whether Defendants build a fence blocking access to public beaches, or create an energy system that contributes to those beaches vanishing due to rising seas, and coral reefs to be destroyed from rising ocean temperatures and acidity. (Compl. ¶¶ 85 ("'the impacts to coral reef ecosystems in the [Southeast] region have been and are expected to be particularly dire.'"; 95-98, 101, 114, 120, 128-141 (detailing the devastating effects of sea level rise in Florida)).

In Florida, the public trust doctrine has both common law and constitutional dimensions. For instance, the doctrine is partially enshrined in Article X, Section 11 of the Florida Constitution:[7]

> The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest. Private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.

See also Coastal Petroleum Co. v. American Cyanamid Co., 492 So. 2d 339, 344 (Fla. 1986) (Art. X, §11 "is largely a constitutional codification of the public trust doctrine contained in our case law."). Article X, Section 16 similarly reflects the constitutional recognition of public trust principles with respect to marine resources:

> The marine resources of the state of Florida belong to all of the people of the state and should be conserved and managed for the benefit of the state, its people, and future generations.

The doctrine is also reflected in "the general policy power of the state to protect the public health, safety, and welfare," *Coastal Petroleum v. Chiles*, 701 So. 2d 619, 624 (Fla. 1st DCA 1997), and

[7] Defendants' argument that Article X, Sections 11 and 16 are not self-executing is totally irrelevant. State Mtn. at 23-27. Counts I and II assert a cause of action under the public trust doctrine, and while Florida courts have recognized the doctrine has constitutional dimensions, no court has held that the public doctrine is not "self-executing" or otherwise unenforceable.

is considered a part of Florida's common law. *Lee v. Williams*, 711 So.2d 57, 60 (Fla. 5th DCA 1998) ("[T]he public trust doctrine is a creature of the common law, the extent of which and alterations to which are subject to judicial determination, at least where there is no contrary constitutional or legislative directive."); *Hayes v. Bowman*, 91 So.2d 795, 799 (Fla. 1957); *see also Brickell v. Trammell*, 77 Fla. 544, 559 82 So. 221, 226 (Fla. 1919).

Courts necessarily have jurisdiction to hear and decide public trust cases, under the common law and as a constitutionally-based and judicially-enforced doctrine. *Illinois Cent. R.R. v. Illionois*, 146 U.S. 387 (1892) (recognizing the public trust doctrine as part of common law). In fact, Florida courts have resolved many public trust cases, and routinely require compliance with the doctrine's mandate that the public interest be protected in managing public trust resources. *See, e.g.*, *Coastal Petroleum Co.*, 492 So. 2d 339; *Mariner Properties Dev. v. Bd. of Trustees of Internal Imp. Tr. Fund*, 743 So. 2d 1121, 1122 (Fla. 1st DCA 1999); *Lee*, 711 So. 2d at 60. Plaintiffs, as beneficiaries of the public trust, retain the right to bring this action against the public trustees for failing to discharge their duties and causing impairment of public trust resources.[8] *Walton County v. Stop Beach Renourishment, Inc.*, 998 So. 2d 1102, 1114-15 (Fla. 2008) ("[T]he State has a constitutional duty to protect Florida's beaches, part of which it holds in trust for public use.").

Dismissal of Plaintiffs' public trust claims would also violate Article I, Section 21 of the Florida Constitution, which provides:

> The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay.

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[8] As James Madison succinctly wrote in the Federalist Papers, "the federal and State governments are in fact but different agents and trustees of the people." *The Federalist No. 46* (James Madison).

Art. I, § 21, Fla. Const. This provision "protects only rights at common law or by statute prior to the enactment of the Declaration of Rights of the Florida Constitution." *Kluger v. White*, 281 So. 2d 1, 4-5 (Fla. 1973). Plaintiffs' rights under Florida's public trust doctrine have been enshrined and protected under the common law well before 1968, and thus Art. I, § 21 applies. "[T]he 'right to go to court to resolve our disputes is one of our fundamental rights." *DR Lakes, Inc. v. Brandsmart U.S.A. of W. Palm Beach*, 819 So. 2d 971, 974 (Fla. 4th DCA 2002) (quoting *Psychiatric Associates v. Siegel*, 610 So. 2d 419, 424 (Fla. 1992)). "[T]he constitution requires the courts to give a 'remedy' 'for any injury done' to personal or property rights, which includes an injury caused by an arbitrary or an unreasonable exercise of authority conferred, as well as by action taken without any authority whatever." *Getzen v. Sumter County*, 203 SO. 104, 106 (Fla. 1925). If this Court refuses to hear Plaintiffs' public trust claims, Plaintiffs would be without redress for the grievous harms they are experiencing and such a result would be contrary to Article I, Section 21 of the Florida Constitution. *Maronda Homes, Inc. v. Lakeview Reserve Homeowners Ass'n*, 127 So.3d 1258 (Fla. 2013). This Court has jurisdiction to hear Plaintiffs' public trust claims.

A. Defendants present no basis to dismiss Plaintiffs' public trust claim as to impairment of traditional public trust resources including submerged lands, beaches, state lands, and marine resources.

The Plaintiffs' Amended Complaint, at ¶¶ 4, 137, 149, 160, 161, 163, 167-172, comprehensively describes how the Defendants breached their public trust responsibilities to protect and preserve access to Florida's public trust resources, including "the atmosphere (air), submerged state sovereignty lands, lakes, rivers, beaches, water (both surface and subsurface), forests, and wild flora and fauna." The Plaintiffs allege impairment of resources that Florida courts have previously found are subject to the public trust doctrine, such as beaches, tidelands, rivers,

shorelands, marine resources, and state lands. As such, Plaintiffs' Counts I and II can proceed on these allegations alone. (Compl. ¶¶ 3, 4, 14, 19, 20, 24, 84, 88, 115, 144). Defendants ignore Plaintiffs' allegations as to impairment of already-recognized public trust resources and present no other justification for dismissing Counts I and II as to those resources.[9] Thus, at the very least, Plaintiffs' public trust claim should be allowed to proceed as to traditional public trust resources such as submerged lands and beaches.

B. Florida's public trust doctrine should be extended to protect the atmosphere.

The Plaintiffs also seek a declaration that the atmosphere is a public trust resource that cannot be impaired by Defendants' unconstitutional conduct. Plaintiffs do not dispute that no Florida court has yet explicitly extended the public trust doctrine to the atmosphere, but argue that such an extension is reasonable, implicit in the corpus of the public trust doctrine and appropriate given the facts presented here.

Various reasons justify extending Florida's public trust doctrine to the atmosphere.[10] *First*, extending the doctrine to the atmosphere would be consistent with the logic of previous instances where the public trust doctrine has been judicially extended beyond submerged lands. For instance, Florida courts have applied the public trust doctrine to beaches (*Walton County*, 998 So. 2d at 1110-11 (Fla. 2008), *City of Daytona Beach v. Tona-Rama, Inc.*, 294 So. 2d 73, 75 (1974), and *Martin v. Busch*, 112 So. 274, 283 (Fla. 1927)); to the banks of rivers and creeks (*Teat v. City of Apalachicola*, 738 So.2d 413, 414 (Fla. 1999)); to state lands (*Coastal Petroleum*, 701 So. 2d at

[9] For example, Defendants make the incorrect statement that "Count I relies on the premise that the public trust doctrine can somehow be extended to cover the atmosphere." DEP Mtn. at 13.

[10] Defendants state no court has held that the climate system or atmosphere is protected by a public trust doctrine, but that is not true. *See, e.g., Juliana*, 217 F. Supp. 3d at 1255 n.10; *Sanders-Reed ex rel. Sanders-Reed v. Martinez*, 350 P.3d 1221, 1225 (N.M. Ct. App. 2015) ("[A] public trust duty exists for the protection of New Mexico's natural resources, including the atmosphere, for the benefit of the people of this state."); *see also Foster v. Wash. Dep't of Ecology*, 2015 WL 7721362 (Wash. Super. Ct. 2015).

625); and the ocean (*City of Daytona Beach*, 294 So. 2d at 75). The Florida Constitution similarly applies the doctrine to marine resources within the ocean. Art. X, § 16 ("The marine resources of the State of Florida belong to all of the people of the state and should be conserved and managed for the benefit of the state, its people, and future generations."). As explained further, *infra*, the atmosphere is ecologically connected with and critical to the viability of each of these resources (Compl. ¶ 160), such that the atmosphere incidentally falls within the scope of Florida's public trust resources.

Second, ancient Roman and common law authority recognize that the air and atmosphere are included public trust resources within Defendants sovereign trust control and ownership. J. Inst. 2.1.1 (T. Sanders trans., 4th ed. 1867); 2 William Blackstone,[11] Commentaries on the Laws of England 4 (1766) ("[T]here are some few things which . . . must still unavoidably remain in common . . . Such (among others) are the elements of light, air, and water . . . ."); *id*. at *3 ("The earth, therefore, and all things therein, are the general property of all mankind, exclusive of other beings, from the immediate gift of the Creator."). Defendants expressly have asserted sovereign control over the air and atmosphere in Florida, Art. II, § 7(a);[12] § 403.021, Fla. Stat., and must exert its control in a manner that likewise protects the resource for present and future generations.

Third, Plaintiffs have adequately pled, and should be allowed to present factual and scientific evidence to show, that air, water and land are inter-related systems, which depend upon each other. The atmosphere – which cannot in any way be subject to private ownership – is the

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[11] William Blackstone has been called "the preeminent authority on English law for the founding generation." *Heller*, 554 U.S. at 593-94 (quoting *Alden v. Maine*, 527 U.S. 706, 715 (1999))

[12] Contrary to the Defendants' assertion, Plaintiffs are not citing this constitutional provision as "self-executing." Rather, it is evidence that air be treated an essential natural resource for purposes of the public trust doctrine. *Walton County*, 998 So. 2d at 1110, 1111 (citing Art. II, § 7(a) for the principle that "the State has an obligation to conserve and protect Florida's beaches as important natural resources" that supplements the State's "constitutional duty to protect Florida's beaches, part of which it holds 'in trust for all the people'").

responsibility of the sovereign state and, through it, the Defendants. The Defendants cannot take actions that substantially impair the atmosphere with excessive greenhouse gas (GHG) emissions while simultaneously protecting other public trust resources; failure to protect the former inevitably impairs the latter and detrimentally impacts the Plaintiffs' rights to these resources. As a scientific as well as logical reality, the air and the water are part of a symbiotic ecosystem; both are critical to the health of traditional and long-recognized public trust resources such as rivers, oceans, beaches and river banks. As the Plaintiffs allege, "without an atmosphere free from substantial impairment, all other Public Trust Resources will inevitably also be substantially impaired."[13] (Compl. ¶ 160); *see also,* § 259.032, Fla. Stat. (connecting the protection of air with the "policy of the state that the citizens of the state shall be assured public ownership of natural areas for purposes of maintaining this state's unique natural resources.").

Fourth, although this issue a matter for resolution on the merits, there is ample historic support for treating the atmosphere as subject to the public trust doctrine. The historic pedigree of the public trust doctrine dates back to Roman law; the Institutes of the Roman Emperor Justinian I declared in the sixth century that "[by] the law of nature, these things are common to mankind: the air, running water, the sea, and consequently, the shores of the sea." J. Inst. 2.1.1 (T. Sanders trans., 4th ed. 1867). Under Roman law, air, like running water, the sea and the shoreline, was in some respects the property of all and in others the property of nobody. *Sullivan v. Richardson*, 33 Fla. 1, 117 (1894), *aff'd sub nom. Richardson v. Louisville & N.R. Co.*, 169 U.S. 128 (1898). The

[13] A state court in Washington has extended the public trust doctrine to the atmosphere based on this rationale. *Foster v. Wash. Dep't of Ecology*, 2015 WL 7721362 (Wash. Super. Ct. 2015) explains: "Ecology argues that since the Public Trust Doctrine has not been expanded by the courts beyond protection of navigable waters it cannot be applied to protection of the 'atmosphere.' But this misses the point since current science makes clear that global warming is impacting the acidification of the oceans to alarming and dangerous levels, thus endangering the bounty of our navigable waters."). *Id.* at *8 ("The navigable waters and the atmosphere are intertwined and to argue a separation of the two, or to argue that GHG emissions do not affect navigable waters is nonsensical."); *see also Juliana*, 217 F. Supp. 3d at 1255 n.10 ("To be clear, today's opinion should not be taken to suggest that the atmosphere is not a public trust asset . . . ."

Florida Supreme Court cited to the Institutes of Justinian in its early public trust jurisprudence. *Geiger v. Filor*, 8 Fla. 325, 335-36 (1859) (reinforcing the common law notion that the King holds dominion "not as his own private property, but for the public and as trustee to preserve and maintain it . . . . The King has the property, but the people have the use necessary."). This in turn derived from Roman law where such things "common to all" were "expressly denominated by the Roman jurists as "res communes," or thing of the community. *Sullivan*, 33 Fla. at 117; *see also,* Zachary C. Kleinsasser, *Public and Private Property Rights: Regulatory and Physical Takings and the Public Trust Doctrine*, 32 B.C. Envtl. Aff. L. Rev. 421, 424 (2005) ("The public trust doctrine was first formally declared in the fifth century A.D. by the Justinian Institute: "By the law of nature these three things are common to mankind—the air, running water, [and] the sea." (quoting J. Inst. 2.1.1)).

United States jurisprudence traces the public trust doctrine from these ancient sources, through the English common law,[14] to inheritance by the Colonies and the United States. *See, e.g., PPL Montana, L.L.C. v. Montana*, 565 U.S. 576, 589-90 (2012). Common law "was to assign to everything capable of occupancy and susceptible of ownership a legal and certain proprietor, and accordingly it makes those things which, from their nature, cannot be exclusively occupied and enjoyed, the property of the sovereign." *Geiger*, 8 Fla. at 336 (citations omitted). This rationale applies to the atmosphere: since it cannot be exclusively occupied, it belongs to the sovereign to manage and protect in trust for its citizens. For this reason, courts in other states that have explicitly considered the issue have recognized that air and atmosphere are a public trust resource.

[14] *See* William Blackstone, Commentaries on the Laws of England bk. 2, c. 1, p. 14 (1766) (Explaining the nature of crucial natural resources as necessarily of common ownership, unsusceptible to complete privatization: "Such (among others) are the elements of light, air and water . . . also animals *ferae naturae*, or of untamable nature . . . .").

See, e.g., Arnold v. Mundy, 6 N.J.L. 1, 71 (N.J. 1821). Florida has a consequent duty to maintain and preserve this public trust for all.[15]

The atmosphere and Florida's waters, of course, interact, and both are essential to life. It is therefore a logical and natural extension for the public trust doctrine to include Florida's atmosphere, as substituting air for water is the only material distinction between the case law examples cited above. Even if the Court, despite this clear common law basis, refused to apply the public trust doctrine to the atmosphere, the Plaintiffs' public trust claims alleging impairment of public trust resources long-recognized by Florida courts (submerged lands, beaches, rivers, oceans river banks, and state lands) should proceed.

C. The Defendants Have a Mandatory, Enforceable Duty, To Protect And Prevent Substantial Impairment To Florida's Public Trust Resources.

Under the public trust doctrine, Florida "has an affirmative obligation to restrict or eliminate private activity on sovereign lands when such activity becomes contrary to the public interest. Article X, Section 11, Florida Constitution confirms this obligation." *Coastal Petroleum*, 701 So. 2d at 624 (affirming the trial court); *Walton Cty.*, 998 So. 2d at 1110 ("the State has an obligation to conserve and protect Florida's beaches as important natural resources."); *id*. at 1110-11 (quoting Art. X, § 11, Fla. Const.) (describing the state's public trust duty as "a constitutional duty to protect Florida's beaches, part of which it holds 'in trust for all people.'"). Defendants

[15] Defendants erroneously conflate the common law's treatment of running and ground water, and mistakenly associate the atmosphere with the latter. DEP Mtn. 15-16. The English common law position regarding running or flowing water was settled in *Embrey v. Owen*, 155 Eng.Rep. 579 (1851), where the House of Lords described the public's rights to running water and "the analogous cases of rights to air and light" as a "usufruct . . . subject to the similar rights of all . . . to the reasonable enjoyment of the same gift of Providence." *Id.* at 585-586 (1851). S*ee also* Blackstone, *Commentaries on the Laws of England* (1766), bk. 2, c. 1, p. 14; *Sullivan*, 33 Fla. at 117; Jan S. Stevens, *The Public Trust: A Sovereign's Ancient Prerogative Becomes the People's Environmental Right*, 14 U. C. Davis L. Rev. 195, 197-198 (1980). The common law has thus treated the atmosphere, alongside running water, as property vested in the sovereign in which all have rights. Ground water, on the other hand, had not "received the protection which water running in a natural channel on the surface has always received." *Chasemore v. Richards*, 11 Eng.Rep. 140, 152 (1859) (Cranworth, L.J.), and has therefore been treated differently in different common law jurisdictions.

attempt to drain all meaning out of Florida's public trust doctrine by arguing the doctrine imposes no fiduciary duty to protect and prevent substantial impairment to trust resources. DEP Mtn. at 18. Florida law expressly recognizes that the sovereign's role as trustee has a correlative fiduciary duty to preserve trust resources. *Secret Oaks Owner's Ass'n, Inc. v. Dep't of Envtl. Prot.*, 704 So.2d 702, 706 (Fla. 5th DCA 1998) (recognizing BOT's "fiduciary duties" with respect to sovereign lands); *Hayes v. Bowman*, 91 So.2d 795, 800 (Fla. 1957) ("Like any other fiduciary asset, however, [submerged tidal lands] must be administered with due regard to the limitations of the trust with which they are impressed.").

Plaintiffs alleged Defendants breached their duty to protect Florida's public trust resources: (1) through the systemic creation and operation of an energy system that causes dangerous levels of GHG emissions; and (2) through the approval, and failure to restrict, private activities that cause GHG emissions, both of which have resulted in substantial impairment to, and denial of access to, the state's public trust resources. *See, e.g.,* (Compl. ¶¶ 40, 41, 149, 170, 171).

The Defendants' primary role in administering trust resources is to ensure that they are "devoted to the fulfillment of the purposes of the trust, to wit [sic]: the service of the people." *Hayes*, 91 So. 2d at 799. The standard for the court to apply is whether the state has "materially impaired" or "abdicated control" of the trust resource:

> A state may make limited disposition of portions of such [trust] lands, or of the use thereof, in the interest of the public welfare, where the rights of the whole people of the state as to navigation and other uses of the waters are not materially impaired. The states cannot abdicate general control over such lands and the waters thereon, since such abdication would be inconsistent with the implied legal duty of the states to preserve and control such lands and the waters thereon and the use of them for the public good.

State ex rel. Ellis v. Gerbing, 47 So. 353, 355 (Fla. 1908); *see also American Cyanamid Co.*, 492 So. 2d at 346 (Boyd, C.J, dissenting) ("Florida law has long recognized that it is not necessary for

the state to retain absolute ownership of the bed of a river in order to retain the control of the use of the surface waters for the benefit of the public."). Otherwise put: "if the grant of sovereignty land to private parties is of such nature and extent as not to substantially impair the interest of the public in the remaining lands and waters it will not violate the inalienable trust doctrine." *Holland v. Fort Pierce Fin. & Constr. Co.*, 27 So. 2d 76, 81 (Fla. 1946).

By deliberately creating, operating and maintaining an energy system based on fossil fuels and by authorizing and failing to restrict private activity that causes dangerous levels of GHG emissions, the Defendants have caused substantial impairment to and "abdicated general control" over public trust resources in a way that harms the Plaintiffs. (Compl. ¶¶ 149, 163-179). Defendants' actions, causing dangerous climate change, have damaged the Plaintiffs' constitutional rights of access to public trust resources that are critical for their lives and liberties. (Compl. ¶¶ 14, 19, 20, 24, 25, 27, 28, 32, 39). Defendants have breached their duty to administer and manage public trust lands and resources by, among other things, failing to complete any accounting of Florida GHG emissions since 2008, and only considering historical anthropogenic GHG emissions from 1990-2005.[16] (*Id.* ¶ 149(c)). Defendants routinely issue permits and

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[16] A current GHG emissions accounting is a widely accepted means of calculating the amount of GHGs produced in a given region over a given time. Such an accounting is within the Court's authority to order and is essential to understanding the full extent of the harms at issue. A GHG emissions accounting is also within the authority of the Defendants to prepare. *See, e.g.* § 377.603(1), Fla. Stat. (authorizing FDACS to collect "data on the extraction, production, importation, exportation, transportation, transmission, and sale of reserves of energy sources in [Florida] in an efficient and expeditious manner."); *see also* §§ 377.603-605, Fla. Stat.; Exec. Order 07-128. In Florida, as in other jurisdictions, the public trust doctrine imposes a general fiduciary duty to manage the trust resource in the "service of the people." *Hayes*, 91 So. 2d at 799. "The public trust doctrine is based upon common law equitable principles. That is, the administration of land subject to the public trust is governed by the same principles applicable to the administration of trusts in general." *Idaho Forest Industries, Inc. v. Hayden Lake Watershed Improvement Dist.*, 733 P.2d 733, 738 (Idaho 1987) (citing Bogert & Bogert, Law of Trusts, § 6 (1973)). A long-recognized duty of trustees is the duty to account. § 736.0813, Fla. Stat.; *Sewell v. Sewell Properties*, 159 Fla. 570, 573 (1947); *Slocum v. Borough of Belmar*, 569 A.2d 312, 316–17 (N.J. 1989) (internal citations omitted) ("A public trustee is endowed with the same duties and obligations as an ordinary trustee. That is, the trustee owes to the beneficiary a duty of loyalty, a duty of care, and a duty of full disclosure. Additionally, a trustee has the duty to keep clear and adequate records and accounts. When the trustee fails to keep proper accounts, all doubts are resolved against him."). In addition to the outdated and incomplete GHG emissions inventory completed in 2008 that was prepared at the direction of the former Governor (Executive Order 07-126), the DEP also engages in a form of trust accounting for submerged state

authorizations for fossil fuel projects and infrastructure that cause dangerous levels of GHG emissions. (*Id.* ¶ 149). Defendants' conduct has resulted in substantial impairment to Florida's vital public trust resources and disposal of such resources in a manner that interferes with the public's rights to the resources. (*Id.* ¶¶ 137, 149, 163, 167-69, 172). These allegations, which must be taken as true at the motion to dismiss stage, state valid *prima facie* public trust claims.

IV. THE PLAINTIFFS' CLAIMS ARE NOT BARRED BY THE PRIMARY JURISDICTION DOCTRINE.

The Defendants have argued that the primary jurisdiction doctrine bars the Plaintiffs' claims. The doctrine "dictates that when a party seeks to invoke the original jurisdiction of a trial court by asserting an issue which is beyond the ordinary experience of judges and juries, but within an administrative agency's special competence, the court should refrain from exercising its jurisdiction until such time as the issue has been ruled upon by the agency." *Flo-Sun, Inc. v. Kirk*, 783 So. 2d 1029, 1036-37 (Fla. 2001). For the reasons discussed below, the primary jurisdiction doctrine does not bar Plaintiffs' claims.

A. The Primary Jurisdiction Doctrine is Inapplicable.

The doctrine of primary jurisdiction applies "whenever enforcement of the claim requires resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body . . . ." *Id.* at 1037 n.5. Defendants cite no statute or rule giving them specific authority to define the scope of Plaintiffs' constitutionally-established substantive due process and public trust rights. Furthermore, a recognized exception exists to the doctrine of primary jurisdiction:

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sovereignty lands by determining the mean high water elevation to meet the requirements of the Coastal Mapping Act, §§ 177.25-177.40 Fla. Stat.; *see also* § 253.03(8)(a) Fla Stat (requiring Board of Trustees to prepare an annual inventory of state trust lands). Thus, an updated GHG emissions inventory is a reasonable remedy to Plaintiffs' public trust claim that would not raise any political question concerns.

> Florida courts have consistently held that parties need not resort to administrative remedies where agency errors are so 'egregious or devastating that the promised administrative remedy is too little or too late.'

Id. at 1037 (quoting *Communities Fin. Corp. v. Florida Dep't of Envtl. Regulation*, 416 So. 2d 813, 816 (Fla 1st DCA 1982)). To invoke this exception:

> [T]he Complaint must demonstrate some compelling reason why the APA [Administrative Procedures Act, codified at Chap. 120, Florida Statutes] does not avail the complainants in their grievance against the agency; or (2) the Complaint must allege a lack of general authority in the agency and, if it is shown, that the APA has no remedy for it; or (3) illegal conduct by the agency must be shown and, if that is the case, that the APA cannot remedy that illegality; or (4) agency ignorance of the law, the facts, or public good must be shown and, if any of that is the case, that the Act provides no remedy; or (5) a claim must be made that the agency ignores or refuses to recognize related or substantial interests and refuses to afford a hearing or otherwise refuses to recognize that the complainants' grievance is cognizable administratively.

Id. at 1038 (quoting *Communities Fin. Corp.*, 416 So. 2d at 816). Plaintiffs satisfy all of these criteria.

In this case, the APA provides no remedy for Plaintiffs' non-administrative public trust and substantive due process claims, which are based in constitutional and common law rights. The Plaintiffs' grievances concern the Defendants' combined creation, operation, and maintenance over time of an unconstitutional energy system – a collective matter that is far outside the piecemeal review of individual agency actions assigned to the Division of Administrative Hearings (which implements the APA) and that is not fixable absent collective action by all of the Defendants. Most of the issues in this case – for example, declaratory relief as to whether Defendants breached a duty to Plaintiffs, whether Defendants' actions unconstitutionally infringed upon Plaintiffs' due process and public trust rights, the extent of Plaintiffs' injuries, and the appropriate remedy – are all of a type commonly adjudicated by the courts.[17] Resolving these

[17] *Non-Parties v. League of Women Voters of Fl.*, 150 So. 3d 221, 224 (Fla. 1st DCA 2014) (Marstiller, J., dissenting) ("Florida's district courts of appeal routinely decide, via three-judge panel, constitutional questions and myriad other

questions will not require extensive interpretation of FDEP or other agency regulations or a detailed technical analysis beyond the sort in which this Court ordinarily engages when considering the evidence presented by the parties. Defendants are therefore incorrect that Florida law "requires" that the Plaintiffs' claims be deferred until the DEP "has rendered a decision on the matter."[18] DEP Mot. at 9. There are additional reasons that this argument is incorrect.

First, failure to exhaust administrative remedies is an affirmative defense that is not apparent on the face of the complaint. Thus, it cannot be a valid basis for dismissal. *Wilson v. County of Orange*, 881 So. 2d 625, 631 (Fla. 5th DCA 2004). *Second*, Plaintiffs are not challenging individual agency actions under the APA. Rather, they challenge the constitutionality of the Defendants' collective, systemic conduct in creating, operating and managing Florida's energy system over time. No statute delegates to the DEP (or any other Defendant) the expertise to interpret and define the scope of Plaintiffs' constitutional substantive due process and public trust rights. In fact, any attempt to do so would violate the separation of powers doctrine.[19] *Third*, "the application of the doctrine of primary jurisdiction is a matter of deference, policy and comity, not subject matter jurisdiction." *Flo-Sun, Inc.*, 783 So. 2d at 1037-38. *Fourth*, the Florida

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complex matters. That is what we do."); *3883 Conn LLC v. Dist. of Columbia*, 191 F. Supp.2d 90, 92 (D. D.C. 2002) (quoting *Dominion Cogen, D.C., Inc. v. Dist. of Columbia*, 878 F.Supp. 258, 267 (D. D.C. 1995)) (finding that resolution of plaintiff's procedural due process claim "'will not require this court to intrude unduly into sensitive areas of local policy or regulation.'").

[18] The DEP has previously denied a petition for rulemaking brought by youth requesting the reduction of GHG emissions as called for by best available science and thus going back to DEP a second time would be futile. (Compl. ¶ 149(q)).

[19] The DEP, although it has played a role in causing and contributing to the dangerous climate change at issue, does not have legislative authority, alone, to remedy the totality of the State's contributions to the harms alleged. In fact, DEP is no longer the "agency with special competence" with respect to energy policy because that authority has largely been transferred to the Florida Department of Agriculture and Consumer Services. (Compl. ¶ 149(p)). The Amended Complaint alleges that Defendants have taken repeated actions to ignore and deny the issue of climate change and undo agency policy and response, and lacks the will to address the climate change issues presented in this case. (*Id.* ¶ 149(i), (p)-(t)).

legislature has not "devised a detailed and exhaustive regulatory system" to address the problems caused by GHG emissions.[20] *Id.* at 1034; (Compl. ¶ 149(i)).

The Plaintiffs do not seek review of individual agency actions under the APA. Rather, they challenge the Defendants' fossil fuel-based energy and transportation system which does not – and, with the policies and resources now in place – cannot meet constitutional requirements. Constitutional challenges to systemic government conduct have rightfully proceeded outside of the APA and limiting Plaintiffs' claims to the strictures of the APA would violate Plaintiffs' procedural due process right to meaningful review. *See State v. Gleason*, 12 Fla. 190, 209 (Fla. 1868) (a legislative cause of action is not needed "to enable this court to exercise its constitutional jurisdiction. If such was the case, a refusal to act would emasculate the power of the court, and render it unable to perform its constitutional duties and powers.").

The private interests at stake for Plaintiffs are of the highest constitutional importance, and limiting the Plaintiffs' constitutional challenges to the strictures of the APA system risks depriving them of fundamental rights. Indeed, some of Defendants' unconstitutional acts as challenged in the Amended Complaint are not "agency actions" subject to the APA at all;[21] and furthermore, parties are required to exhaust administrative remedies only when the remedies "are available and adequate," which is not the case here. *State ex rel. Dep't of Gen. Serv. v. Willis*, 344 So. 2d 580, 589 (Fla. 1st DCA 1977). Any review of a piecemeal agency action would be limited to the agency record, which would foreclose consideration, review, and redress of the systemic nature that has led to the constitutional violations at issue.

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[20] The facts alleged in the Amended Complaint bely Defendants claims that they are actively regulating GHG emissions. The demonstrable consequence of their conduct is that Florida remains a major contributor to fossil fuel combustion-based CO_2 emissions, emitting 230.1 million metric tons of CO_2 into the atmosphere in 2016 and generating the second highest amount of CO_2 emissions from electricity in the nation. (Compl. ¶¶ 149(b), (d)).

[21] *See, e.g.,* (Compl. ¶¶ 149(i), (j), (k), (l), (m)).

As an unfair procedural barrier, the Court should also consider that many of the discriminatory agency actions comprising the Defendants' systemic constitutional violations were put in place years ago, some when these young Plaintiffs were very young, and therefore they could not even attempt to comply with Florida's 90-day APA appeal deadline. Judicial efficiency militates in favor of treating the Plaintiffs' claims as a single systemic challenge as well, rather than as a myriad of multitude challenges to individual agency actions over time. Even if that process were feasible (it is not), it would prove costly, inefficient, and unduly burdensome for all parties and the court, compared to this single judicial process.

B. The Defendants' Primary Jurisdiction Doctrine Authorities Are Either Distinguishable or Inapplicable; This Case Should Not Be Deferred.

Defendants rely on inapposite cases to support their claim that this case must be deferred due to the application of primary jurisdiction. Defendants cite *Flo-Sun, Inc.*, 783 So. 2d 1029 and *Florida Fish & Wildlife Conservation Comm'n v. Pringle,* 838 So. 2d 648 (Fla. 1st DCA 1983) to argue that primary jurisdiction requires the Court to defer an action based on "complex environmental regulations." The Court should reject that proposition.

Flo-Sun, Inc. involved a public nuisance case between two private parties regarding a specific activity that was explicitly subject to DEP regulation. 783 So. 2d at 1032. Unlike this case, in *Flo-Sun, Inc*., there were clearly-established statutes delegating authority to DEP that the Court needed to interpret and address to resolve the claims in the case. The Court in *Flo-Sun, Inc.* noted, "it is abundantly apparent that the comprehensive legislative scheme established to deal with environmental concerns is aptly suited to address the complex technical issues which may arise in this case." *Id*. at 1040. Here, in contrast, there is no "comprehensive legislative scheme" at all to address dangerous climate change. Worse, the scheme that was enacted has been largely

repealed or unenforced by the Defendants, as set forth in ¶¶ 149(c), (h), (i), (k), (m)-(t) of the Amended Complaint.

Furthermore, in the *Flo-Sun, Inc.* case, the Florida Supreme Court emphasized that primary jurisdiction is a matter of deference, not subject matter jurisdiction: "the simple fact that the doctrine of primary agency jurisdiction may apply does not necessarily mean that it must be applied. As noted earlier, this is a doctrine grounded on the notion of judicial deference and restraint." 783 So.2d at 1039. This Court should not defer to state actors who have proven incapable of any meaningful remediation or other resolution of the conditions that led to the constitutional harms alleged in the Amended Complaint.

In *Florida Fish & Wildlife Conservation Commission*, the central issue involved a constitutional challenge to specific administrative rules promulgated by the Commission. 838 So. 2d at 649. As such, the court applied the "well established" rule that "a constitutional challenge to an agency's rule must first be presented to the agency and the administrative process exhausted before the issue may be raised in the courts." *Id.* at 650. In contrast, here Plaintiffs are not challenging specific agency rules, but rather Defendants' collective pattern and practice in operating a fossil fuel-based energy system that is knowingly causing harm to Plaintiffs. Furthermore, Plaintiffs' constitutional substantive due process and public trust claims are routinely resolved by courts, regardless of the underlying factual basis for the claims. Finally, Defendants have not identified what technical expertise the Court would need to have in order to resolve Plaintiffs' constitutional claims. *See* DEP Mtn. at 9-10.

Defendants reliance on *Key Haven Associated Enterprises, Inc. v. Bd. of Trustees of Internal Imp. Tr. Fund*, 427 So. 2d 153 (Fla. 1983), also is misplaced. *Key Haven* dealt with specific agency actions that were reviewable and appealable under the APA. Here, Plaintiffs do

not challenge specific, individual agency actions. Instead, Plaintiffs challenge Defendants' aggregate and systemic actions that collectively serve to violate Plaintiffs' constitutional rights, something not at issue in *Key Haven,* and something that cannot be adequately addressed through piecemeal agency review.

The case before this Court is more in line with *Wilson v. County of Orange*, 881 So. 2d 625 (Fla. 5th DCA 2004), where plaintiffs alleged a civil rights cause of action under 42 U.S.C. § 1983. In *Wilson*, the court held that the Wilsons sufficiently alleged a cause of action that should properly be decided after a jury had the benefit of hearing evidence and argument from both parties on the issues, and denied the defendant's claim that the Wilsons failed to exhaust administrative remedies, holding: "[i]t is well established that the facial constitutionality of a statute may not be raised in an administrative proceeding." *Id.* at 630-31. The constitutional challenge to Defendants' systemic conduct here is not something that can first be heard by an administrative agency lacking in expertise or authority to interpret and apply constitutional substantive due process and public trust law. The doctrine of primary jurisdiction does not apply to prohibit judicial review of the Plaintiffs' claims.

V. THE POLITICAL QUESTION DOCTRINE DOES NOT BAR PLAINTIFFS' DUE PROCESS OR PUBLIC TRUST CLAIMS.

The Defendants erroneously argue that Plaintiffs' claims implicate a nonjusticiable political question beyond this Court's competency. Defendants are wrong for at least three reasons. First, Plaintiffs' claims implicate none of the formulations indicating the presence of a nonjusticiable political question. Defendants' conclusory arguments to the contrary mischaracterize Plaintiffs' claims, the law governing their justiciability, and the relief sought. Second, the separation of powers principles underlying the political question doctrine establish that it is the judiciary's core function to assess legislative and executive action and policy for

constitutional compliance. Third, Defendants' arguments contradict decades of Florida jurisprudence whereby courts have heard and decided substantive due process and public trust claims raised under the Florida constitution.

A. Plaintiffs' Claims Implicate None of the *Baker* Formulations Indicating the Presence of a Nonjusticiable Political Question.

The judiciary has the responsibility to decide cases properly before it, even those a court would rather avoid. *Zivotofsky v. Clinton*, 566 U.S. 189, 194 (2012) (citations omitted). The "political question doctrine" constitutes a "narrow exception to that rule." *Id.* at 195. Courts cannot avoid their responsibility, however, merely "because the issues have political implications." *INS v. Chadha*, 462 U.S. 919, 943 (1983),[22] and in Florida, "circuit courts are superior courts of general jurisdiction, and nothing is intended to be outside their jurisdiction except that which clearly and specially appears so to be." *English v. McCrary*, 348 So. 2d 293, 297 (Fla. 1977); *see also* Fla. Const. Art. I, § 21.

As announced by the U.S. Supreme Court in *Baker v. Carr*, unless one of the following considerations is "*inextricable* from the case at bar," there can be no dismissal for non-justiciability on the ground of a political question's presence:

> [(1)A] textually demonstrable constitutional commitment of the issue to a coordinate political department; [(2)] a lack of judicially discoverable and manageable standards for resolving it; [(3)] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; [(4)] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; [(5)] an unusual need for unquestioning adherence to a political decision already made; or [(6)] the

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[22] It is difficult to imagine a dispute that does not have at least some "political" overtones, but cases from around the country recognize that judicial review is particularly appropriate when individual rights are at stake. *See e.g., Eain v. Wilkes*, 641 F. 2d 504, 516 (7th Cir. 1981) (courts are cautious to invoke political question doctrine where individual rights are involved), cert. denied 454 U.S. 894 (1981); *Allende v. Shultz*, 605 F. Supp. 1220, 1223 (D. Mass. 1984) (judicial review is particularly appropriate in cases involving fundamental rights of citizens); *Sharon v. Time*, 599 F. Supp. 538, 552-53 (S.D. N.Y. 1984) (political question doctrine was improperly invoked when individual rights were involved).

> potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Coalition for Adequacy of Fairness in School Funding, 680 So. 2d at 408 (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)) (emphasis added).

First, although Defendants' mischaracterize the Plaintiffs' claims as statutory, (*see* DACS Mot. at 13, 30; Gov. Mtn. at 12), the Amended Complaint clearly and consistently challenges the Defendants' conduct as violative of *constitutional* rights and the *affirmative actions and conduct of Defendants*, in causing and contributing to dangerous climate change through their permitting, authorization, promotion, and facilitation of activities that make up Florida's energy system. (Compl. ¶¶ 2, 42, 53, 149). Such substantive due process and public trust claims have been resolved by state and federal courts for decades. As articulated by the U.S. Supreme Court:

> The irreplaceable value of the [judicial] power articulated by Mr. Chief Justice Marshall [in *Marbury v. Madison*] lies in the protection it has afforded the constitutional rights and liberties of individual citizens and minority groups against oppressive or discriminatory government action. It is this role, not some amorphous general supervision of the operations of government, that has maintained public esteem for the federal courts and has permitted the peaceful coexistence of the countermajoritarian implications of judicial review and the democratic principles upon which our Federal Government in the final analysis rests.

Raynes v. Byrd, 521 U.S. 811, 829 (1997) (internal citations omitted).

Second, Defendants fundamentally misconstrue the nature of the relief Plaintiffs seek. The Plaintiffs do not ask the Court to seize control over, or execute the power of, another branch of government. Defendants mistakenly argue that the Plaintiffs ask this Court to dictate "how to exercise" "discretionary duties." *See, e.g.*, FDACS Mot. at 15. Plaintiffs neither ask the Court to micromanage agency or official duties, nor to order Defendants to adopt any specific policy or dictate the formulation of specific agency actions. Plaintiffs also are not asking the court to appropriate funding in a particular manner. Gov. Mtn. at 7; DEP Mtn. at 22-23. Simply put, when

implementing statutory authority, Defendants have no discretion to violate Plaintiffs' fundamental, constitutional rights. *League of Women's Voters v. Detzner*, 172 So. 3d 363, 400 (Fla. 2015) (legislative deference only applies when there is no constitutional violation); *Florida Dep't of Children and 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*.") (emphasis added). Plaintiffs properly ask this Court to assess the constitutionality of Defendants' systemic conduct, declare that conduct violates Plaintiffs' fundamental rights, and order the Defendants to come into constitutional compliance while deferring to Defendants' judgment and discretion as to the best way to develop and implement the technical details of a remedial plan of their own devising.[23]

The Plaintiffs' requested relief is thus consistent with the judiciary's broad authority to "fashion practical remedies when confronted with complex and intractable constitutional violations." *Brown v. Plata*, 563 U.S. 493, 526 (2011) (approving Eighth Amendment remedy ordering California to develop and implement plan to reduce state-wide prison population to no more than 137.5% of design capacity); *see also Brevard Land Materials, Inc. v. Boruch-David, LLC*, 135 So. 3d 578 (Fla. 5th DCA 2014) (trial courts possess "broad equitable powers"); *see also* Substantive Limits on Liability and Relief, 90 Harv. L. Rev. 1190, 1248 (1977) ("[I]n each of the [United States Supreme Court's institutional reform] cases . . . the court sought a proposed plan from the defendant officials before being forced to consider shaping one of it[s] own over their objections").

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[23] Thus Plaintiffs' relief neither asks nor requires the Court to "direct[] an agency to perform its duties in a particular manner" as might implicate the separation of powers concerns identified in *Fla. Fish and Wildlife Conservation Comm'n v. Daws*, 256 So.3d 907, 917 (Fla. 1st DCA 2018). Defendants would have full discretion to draft and implement a remedial plan, provided it comports with the constitutional parameters as dictated by the Court.

In any event, it is premature now to speculate as to whether *any* relief that might ultimately be ordered, after a determination on the merits, would implicate the separation of powers concerns underlying the political question doctrine. *Baker*, 369 U.S. at 198 ("Beyond noting that we have no cause at this stage to doubt the District Court will be able to fashion relief if violations of constitutional rights are found, it is improper now to consider what remedy would be most appropriate if appellants prevail at trial."); *Milliken v. Bradley*, 433 U.S. 267, 280 (1977) ("the nature of the . . . remedy is to be determined by the nature and scope of the constitutional violation."); *see also League of Women's Voters*, 172 So. 3d at 413, 419 (remedy needs to be "commensurate with the constitutional violations found in th[e] case."). Further, the Florida Supreme Court has rejected the notion that it lacks authority to order the legislature to adopt a plan to come into constitutional compliance. *League of Women's Voters*, 172 So. 3d at 413.

1. The First *Baker* Formulation[24]

The *Baker* formulations are "listed in descending order of both importance and certainty." *Vieth v. Jubelirer*, 541 U.S. 267, 278 (2004) (plurality opinion). Under the first *Baker* formulation, a claim implicates a nonjusticiable political question if there has been "a textually demonstrable constitutional commitment of the issue to a coordinate political department." *Baker,* 369 U.S. at 217. Defendants rely primarily on Art. II, Sec. 7(a) of Florida's Constitution, which declares the policy of the State to "conserve and protect its natural resources and scenic beauty" and provides that "[a]dequate provision shall be made by law for the abatement of air and water pollution . . . for the conservation and protection of natural resources."[25] This is not an *exclusive* commitment

[24] Defendants State, FDACS, Commissioner Fried and the Public Service Commission do not argue that the first *Baker* factor applies to Plaintiffs' public trust claims and thus they concede that it does not.
[25] Defendants' also argue that Article V, Section 13(d), which states that "[t]he judiciary shall have no power to fix appropriations," is a textually demonstrable commitment. However, neither Plaintiffs' claims nor their resolution requires the Court to determine any issues regarding appropriations. Nor do they require the Court to "'reweigh the competing policy concerns underlying a legislative enactment.'" (Gov. Mtn. at 8) (quoting *Bush v. Holmes*, 940 So.

of *unchecked* authority over Plaintiffs' rights to life, liberty, property and access to public trust resources to the legislative branch or to an agency's exercise of legislatively-delegated discretion. *See, e.g., Comer v. Murphy Oil USA*, 585 F.3d 855, 874 (5th Cir. 2009) (vacated for rehearing en banc which never occurred) ("Although . . . courts may not decide an issue whose resolution is committed by the Constitution to the exclusive authority of a political branch of government, a federal court may decide a case that merely implicates a matter within the authority of a political branch.") (citing *Baker*, 369 U.S. at 217).

While the legislature has authority to enact laws for environmental protection pursuant to its police powers, the judiciary retains the authority and duty to see that government actions comply with the constitution, regardless of whether those actions may implicate environmental concerns. *See, e.g., Montgomery v. State*, 45 So. 879, 881 (Fla. 1908) ("The duty rests upon all courts, state and national, to guard, protect, and enforce every right granted or secured by the Constitution . . . whenever such rights are involved in any proceeding before the court and the right is duly and properly claimed or asserted."); *Jones v. Chiles*, 654 So. 2d 1281, 1286 (Fla. 1st DCA 1995) ("State action, whether taken by a county commission or by any other organ of state government is subject to the strictures imposed by the Florida and federal constitutions."). Although it is the duty of the legislature to "provide the ways and means of enforcing [constitutional rights]," where the political branches transgress or fail to fulfill a constitutionally assigned duty, the judiciary will "have no choice but to fashion such guidelines by judicial decree in such manner as may seem to the Court best adapted to meet the requirements of the constitution and comply with [its] responsibility." *Dade County Classroom Teachers Ass'n v. Legislature*, 269 So. 2d 684, 686, 688 (Fla. 1972). Defendants' reading of Article II, Section 7(a) would put all environmental issues beyond the

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2d 392 (Fla. 2006)). Plaintiffs seek only for the Court to engage in the familiar judicial exercise of determining whether governmental actions comply with constitutional guarantees of fundamental rights.

purview of the judiciary, a position fundamentally repugnant to Florida's system of checks and balances and jurisprudential history. *See, e.g., Barley v. S. Fl. Water Mgmt. Dist.*, 823 So. 2d 73 (Fla. 2002) (upholding tax to fund Everglades pollution abatement as compliant with Article II, Section 7(a)).

2. The Second *Baker* Formulation

Under the second *Baker* formulation, a claim implicates a political question if there are a "lack of judicially discoverable and manageable standards for resolving it." *Baker*, 369 U.S. at 217. Contrary to Defendants' arguments, both Florida's public trust doctrine and its due process clause provide clear and well-established standards under which Florida's courts have resolved countless claims and cases.

As the *Baker* Court stated with respect to Fifth Amendment claims, the standards governing Plaintiffs claims are "well developed and familiar." 369 U.S. at 226. Florida's courts have found the public trust doctrine enforceable in many cases and applied well-established standards as to whether the state has "materially impaired" or "abdicated control" of the trust resource. *State ex rel. Ellis*, 56 Fla. at 609; *Coastal Petroleum Co.*, 492 So. 2d at 344. Likewise, as explained in Section II, when assessing whether governmental actions and policies abridge the constitutional guarantee of due process, Florida's "courts have considered the propriety of the state's purpose; the nature of the party being subjected to state action; the substance of that individual's right being infringed upon; the nexus between the means chosen by the state and the goal it intended to achieve; whether less restrictive alternatives were available; and whether individuals are ultimately being treated in a fundamentally unfair manner in derogation of their substantive rights." *Dep't of Law Enforcement v. Real Property*, 588 So. 2d 957, 960 (Fla. 1991). As in *Baker,* this Court need only apply well-established standards governing individual constitutional rights to the facts

alleged. *See* Erwin Chemerinsky, *Federal Jurisdiction*, § 2.6 n.7 (5th ed. 2007) ("If a litigant claims an individual right has been invaded, the lawsuit by definition does not involve a political question.") (quoting Howard Fink & Mark Tushnet, *Federal Jurisdiction: Policy and Practice* 231 (2d ed. 1987)).

The Florida Supreme Court's recent decision in *Citizens for Strong Schools v. Fla. State Bd. of Educ.*, No. SC18-67, 2019 WL 98253, ___ So. 3d ___ (Fla. Jan. 4, 2019), does not change this analysis. Plaintiffs' substantive due process and public trust claims do not require the court to interpret the phrase "adequate provision."[26] *Id.* at *11 ("[T]he primary issue here is whether the term 'high quality' provides 'an appropriate standard for determining 'adequacy.''"). Rather, Plaintiffs' allege Defendants' conduct in effecting a fossil fuel-based energy system is affirmatively infringing upon their constitutional rights to life, liberty, and property and access to public trust resources. There is ample legal precedent interpreting and resolving Plaintiffs' constitutional claims, even if Plaintiffs' claims require the Court to apply familiar legal standards to a new set of facts. *Los Angeles County Bar Ass'n v. Eu*, 979 F.2d 697, 702 (9th Cir. 1992) ("So long as the nature of the inquiry is familiar to the courts, the fact that standards needed to resolve a claim have not yet been developed does not make the question a non-justiciable political one."); *id.* ("Judicial standards for evaluating compliance with the constitutional dictates of due process . . . are well developed, although they have not often been applied to these facts.").

Defendants' erroneous argument under the second *Baker* factor would place all constitutional and public trust claims beyond judicial competency, a position fundamentally

[26] The Governor erroneously argues that Plaintiffs are asking the Court to interpret and apply Article II, Section 7, which does contain a similar "adequacy" standard. Art. II, § 7, Fla. Const. Plaintiffs' Amended Complaint contains no cause of action alleging violation of Article II, Section 7. Rather, Plaintiffs cite this provision as support for recognition of the atmosphere as a public trust resource and to show that the right to a stable climate system capable of supporting human life is well-established in Florida history.

repugnant to Florida's founding principles and the role of the courts. *See Burnsed v. Seaboard Coastline R. Co.*, 290 So. 2d 13, 16 (Fla. 1974) ("It is a fundamental rule of construction of our constitution that a construction of the constitution which renders superfluous, meaningless or inoperative any of its provisions should not be adopted by the courts.").

3. The Third *Baker* Formulation

This Court would not be required to make "an initial policy determination of a kind clearly for nonjudicial discretion" under the third *Baker* formulation. 369 U.S. at 217; *In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d 597, 606-07 (Fla. 2012). The third *Baker* formulation is only applicable where a court "cannot resolve a dispute in the absence of a *yet-unmade* policy determination . . . ." *Zivotovsky v. Clinton*, 566 U.S. 189, 204 (2012) (emphasis added). Rather than calling for such initial policy determinations, Plaintiffs' claims call on this court to engage in the familiar and traditional judicial role of assessing the political branches *existing* actions and policies for compliance with well-established and oft-applied constitutional standards. *League of Women's Voters*, 172 So. 3d at 414. Defendants' arguments to the contrary are premised on the mistaken contention that the Court must employ the adequacy standard from Article II, Section 7 to resolve Plaintiffs' substantive due process and public trust claims. As explained, above, that is not the standard governing Plaintiffs' public trust or substantive due process claims. *See* Sections II, III, *supra*.

Defendants' further erroneously argue that Plaintiffs' requested relief would require the Court to manage Florida's energy system.[27] As demonstrated above, the relief Plaintiffs seek

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[27] The Governor argues that the court would be required to determine how the applicable standard (which it incorrectly identifies as "adequacy") "might apply to the wide variety of reports, statistics, and maps Plaintiffs cite in their Amended Complaint." Gov. Mtn. at 9. But this court would not be required to apply constitutional standards to "reports, statistics, and maps" but to Defendants' actions – a familiar constitutional exercise. The fact that the Amended Complaint cites extensive evidence supporting Plaintiffs' claims does not mean the Court will be making a policy decision when it decides Plaintiffs' claims. *See, e.g., Light v. King*, 179 So. 2d 398, 398 (Fla. 3rd DCA 1965)

would leave discretionary decisions as to how best to attain constitutional compliance with Defendants. Like any traditional constitutional case, Plaintiffs' claims require only that the Court assess Defendants' actions for constitutionality. *See Swann v. Charlotte-Mecklenberg Bd. of Educ.*, 402 U.S. 1, 15 (1971) ("Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies."); *see also Florida v. Georgia*, 138 S.Ct. 2502, 2517 (2018); *Dayton Bd. of Educ. v. Brinkman*, 433 U.S. 406, 420 (1977). Further, as demonstrated above, it is entirely premature to speculate as to the propriety of any relief that may be issued following a determination of liability on the merits.

Finally, Defendants argue that Plaintiffs' claims require the Court to define Florida's Fossil Fuel Energy System. State Mtn. at 29-30. However, Plaintiffs' defined this system as "all components related to the production, conversion, delivery and use of energy" and have specified how Defendants' actions with respect to the system are causing harm to the Plaintiffs. (Compl. ¶¶ 148-149) (alleging the energy system is under the care and control of Defendants; quantifying the amount of GHG emissions that result from the system; describing how Defendants have prioritized fossil fuels over renewable energy; identifying specific activities taken by Defendants as part of the energy system, such as authorizing fossil fuel infrastructure and approving energy plans that lock in dangerous GHG emissions into the future; rejecting economically and technically feasible alternatives to a fossil fuel-based energy system). These factual allegations must be accepted as true at this stage and it will be Plaintiffs' burden at trial to establish precisely how Defendants' actions with respect to the Fossil Fuel Energy System have and are causing and contributing to Plaintiffs' injuries. *Brown v. Plata*, 563 U.S. at 517 (quoting *Lilly v. Virginia*, 527 U.S. 116, 148

(weighing the evidence "is the primary function of the trial judge" and "[i]t is within the province of the trier of facts to resolve conflicts in evidence.").

(1999)) (affirming lower court's finding that in challenge to prison's medical care system overcrowding was the primary cause of plaintiffs' constitutional injuries and stating "[t]he ultimate issue of primary cause presents a mixed question of law and fact; but there, too, 'the mix weighs heavily on the 'fact' side.'"). The Court will not be called upon to make any kind of initial policy decision.

4. The Fourth, Fifth, and Sixth *Baker* Formulations

There is neither an impossibility of resolving this case "without expressing lack of the respect due coordinate branches of government[,]" an "unusual need for unquestioning adherence to a political decision already made[,]" nor the likelihood of "embarrassment from multifarious pronouncements by various departments on one question," such as would implicate the fourth, fifth, and sixth *Baker* factors, respectively. 369 U.S. at 217. Defendants' mischaracterize Plaintiffs' requested relief as requiring the Court to assume control over the state's energy system. Gov. Mtn. at 9. Defendants also argue that these formulations are implicated simply because Florida's legislative and executive branches have adopted and implemented policies allowing the challenged activities to continue. Such a test would foreclose all challenges, constitutional or otherwise, to government action. Defendants have it backwards. The core judicial functions is to check encroachment upon individual liberties by the other branches of government – that is the very essence of judicial review. *League of Women's Voters*, 172 So. 3d at 414 (court has a responsibility to vindicate citizens' essential rights). Accordingly, the U.S. Supreme Court has repeatedly ruled that these formulations, the least determinative of the *Baker* set, are not implicated when a court is called upon, as here, to resolve the constitutionality of another branch's acts. *See, e.g., United States v. Munoz-Flores*, 495 U.S. 385, 390-91 (1990) (ruling justiciable a claim that a statute violated the Origination Clause); *Powell v. McCormack*, 395 U.S. 486, 548-49 (1969)

(ruling justiciable a challenge to House of Representatives' refusal to seat petitioner). Indeed, 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-upon branch approves the encroachment.'" *Nat'l Labor Relations Bd. v. Canning*, 134 S. Ct. 2550, 2593-94 (2014) (Scalia, J. concurring). The legislative and executive branches possess the authority to meet state energy needs without violating Plaintiffs' inalienable constitutional rights. This Court has the authority to order such constitutional compliance.[28]

VI. IT IS THE JUDICIARY'S ROLE, UNDER THE SEPARATION OF POWERS DOCTRINE, TO DECIDE CASES OF FUNDAMENTAL INDIVIDUAL RIGHTS.

Adjudication of Plaintiffs' constitutionally-grounded claims is compelled, rather than prevented, by the separation of powers principles underlying the political question doctrine. *Citizens for Strong Schools, Inc. v. Florida State Board of Educ.*, 232 So. 3d 1163, 1169 (Fla. 1st DCA 2017) (deeming the political question inquiry "essentially a function of separation of powers.") (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)). "[T]he declared purpose of separating and dividing the powers of government, of course, was to diffuse power the better to

[28] Misstating the role of the Court in a constitutional case, Defendants erroneously argue that "this Court lacks the resources to grapple with the broad and global scale of climate change." State Mtn. at 31. However, if Defendants deny any of Plaintiffs' allegations, both parties will be able to present scientific evidence in the form of expert testimony that the court would assess for admissibility. Courts frequently resolve claims that require consideration of scientific evidence in a variety of different contexts. *See, e.g., Brim v. State*, 695 So. 2d 268, 272 (Fla. 1997) (finding that the admissibility of scientific evidence "requires a determination, by the judge, that the basic underlying principles of scientific evidence have been sufficiently tested and accepted by the relevant scientific community. To that end, we have expressly held that the trial judge must treat new or novel scientific evidence as a matter of admissibility (for the judge) rather than a matter of weight (for the jury)."); *see also* Breyer, Stephen, J., "Science in the Courtroom," *Issues in Science and Technology* 16, no. 4 (Summer 2000) ("The Supreme Court has . . . decided basic questions of human liberty, the resolution of which demanded an understanding of scientific matters . . . . [W]e must search for law that reflects an understanding of the relevant underlying science, not for law that frees [defendants] to cause serious harm."). The Court would not be making its legal findings in a vacuum, but rather based upon the evidence presented by the parties.

secure liberty." *Bowsher v. Synar*, 478 U.S. 714, 721 (1986). "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." Marbury, 5 U.S. at 163.

Under Florida's tripartite system of government, it is the judiciary's core duty to decide whether affirmative state actions and policies, such as those challenged here, infringe fundamental individual rights safeguarded by the constitution. *Dade County Classroom Teachers Ass'n, Inc. v. Legislature*, 269 So. 2d 684, 686 (Fla. 1972) ("We are under a constitution, but the constitution is what the judges say it is, and the judiciary is the safeguard of our liberty and our property under the constitution.") (quotations omitted); *Satz v. Perlmutter*, 379 So.2d 359, 360 (Fla. 1980) ("As people seek to vindicate their constitutional rights, the courts have no alternative but to respond."); *In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d at 607 ("[T]he [judiciary] is responsible for measuring" the acts and policies of the coordinate branches "with the yardstick of the Constitution."). As the Florida Supreme Court has observed:

> It matters not whether the usurpation of power and the violation of rights guaranteed to the people by the organic law results from the activities of the executive or legislative branches of the government or from officers selected to enforce the law, the rights of the people guaranteed by the Constitutions must not be violated.

Boynton v. State, 64 So. 2d 536, 552 (Fla. 1953); *Dep't of Bus. Regulation, Div. of Alcohol & Tobacco v. Provende, Inc.*, 399 So. 2d 1038, 1042 (Fla. 3rd DCA 1981) ("[T]he constitution grants [circuit courts] equity jurisdiction and original jurisdiction in cases involving constitutional violations . . . ."); *Dade County Classroom Teachers Ass'n v. Legislature*, 269 So. 2d 684, 686 (Fla. 1972) ("[O]ne of the exceptions to the separation-of-powers doctrine is in the area of constitutionally guaranteed or protected rights. 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 . . . .").

The legislative and executive branches cannot be expected to police their own compliance with the constitution; that is the purview of the judiciary. Contrary to Defendants' contentions, Plaintiffs do not ask the Court to "dictate the manner of executing legislative policies or appropriations in any particular way." State Mtn. at 14, (quoting *Citizens for Strong Schools*, 232 So. 3d at 1171). Rather, Plaintiffs ask the Court to fulfill its constitutional obligation to "construe[] a provision of the state . . . constitution." Art. V, §§ 3(b)(3), 5(b).

VII. CLAIMS PREDICATED ON CLIMATE CHANGE DO NOT INHERENTLY INVOLVE NONJUSTICIABLE POLITICAL QUESTIONS.

No federal appellate court has found that claims predicated on climate change implicate a nonjusticiable political question. On the contrary, those courts confronting the issue have found that such claims fall squarely within the judiciary's purview. This result only makes sense: if despite all evidence the political branches refuse to even recognize that climate change exists and that their actions contribute to it, an independent judiciary has an obligation to step in to protect children being harmed by the government's conduct.

In *Connecticut v. American Elec. Power Co.,* (*"AEP*"), the Second Circuit ruled that public nuisance claims against power companies premised on climate change implicated none of the *Baker* formulations. 582 F.3d 309, 324-332 (2d Cir. 2009), rev'd on other grounds *Amer. Elec. Power Co., Inc. v. Connecticut*, 564 U.S. 410, 420 (2011). Similarly, in *Comer v. Murphy Oil USA*, the Fifth Circuit ruled that the plaintiffs' nuisance, trespass, and negligence claims against oil and energy companies did not implicate a political question. 585 F.3d 855, 880 (5th Cir. 2009) (vacated for a rehearing *en banc* which never occurred).

The climate change-related claims at issue in *AEP* and *Comer* were rooted in common law, but the Plaintiffs' claims here are premised upon infringement of fundamental constitutional

rights.[29] As such, it is even more clear in this case than in *AEP* and *Comer* that the Plaintiffs' claims are justiciable. *See, e.g., Imparato v. Spicola*, 238 So.2d 503, 509 (Fla. 2nd DCA 1970) (quoting *Boyd v. United States*, 116 U.S. 616 (1886)) ("'It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.'").[30]

The clear justiciability of Plaintiffs' claims is further underscored by *Juliana*, which involves climate change and a constitutional challenge to the systemic energy policy of the United States. 217 F. Supp. 3d 1224. Like Plaintiffs here, the *Juliana* plaintiffs alleged infringement of their fundamental constitutional rights based upon the federal government's aggregate and systemic actions related to GHG emissions. 217 F. Supp. 3d at 1240. After a thorough and reasoned analysis of all six *Baker* formulations' application to the claims at hand,[31] *id.* at 1235-42, the

[29] Most of the out-of-state cases cited by FDACs on pages 3-5 of its brief are factually and legally inapposite. Many of the cases alleged that government had failed to act to address climate change and did not allege affirmative violations of specific constitutional provisions as is done here. *See Filippone v. Iowa Dep't of Natural Resources*, 829 N.W.2d 589 (Iowa Ct. App. 2013); *Aronow v. State of Minnesota*, 2012 WL 4476642 (Minn. Ct. App. 2012) (unpublished decision); *Funk v. Wolf*, 144 A.3d 228 (Pa. Cmwlth. 2016); *Butler v. Brewer*, 2013 WL 1091209 (Ariz. Ct. App. 2013); *Svitak v. State*, 178 Wash. App. 1020 (2013) (unpublished decision which has "no precedential value and are not binding on any court" Washington General Rule 14.1); *Cherniak v. Brown*, 295 Or. App. 584 (2019). In the case of *Sanders-Reed v. Martinez*, 350 P.3d 1221 (N.M. Ct. App. 2015), Defendants mischaracterize the holding and fail to acknowledge that the court held that the state *does* have a constitutional duty to protect the atmosphere as a public trust resource and resolved the case on summary judgment as opposed to a motion to dismiss. The other state substantive due process climate cases cited by Defendants, *Aji P., et al. v. State of Washington, et al.*, No. 18-2-1-SEA, 2018 WL 3978310 (Wash. Super. Ct. Aug. 14, 2018) and *Sinnok v. State of Alaska*, No. 3AN-17-9910 CI (3rd Jud. Dist. Alaska Oct. 30, 2018) were wrongly decided, based upon the laws of each state, and are currently on appeal.

[30] The Defendants mistakenly rely on *City of Oakland v. B.P. P.L.C.*, a district court opinion in a non-constitutional public nuisance case against private corporations seeking monetary damages that is currently on appeal. Federal appellate courts that have reviewed climate-premised claims have consistently found them not to implicate nonjusticiable political questions. Further, Plaintiffs' claims and requested relief are bolstered by *City of Oakland*, where the court clarified that "federal courts have authority to fashion . . . remedies for claims based on global warming" but "must also defer to the other co-equal branches of government when the problem . . . deserves a solution best addressed by those branches." Order Granting Motion to Dismiss, No. C 17-06011 WHA, 2018 WL 3109726, at *9 (N.D. Cal. June 25, 2018). This is precisely the relief Plaintiffs request here. Plaintiffs ask the Court to assess the constitutionality of Defendants' systemic conduct, declare that conduct violates Plaintiffs' fundamental rights, and order Defendants to come into constitutional compliance while appropriately deferring to Defendants' judgment as to the best way to develop and implement a plan to remedy the constitutional violations.

[31] The case of *Aji P. v. State of Washington*, Case No. 18-2-04448-1 SEA (Wash. Super. Ct. Aug. 14, 2018), that Defendants' cite, in contrast to the *Juliana* decision, contained no legal analysis of the *Baker* factors and applied the incorrect standard of review by not accepting the facts alleged in the Amended Complaint as true. Furthermore, unlike Washington, Florida has no mandatory GHG reduction targets, no renewable energy portfolio standard, and no administrative rule capping and regulating the discharge of carbon dioxide emissions. A notice of appeal has been filed in that case and thus the superior court decision is of no precedential value in this case.

Juliana court concluded that the case did not present a nonjusticiable political question, emphatically concluding:

> There is no need to step outside the core role of the judiciary to decide this case. At its heart, this lawsuit asks this Court to determine whether defendants have violated plaintiffs' constitutional rights. That question is squarely within the purview of the judiciary.

Id. at 1241.

Juliana stands for the proposition that the constitutionally-rooted principle of separation of powers requires the judiciary to confront the merits of climate cases premised on violations of fundamental rights, and Florida's Constitution affords *at least* as much protection of individual liberties as its federal counterpart. *See State v. Lavazzoli*, 434 So. 2d 321, 324 n.3 (Fla. 1983) (quoting William Brennan, *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489, 491 (1977) ("State constitutions, too, are a font of individual liberties, their protections often extending beyond those required by the Supreme Court's interpretation of federal law."); *In re: T.W.*, 551 So. 2d 118, 1191 (Fla. 1989) ("While the federal Constitution traditionally shields enumerated and implied individual liberties from encroachment by state or federal government, the federal court has long held that state constitutions may provide even greater protection.").

VIII. THE DEFENDANTS ARE NOT IMMUNE FROM THIS SUIT.

Defendants are not immune from this suit: "sovereign immunity will not bar a claim against the State from a challenge based on violation of the federal or state constitutions." *Fla. Fish & Wildlife Conservation Comm'n*, 256 So.3d at 912. Defendants admit this to be true: "Florida courts have allowed claims for equitable or declaratory relief when a government entity takes an illegal act that deprives a citizen of constitutional rights . . . ." DEP Mtn. at 11, 12. Since this is what the Plaintiffs allege, the Court's inquiry ends here. In a last-ditch effort, the DEP's Motion

to Dismiss wrongly suggests that "Plaintiffs seek an order compelling executive agencies to enact new laws and policies, and to undertake regulatory action against third parties . . . ." *Id.* This is simply not true; no such relief is sought in the Amended Complaint.[32] Defendants are not immune from this constitutional case.

IX. DEFENDANTS' CLAIMS THAT THEY REGULATE GHG EMISSIONS IS IRRELEVANT.

Defendants DEP and BOT contend that "DEP can and does regulate the emission of GHGs," but they grossly mischaracterize the effect of their conduct. DEP Mtn. at 5. Defendants can point to no law, regulation or policy that regulates GHG emissions in a manner that is needed to protect, and prevent infringement of, Plaintiffs' constitutional due process and public trust rights. In fact, the massive amounts of GHG emissions coming from Florida confirms that Defendants' existing policies and programs only serve to legalize high levels of emissions. (Compl. ¶¶ 149(b) (Florida "emit[ed] 230.1 million metric tons of CO_2 into the atmosphere in 2016" and "Florida's electric power generation accounts for the largest portion of these emissions at 105.9 million metric tons (46% of Florida's total emissions followed closely by the transportation sector at 103.6 million metric tons (45% of Florida's total emissions). If Florida were a country, it would rank as the 27th largest emitter of CO_2 emissions in the world."); 149(d)

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[32] Contrary to DEP's arguments, the case of *Detournay v. City of Coral Gables*, 127 So. 3d 869, 872-73 (Fla. 3d DCA 2013), was decided on separation of powers, not sovereign immunity grounds. *Id.* at 872 ("[W]e think the simplest and most direct explanation of why dismissal is proper is provided by the principles of separation of powers . . . ."). Furthermore the plaintiffs in that case sought an order requiring the City of Coral Gables prosecutor to use his discretion to file an enforcement action against another party. *Id.* at 870. The court expressly acknowledged: "Under the doctrine of separation of powers, the City's discretion to file, prosecute, abate, settle, or voluntarily dismiss a building and zoning enforcement action is a purely executive function that cannot be supervised by the courts, *absent the violation of a specific constitutional provision or law.*" *Id.* at 870-71. Here, Defendants have no discretion to infringe upon constitutional rights and Plaintiffs have alleged violations of specific constitutional provisions. Defendants also cite the case of *Fla. Fish & Wildlife Conservation Comm'n v. Daws*, 2018 WL 1720973 (Fla. 1st DCA Apr. 10, 2018), but that decision was withdrawn and superseded on rehearing by *Fla. Fish & Wildlife Conservation Comm'n*, 256 So. 3d at 912, and the case clearly states: "sovereign immunity will not bar a claim against the State based on violations of the state or federal constitution." The case of *Paedae v. Escambia County*, 709 So. 2d 575 (Fla. 1st DCA 1998), involved no constitutionally protected right.

("Florida generates more electricity from petroleum than any other state in the nation. Florida generates the second highest amount of CO_2 emissions from electricity in the nation.")). Defendants cannot contest these facts at this stage in the proceedings. If Defendants wish to present evidence to show that their conduct is not infringing upon Plaintiffs' rights, they can do so at trial, but that is a factual issue that cannot be resolved at the motion to dismiss stage. In short, Defendants have no authority to infringe upon Plaintiffs' constitutional rights, and their assertions to the contrary, are incorrect.

X. THE DEFENDANTS ARE PROPER PARTIES, AND THE COURT HAS AUTHORITY TO HEAR THESE IMPORTANT CONSTITUTIONAL ISSUES.

A. The Defendants Are Proper Parties.

The current Defendants are all proper parties because they have "either taken a present, adverse, and antagonistic position to that espoused by [Plaintiffs] or would be necessary parties to an action to determine the State's responsibility under the controlling constitutional provision," the standard set forth by the Florida Supreme Court. *Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 403 (Fla. 1996). This action involves a constitutional duty that implicates specific responsibilities of each of the named Defendants. *Scott v. Francati*, 214 So.2d 742, 746 (Fla. 1st DCA 2017); *Atwater v. City of Weston*, 64 So. 3d 701, 704 (Fla. 1st DCA 2011). The Plaintiffs have alleged that Florida's energy system is under the creation, control, and supervision of the Defendants, (Compl. ¶ 149), and since each Defendant has played and continues to play a role in causing the constitutional injuries alleged in the Amended Complaint, and has the authority to remedy the constitutional violations, the Court has the authority to consider the Plaintiffs' claims, and ultimately, order the Defendants to comply with their constitutional obligations. *Brown v. Butterworth*, 831 So. 2d 683, 690 (Fla. 4th DCA 2002) ([A] proper party is one with "a cognizable interest in the action."). Furthermore, because Plaintiffs seek declaratory

relief, all Defendants are proper parties as they have an interest that would be affected by the declaration. § 86.091, Fla. Stat. The Defendants in this case take the untenable position that no government entity is responsible for creating and managing an energy system that is constitutionally compliant and protective of the Plaintiffs.[33]

1. <u>The Governor is a proper party</u>.

Florida courts have the authority and obligation to review actions of members of Florida's executive branch to ensure their compliance with the Florida Constitution. This result is logically and procedurally necessary; if this judicial power did not exist, the executive branch would be unchecked for constitutional compliance. For instance, judicial review of the Governor's pardoning powers was found in *Sullivan v. Askew*, 348 So. 2d 312, 313-16 (Fla. 1977). Courts have also considered whether the Governor, as chief executive officer and chairperson of the Board of Education, has adequately funded the public education system, as required by the Florida Constitution. *Coalition for Adequacy & Fairness in Sch. Funding, Inc.*, 680 So.2d 400.

The Governor is Florida's chief executive officer and chief planning officer and has great influence over the development and implementation of the State's energy system, which causes, and is contributing to, the Plaintiffs' injuries.[34] (Art. IV, § 1, Fla. Const.; Compl. ¶ 43). Taking

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[33] Defendants contend that Plaintiffs have failed to allege how its policies and practices that encourage and perpetuate the use of fossil fuels for Florida's energy present a justiciable controversy. State Mtn. at 19. Defendants ignore the multiple allegations in the Amended Complaint directly tying its creation and operation of an energy system based on fossil fuels to Plaintiffs' climate change-related injuries. *See, e.g.,* (Compl. ¶¶ 52 ("GHG pollution is a function of a systemic problem caused by the Fossil Fuel Energy System, which the named Defendants control and perpetuate through their authorities, actions, and inactions."); 54-92 (describing anthropogenic climate change and how that harms Plaintiffs and Florida's public trust resources)).

[34] Contrary to Defendants' arguments, Plaintiffs do not "rely entirely on the Governor's general executive duty to execute and enforce the laws of Florida as a basis for including him as a party defendant." Gov. Mtn. at 12. Rather, Plaintiffs have provided specific examples of implementation of gubernatorial authority in an unconstitutional manner. (Compl. ¶¶ 43, 149). While Governor DeSantis has recently entered office, he has continued his predecessor's unconstitutional conduct in perpetuating a fossil fuel-based energy system, as Florida's GHG emissions continue to rise and no action has been taken to alter Florida's dependence on fossil fuels. This conduct continues, in spite of the Trump Administration's public acknowledgment that injuries like those the Plaintiffs are experiencing "are rising" and will "intensify," "depend[ing] on actions taken to reduce global greenhouse gas emissions and to adapt to the risks from climate change now and in the coming decades." (Compl. ¶ 54).

the facts in the Amended Complaint as true, "[t]here is an overwhelming scientific consensus that human-caused climate change is occurring and negatively affecting the state of Florida" and "'climate-related threats to Americans' physical, social, and economic well-being are rising.'" (*Id.* ¶ 54). If GHG emissions continue as they are today, the impacts the Plaintiffs are already experiencing will become so severe that many parts of Florida will become uninhabitable and the economic consequences would be calamitous. (*Id.* ¶¶ 93-147). The Trump Administration has expressed that "[d]ecisions made today determine risk exposure for current and future generations and will either broaden or limit options to reduce the negative consequences of climate change." (*Id.* ¶ 183). Given the ongoing harms these Plaintiffs are experiencing and the scientific consensus that their injuries are getting more severe, it is unconstitutional for the Governor to continue energy policies and practices that exacerbate the climate danger and infringe upon Plaintiffs' constitutional rights to life, liberty, and property and responsible for management of public trust resources.

The Governor has a statutory obligation to "[i]dentify and monitor on a continuing basis statewide conditions and trends which impact the state," § 186.006(1), Fla Stat., and makes policy recommendations, such as through the State's Comprehensive Plan, which is designed to ensure "[t]he preservation and enhancement of the quality of life of the people of this state . . . ." *See* § 186.002(c), Fla. Stat. The Governor sits on the Power Plant Siting Board, the Transmission Line Siting Board, and the Natural Gas Transmission Pipeline Siting Board, which decide whether and under what conditions power plants, transmission lines, and natural gas pipelines may be built in Florida, respectively;[35] he appoints various agency heads as well as the Florida Public Service

[35] §§ 403.509 and 403.503(9), Fla. Stat. (Power Plant Siting Board sets conditions for electrical power plant certification), §§ 403.9415 and 403.9403(6), Fla. Stat. (Natural Gas Transmission Pipeline Siting Board sets conditions for natural gas pipeline certification); and §§ 403.529, 403.52(7), and 403.509(4), Fla. Stat. (Transmission Line Siting Board sets conditions for high-voltage transmission line certification); *see also* §§ 403.509(8), 403.9403(5), and

Commissioners; and is also one of the three members of Florida's Cabinet, who comprise the Board of Trustees for the Florida Internal Improvement Trust Fund.[36] The Governor, through agency appointments and oversight, policy and funding recommendations,[37] and veto power, has heavy involvement in and influence over the state's energy system. The Governor's actions have caused and contributed to Plaintiffs' exposure to a dangerous climate system that violates their constitutional rights. *See, e.g.,* (Compl. ¶ 149(k), (l)). His unconstitutional conduct continues in spite of the overwhelming, and long-lived scientific consensus about how perpetuating a fossil fuel-based energy system harms Plaintiffs' lives and liberties in Florida. (*Id.* ¶¶ 62, 64, 148).

All three cases the Governor relies upon are inapposite and simply hold that "legislators are not proper parties to actions seeking a declaration of rights under a particular statute" because "they are not charged with enforcing the statute at issue." *Haridopolos v. Alachua County*, 65 So. 3d 577, 578-79 (Fla. 1st DCA 2011); *Marcus v. State Senate for the State*, 115 So. 3d 448 (Fla. 1st DCA 2013); *Walker v. President of the Senate*, 658 So. 2d 1200 (Fla. 5th DCA 1995). Here, Plaintiffs are not challenging the constitutionality of a statute but allege the Governor has violated specific provisions of the Florida constitution with which he is required to comply and has abdicated his duty to protect present and future generations of Floridians from the perils of climate change, and as such, he is a proper party. In fact, given the Governor's significant role in developing and implementing the state's energy system, Plaintiffs' are obligated to name him as a

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403.52(6), Fla Stat. (defining said Siting Boards as the Governor and Cabinet). Further, § 14.02, Fla. Stat. provides that the Governor's vote is a tie-breaker if necessary in said Siting Board votes.

[36] For example, a key piece of Florida's energy system is the requirement that it coordinate with other states in the South for "the development of a balanced economy for the region," § 377.711 Fla. Stat., resulting in an interstate compact for the conservation of oil and gas resources, for which the Governor officially represents the State. Florida joined the Interstate Compact to Conserve Gas and Oil in 1945, to which 29 other states belong. While the Governor cannot alter its terms, he can withdraw the State from the Compact. § 377.03 Fla. Stat.

[37] The Governor's annual budget submittal to the legislature is a driving force in development of the state budget. Further, the Governor is authorized to "employ as many persons as he or she, in his or her discretion, may deem necessary to procure and secure protection to life, liberty and property of the inhabitants of the state, also to protect the property of the state." § 14.01, Fla. Stat.

Defendant. *Florida Dep't of Educ. v. Glasser*, 622 So. 2d 944, 948 (Fla. 1993) (quoting *May v. Holley*, 59 So. 2d 636, 639 (Fla. 1952) ("[B]efore any proceeding for declaratory relief is entertained all persons who have an 'actual, present, adverse, and antagonistic interest in the subject matter' should be before the court.").

2. The State of Florida is a proper party.

Florida establishes the state's energy system,[38] and when a case challenges the constitutionality of a state-established system, the state is naturally a proper party. *State ex rel. Shevin v. Kerwin*, 279 So. 2d 836, 838 (Fla. 1973); *League of Women's Voters*, 172 So. 3d 363 (reviewing constitutional challenge to state's redistricting plan). The Defendants do not (and cannot) dispute that the State has sovereign control over the State's public trust resources, the control over which makes the State a proper party in this case. Art. X, § 11, Fla. Const. (emphasis added) ("The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held *by the state*, by virtue of its sovereignty, in trust for all the people.").

There is no basis for Defendants' claim that Plaintiffs have not identified "any particular statute or constitutional provision" "allege[d] to have been violated by the State of Florida." State Mtn. at 11. The Amended Complaint clearly articulates the constitutional provisions it alleges the state has violated: Counts 1 and 2 (alleging violations of the public trust doctrine, codified in Article X, Sections 11 and 16 of the Florida Constitution); Count 3 and 4 (alleging violations of inalienable rights protected by Article I, Sections 1, 2 and 9 of the Florida Constitution). Defendants essentially take the position that the state has no obligation to comply with the Florida Constitution, which is clearly incorrect.

[38] The state has declared its energy policy a state function via state law. § 377.601, Fla. Stat.

3. The Florida Department of Agricultural and Consumer Services ("FDACS") and Department of Environmental Protection ("FDEP") are proper parties.

FDACS, as set forth in ¶¶ 46-48, 149 of the Amended Complaint, is charged with coordinating Florida's energy policy and the State's energy-related programs, including planning for the development of renewable energy resources and reducing dependence on energy resources like oil and gas. §§ 377.703(1), (2)(e)(2), Fla Stat. FDACS includes the Office of Energy, which is responsible for developing Florida's energy policy and for developing energy efficiency and renewable energy programs. The Office of Energy is also responsible for recommending energy policy and programs to the Public Service Commission, the Legislature and the Governor. The Legislature has conferred FDACS with the mandatory authority to "[a]dvocate for energy and climate change issues and provide educational outreach and technical assistance in cooperation with the state's academic institutions." § 377.6015(2)(f), Fla. Stat. FDACS includes the Florida Forest Service which is responsible for managing over one million acres of state forest resources for present and future generations and promoting forest land stewardship, good forest management, and tree planting and care. § 589.04, Fla. Stat. "The Florida Forest Service has the primary responsibility for prevention, detection, and suppression of wildfires wherever they may occur" and "shall provide leadership and direction in the evaluation, coordination, allocation of resources, and monitoring of wildfire management and protection." § 590.01, Fla. Stat. In addition, FDACS is responsible for protecting and promoting the appropriate and efficient use of soil and water resources as well as protecting the state's farm, forests, and grazing lands, which are "among the most basic assets of the state and the conservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people and is in the public interest." § 582.02, Fla. Stat.

Plaintiffs allege that FDACS has implemented its statutory authority in a fashion that results in dangerous levels of GHG emissions that are causing and contributing to Plaintiffs' constitutional injuries. (Compl. ¶¶ 46-47, 51, 53, 149). Plaintiffs also allege that the natural resources under FDACS' care and control are being impaired by climate change and as such, FDACS has abdicated its duty to protect and prevent impairment to such resources. (*Id.* ¶¶ 47, 53, 56, 65, 122). As an agency of the state, FDACS has a constitutional obligation to implement its authority in compliance with the Florida Constitution, which encompasses the inalienable rights of Plaintiffs protected by the Florida Constitution and the Public Trust Doctrine. Art. I, §§ 2; Art. X, §§ 11, 16, Fla. Const. Plaintiffs have adequately alleged that FDACS has breached its constitutional obligations. (Compl. ¶¶ 152-166, 168-179).

FDEP's mission – environmental protection – is set forth in the very name of the agency. To this end, FDEP is charged with developing and implementing a vast array of energy-related permitting, policy setting, and land management responsibilities. (Compl. ¶ 44). Plaintiffs have alleged that FDEP has implemented its statutory authority in a fashion that results in dangerous levels of GHG emissions that are causing and contributing to Plaintiffs' constitutional injuries. (*Id.* ¶¶ 44, 45, 149). Plaintiffs have clearly articulated FDEP's illegal conduct in controlling and managing the state's Fossil Fuel Energy System, through power plant and fossil fuel infrastructure permitting and in authorizing others to emit dangerous levels of GHG emissions through its air quality program. (*Id.* ¶¶ 149, 169). Plaintiffs also allege that the state lands under FDEP's care and control are being impaired by climate change and as such, FDEP has abdicated its duty to protect and prevent impairment to such resources. (*Id.* ¶¶ 63, 66, 97-101, 119, 122, 131, 137). As an agency of the state, FDEP has a constitutional obligation to implement its authority in compliance with the Florida Constitution, which encompasses the inalienable rights of Plaintiffs

protected by the Florida Constitution and the public trust doctrine. Art. I, §§ 2; Art. X, §§ 11, 16, Fla. Const. Plaintiffs have adequately alleged that FDEP has breached its constitutional obligations. (Compl. ¶¶ 152-166, 168-179).

Both agencies have caused and authorized an energy system, and its components, in the state of Florida that is contributing to climate change and harming the Plaintiffs. (*Id.* ¶ 149(o), (p), (q), (r)). In carrying out their statutory responsibilities with respect to the state's energy system, these agencies can only implement their delegated authority in a manner compliant with the Florida Constitution: "If executive officers regard a statutory provision prescribing their duties as violative of the Constitution, it is their sworn duty to give effect to the Constitution." *State ex rel. Atl. Coast Line R. Co. v. State Bd. of Equalizers*, 94 So. 681, 691 (1922).

"[W]hen a plaintiff challenges the constitutionality of a rule of law, it is the state official designated to enforce that rule who is the proper defendant, even when that party has made no attempt to enforce the rule." *Walker v. President of the Senate*, 658 So. 2d 1200, 1200 (Fla. 5th DCA 1995) (Department of Corrections was proper party in declaratory action challenging operations of the agency); *Haridopolos*, 65 So. 3d at 578-79. Commissioner Nikki Fried and Secretary Noah Valenstein, as the state officials responsible for implementing their statutory authority with respect to Florida's energy policy in compliance with the constitutional provisions at issue, are properly named. *See Atwater*, 64 So. 3d at 703.

4. The Florida Public Service Commission ("PSC") is a proper party.

The PSC's mission is "making sure that Florida's consumers receive some of their most essential services" – including energy and water – "in a safe, reasonable, and reliable manner." In doing so, the PSC exercises regulatory authority over utilities in one or more of three key areas: rate base/economic regulation; competitive market oversight; and monitoring of safety, reliability,

and service."[39] (Compl. ¶ 50). The PSC is also charged with examining future electricity costs related to climate change and is specifically authorized to adopt rules to administer and implement Florida's renewable energy policy, §§ 366.06, 366.92(5), Fla. Stat., reviewing and approval of all Electric Utility 10-year Site Plans, the most recent versions of which project Florida energy generation and consumption through 2026, § 186.801, Fla. Stat., reviewing standard offer energy-resource-procurement contracts and to ensure they fulfill the energy policies of the state. § 366.91, Fla. Stat., and regulating and supervising public utility rates and services in a manner that "promote[s] the convenience and welfare of the public." § 366.05(1), Fla. Stat. The PSC has the responsibility to ensure the development of "adequate and reliable energy grids," which involves the determination of need for new electric power plants and transmission lines, and natural gas pipelines – and is the "exclusive forum" for determination of any such need. §§ 403.501-518, 403.519, 403.537, 503.9422, 366.05(7), Fla. Stat. The PSC has a mandatory duty to develop "plans and implement programs for increasing energy efficiency and conservation and demand-side renewable energy systems," §§ 366.81, 366.82(2)-(3), Fla. Stat., and is the exclusive forum for the determination of need for an electrical power plant in Florida. § 403.519, Fla Stat. Even though the Florida legislature has recognized "that it is in the public interest to promote the development of renewable energy resources in this state," § 366.91(1), Fla. Stat., and has authorized the Commission to consider and encourage renewable energy, §§ 366.04(1), 366.81, 366.92, Fla. Stat., only 3.1% of Florida's overall electric generation capacity comes from renewable sources, well below the national average of 15%. (Compl. ¶ 149(e)). The PSC is a proper Defendant to the extent that the PSC has an interest in, and authority over, the creation and use of Florida's energy system that is causing Plaintiffs' harm. (*Id.* ¶ 149(t)).

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[39] "The PSC's Role," www.psc.state.fl.us (last visited Feb. 26, 2019).

5. <u>The Board of Trustees of Internal Improvement Trust Fund ("BOT") is a proper party</u>.

"[P]ursuant to the Bulkhead Act of 1957, title to all sovereign submerged land was vested in the [BOT]." *5F, LLC v. Dresing*, 142 So. 3d 936, 945 (Fla 2nd DCA 2014). Under § 253.04(1), Fla. Stat., BOT is vested and charged with the conservation and protection of all lands owned by the State, and the BOT is required to take actions "necessary to the full protection and conservation of [state] lands," in compliance with its constitutional responsibilities. Art. II, § 7; Art. X, § 11, Fla. Const.; § 253.04, Fla. Stat. The BOT is charged with conserving and protecting energy resources that exist on state lands. § 270.11, Fla. Stat. The BOT, as the state agency that holds title to state trust lands in trust for the people, is a proper party because they have abridged their constitutional duties to protect sovereign state lands under their care and control from the harms of climate change. *State, Bd. of Trustees of Internal Imp. Tr. Fund v. Lost Tree Village Corp.*, 600 So. 2d 1240, 1243 (Fla. 1st DCA 1992) ("The Board is entrusted with the express constitutional duty to protect the public's interest in sovereign submerged lands."); *State Bd. of Trustees v. Day Cruise Ass'n, Inc.*, 794 So. 2d 696, 698 (Fla. 1st DCA 2001) ("As the state agency holding title to and charged with managing the state's sovereignty lands, the Trustees have broad responsibilities under the public trust doctrine."); *5F, LLC*, 142 So. 3d at 945 (quoting *Mariner Props. Dev., Inc. v. Bd. of Trustees of the Internal Improvement Trust Fund*, 743 So. 2d 1121, 1122 (Fla. 1st DCA 1999)) (BOT's authority is "'rigidly circumscribed'" by the common law public trust doctrine).

XI. THE DEFENDANTS' REMAINING TECHNICAL OR PROCEDURAL CHALLENGES ARE WITHOUT MERIT.

Any remaining challenges the Defendants assert should be rejected. The Amended Complaint involves complicated issues, and the Plaintiffs have made a good faith effort to set forth their claims clearly and specifically. Furthermore, "it would be improper to dismiss a Complaint

for failure to state a cause of action solely because it failed to state the claim in short and plain statements . . . ." *Barrett v. City of Margate*, 743 So. 2d 1160, 1163 (Fla. 4th DCA 1999). Otherwise put, a pleading may be lengthy, and yet be a succinct statement of the ultimate facts relied on for relief. *Hannum v. Hannum Co*., 184 So. 765, 765 (1938).

Defendants claim they are "left guessing" as to which allegations support the claims against them. State Mtn. at 20-22. As is clear on the face of the Amended Complaint, Plaintiffs bring *all* four claims against *all* Defendants. The reason Plaintiffs take this approach is simple: "GHG pollution is a function of a systemic problem caused by the Fossil Fuel Energy System, which the named Defendants control and perpetuate through their authorities, actions and inactions." (Compl. ¶ 52). "Through its Fossil Fuel Energy System, *Defendants are collectively responsible* for authorizing, promoting, and permitting fossil fuel production, consumption, transportation, and combustion in the State of Florida, as well as deforestation and soil degradation, and thus allowing CO_2 and GHG pollution to rise to dangerous levels and cause substantial harm to Plaintiffs." (*Id.* ¶ 53) (emphasis added). "The affirmative aggregate acts and omissions of Defendants, jointly and severally, have violated, and continue to violate Plaintiffs' inalienable rights protected by the Florida Constitution and by the common law." (*Id.*). There is no need to guess why these youth Plaintiffs have brought Defendants into court to vindicate their constitutional rights. As recently articulated by United Nations Secretary-General Antonio Guterres on climate change:

> Climate change is the defining issue of our time – and we are at a defining moment. We face a direct existential threat. Climate change is moving faster than we are – and its speed has provoked a sonic boom "SOS" across our world. If we do not change course by 2020, we risk missing the point where we can avoid runaway climate change, with disastrous consequences for people and all the natural systems that sustain us.[40]

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[40] *Addressing Climate Change, Secretary-General Say's World's Fate is in our Hands, Requires Rising to Challenge Before its Too Late* (September 10, 2018), https://www.un.org/press/en/2018/sgsm19205.doc.htm.

(Compl. ¶ 55). Defendants are named in this case because instead of protecting the fundamental rights of these Young Floridians, they are using their significant authority to deprive them of their fundamental rights to life, liberty, property, and pursuit of happiness.

XII. SUMMARY OF RELEVANT FACTUAL ALLEGATIONS

This case is not just about the law. The Plaintiffs' Amended Complaint, which has alleged standing, jurisdiction, and violations of their rights and resulting harm, is sufficient to withstand a motion to dismiss because it presents real harms happening to Florida's children today to which their own government is contributing. Climate change, caused by the buildup of carbon dioxide and other GHGs in the atmosphere, is causing increasing temperatures and rising seas, threatening the habitability and existence of parts of the state of Florida, as well as the safety and wellbeing of the Plaintiffs. (Compl. ¶ 3). The Plaintiffs in this case do not allege general environmental grievances, but monumental, present and ongoing harms to their ability to pursue life, liberty, and property in the state of Florida due to climate change impacts, which Defendants are knowingly causing and contributing to through their affirmative conduct in effecting a fossil fuel-based energy system. (*Id.* ¶ 149).

Plaintiff Delaney's family home on No Name Key is a mere 3 feet above sea level and suffered tremendous damage when Hurricane Irma struck in the summer of 2017. (*Id.* ¶¶ 13, 16). Since Delaney was a young child, Florida's state government has known that tropical storms and hurricanes like Irma, would become more intense due to warming ocean temperatures and that reductions in GHG pollution were needed to avoid the worst impacts. (*Id.* ¶¶ 64, 73, 78, 120). Within her lifetime, Delaney faces a total loss of her home and community on No Name Key. (*Id.* ¶ 78). Plaintiff Levi lives on a southeastern Florida barrier island and with the sea level rise and flooding that has already occurred, he has had to evacuate his home and taken efforts to protect his

home from water damage. (*Id.* ¶ 18). Levi's home and community will be lost to sea level rise within his lifetime. (*Id.* ¶ 17). These and other Plaintiffs have been forced from their homes and schools because of the hurricanes and flooding that are becoming worse because of climate change. (*Id.* ¶¶ 18, 22, 26, 29, 34, 38). Plaintiff Levi's school was permanently closed because of hurricane damage. (*Id.* ¶ 18). Plaintiffs Luxha and Andres, who live in Miami, are living with the ramifications of frequent flooding in their neighborhood. (*Id.* ¶¶ 27, 29, 31, 32). The access road to Plaintiff Oscar's home in Alachua County was completely cut off because of flooding from Hurricane Irma and the storm destroyed his dock, which was his primary means of access to Lake Newnan. (*Id.* ¶ 39).

Plaintiff Delaney, a student at the University of Miami, spends a lot of her recreational and educational time under the sea and has witnessed coral bleaching in new areas almost every time she goes swimming or snorkeling in Florida waters. (*Id.* ¶ 15). Plaintiff Levi spends a tremendous amount of time on the beaches in his backyard, but in recent years he has been unable to access some beaches because of erosion, flooding, Sargassum seaweed invasion and red tide, which are being made worse and more common because of increasing ocean temperatures. (*Id.* ¶¶ 19-20). Other Plaintiffs' access to Florida beaches and waters has been limited because of climate change impacts, like Plaintiff Oliver, who has been unable to access Bayou Grande in the Pensacola area. (*Id.* ¶ 24-25, 35).

Plaintiff Isaac, who has grown up and lives on his family farm, has experienced how the increased temperatures and changing rainfall patterns are making it more difficult to raise the food and animals that his family grow and depend upon. (*Id.* ¶ 23). A heat wave that occurred in 2015 killed off all but one of Isaac's baby goats that were born on his farm. (*Id.* ¶ 23). Plaintiff Valholly, whose father is a member of the Panther Clan of the Seminole Tribe of Florida, grew up on the

Big Cypress Indian Reservation and has witnessed the devastating effects of climate change on the Everglades, which holds extreme cultural significance to people like Valholly and her family. (*Id.* ¶¶ 35-36). The Everglades is irreparably changing before her eyes and will cease to exist as sea levels continue to rise, the cultural damage of which would be devastating. (*Id.* ¶¶ 141-143). All of the above-described physical impacts to Plaintiffs are a result of climate change, being made worse by the Defendants' conduct. (*Id.* ¶¶ 3, 5, 56-92); (*Id.* ¶ 54 (Trump Administration's Fourth National Climate Assessment "'draws a connection between the warming atmosphere and the resulting changes that affect Americans' lives, communities, and livelihoods, now and in the future.'").

The mental health of many Plaintiffs is being jeopardized because they are living with and understand the gravity and urgency of climate change – yet see their government taking actions in pursuing an energy system based on fossil fuels, long known to cause them harm. (*Id.* ¶¶ 16, 20, 21, 22, 29, 31). The Plaintiffs allege they are being denied access to parks and beaches they regularly visit and enjoy, because of sea level rise, increased flooding, seaweed invasion, bacterial outbreaks, and jellyfish swarms, all of which are largely caused by ever-worsening conditions due to climate change. (*Id.* ¶¶ 14, 19, 23, 24, 26, 27, 31, 34, 35, 37, 39). These injuries are severe, real, immediate, continuing; are caused by climate change; and must be accepted as true for purposes of this motion.

The Amended Complaint alleges that the Defendants' unconstitutional actions that are causing and contributing to Plaintiffs' injuries include the creation, operation, and promotion of a fossil fuel-based energy system that is causing dangerous climate change. (*Id.* n. 1 (defining Florida's Fossil Fuel Energy System)). All Defendants play a role in creating and implementing Florida's energy system, making them proper defendants for the constitutional claims raised

herein. (*Id.* ¶¶ 42-53). Defendants, in addition to being responsible for direct GHG emissions through operation of its own facilities and operations, also authorizes third parties to discharge GHG emissions, by and through its control of the energy system. (*Id.* ¶ 149). The cumulative effect of these GHG emissions is destabilization of the Earth's energy balance, causing dangerous climate change that is injuring the Plaintiffs. (*Id.* ¶ 54-92). The Florida governmental actors responsible can and should be accountable for the share of GHG emissions the State affirmatively authorizes and that contributes to these young Plaintiffs' harm. (*See, e.g., id.* ¶ 149(d) (Florida is third in the nation in both total energy consumption and electric energy consumption, and second in electric energy production; it generates more electricity from petroleum than any state in the nation, and it generates the second highest amount of CO_2 emissions of any state from electricity)). It is not any individual act alone, within Florida's energy system, that causes Plaintiffs' injuries. It is the collective and systemic implementation of Florida's energy policies, plans, projects, and decisions that have foreseeably contributed to – and continue to contribute to – dangerous levels of GHG emissions, which in turn have foreseeably harmed – and continue to harm – the Plaintiffs. All individual energy consumption occurs within, and as a function of, the energy system sanctioned, maintained and promoted by the Defendants.

The Trump Administration has recently reported that climate change impacts such as extreme weather events, sea level rise and ocean acidification "are being acutely felt now" in the state of Florida. (*Id.* ¶ 93). Because of the sea level rise that has already happened and is accelerating, (*id.* ¶ 129), Florida faces an imminent loss of 9% of Florida's landmass, including a projected loss of 37,000 acres of cropland. (*Id.* ¶ 97). The Trump Administration projects that "[i]n the future . . . flooding is projected to become more serious, disruptive, and costly as its frequency, depth, and inland extent grow with time." (*Id.* ¶ 133). Coral reefs in the Florida Keys

have experienced severe coral bleaching during five of the last six years. (*Id.* ¶¶ 105-106). Because of the ocean warming that has already occurred, the Trump Administration has found it "likely that many of the remaining coral reefs in the Southeast region will be lost in the coming decades" and that "coral is projected to disappear even faster." (*Id.* ¶¶ 107, 109). Warmer temperatures and droughts are harming Florida's forests, with some forests beginning to disappear entirely. (*Id.* ¶ 122). The economic consequences of Florida's climate change impacts are difficult to fathom, with property values declining by $15 billion within the next 12 years and losses of tourist revenue reaching billions of dollars. (*Id.* ¶¶ 113, 115, 116, 118, 126, 128, 134). The Trump Administration has found that "[c]limate-related risks will continue to grow without additional action. Decisions made today determine risk exposure for current and future generations and will either broaden or limit options to reduce the negative consequences of climate change." (*Id.* ¶ 146). These Youth need this Court's protection.

CONCLUSION

The Court's review is limited to the four corners of the Plaintiffs' Amended Complaint. The Plaintiffs have adequately pleaded the Court's jurisdiction over the cause and over the parties, and they have asserted important justiciable issues of great constitutional importance. The Court should order all pending motions to dismiss denied, require all Defendants to promptly respond to the Amended Complaint on the merits, and set the matter for trial without delay.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of March, 2019, a true and correct copy of the foregoing has been electronically filed with the Clerk of the Court utilizing the Florida Courts e-Filing Portal system, and served electronically upon all counsel of record, including the following:

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