UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Fort Lauderdale Division

No. 0:23-cv-61890-SMITH/REID

STATE OF FLORIDA,

Plaintiff,

v.

PETE BUTTIGIEG, et al.,

Defendants.

DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT, WITH COMBINED MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Regulations

INTRODUCTION

Section 13(c) of the Urban Mass Transportation Act of 1964, codified at 49 U.S.C. § 5333(b), sets forth the following condition, which must be satisfied before a public transportation system may receive federal mass transit funding assistance: "the Secretary of Labor" must certify that the transit agency protects its employees' interests "under arrangements the Secretary of Labor concludes are fair and equitable." Those "arrangements" must ensure, as relevant here, "the continuation of collective bargaining rights." 49 U.S.C. § 5333(b)(2)(B).

The Eleventh Circuit has long held that Section 13(c) "recognizes the Secretary's competence to determine what arrangements are 'fair and equitable.'" *Loc. Div. 732, ATU v. MARTA*, 667 F.2d 1327, 1343 (11th Cir. 1982). There should be no meaningful dispute, therefore, that Section 13(c) limits the extent to which a State may restrict public employees' collective bargaining rights without jeopardizing its transit agencies' eligibility for federal funds. And for the many decades that Florida transit agencies have requested and received federal funds subject to Section 13(c), Plaintiff the State of Florida had no such dispute with either Section 13(c) or the Secretary of Labor's role under it.

But Plaintiff now contends that Section 13(c) itself exceeds Congress's authority under the Spending Clause (Count I), and further that the Department of Labor ("DOL") violated the Administrative Procedure Act ("APA") when it determined that recent changes to Florida's collective bargaining laws jeopardized Florida transit agencies' continued eligibility for federal funds under Section 13(c) (Count II). Plaintiff's claims fail, both at the threshold and on the merits.

At the outset, Plaintiff names several Department of Transportation ("DOT") Defendants, even at the same time it admits that "the Department of Labor administers the conditions relevant here." ECF No. 1 ("Compl.") ¶ 28. That concession is reason alone to dismiss the claims against the DOT Defendants for lack of standing and failure to state a claim. The claims against the DOL Defendants should also be dismissed because Plaintiff fails to show that it has suffered cognizable

injury sufficient to support standing. No transit agency in Florida has lost federal funding, and the transit agencies not only willingly exercised a waiver provision in the State's collective bargaining laws to seek relief from the collective bargaining restrictions at issue, but affirmatively proposed that course of action to DOL as an acceptable way to resolve the issue.

Plaintiff's claims fare no better even if the Court reaches the merits. First, the Spending Clause claim rests entirely on caselaw having no relevant application here. Under the Spending Clause line of cases, when a statute imposes obligations on a State in exchange for the State's receipt of federal funds, it must do so unambiguously so that the state recipient can spend the funds in an informed manner. But Section 13(c) does not require a transit agency to determine the meaning of "fair and equitable" arrangements and conform its use of transit funds accordingly; rather, it is the Secretary of Labor that construes the statute in evaluating whether a transit agency is eligible in the first place for federal funds. If the transit agency receives funds, it has already been deemed to have "fair and equitable" arrangements. That is perfectly permissible.

Second, the APA claim fails because Plaintiff's sole argument—that DOL has acted contrary to law unless Section 13(c) unambiguously means what DOL says it means—rests on the same faulty premise as the constitutional argument: that this case is governed by Spending Clause decisions requiring clarity in the conditions under which a State expends federal funds. Because those decisions are inapposite here, Plaintiff is incorrect that DOL was required to construe Section 13(c) in the narrowest possible manner. Moreover, the Eleventh Circuit has "recognize[d] the Secretary's competence to determine what arrangements are 'fair and equitable,'" *Loc. Div. 732*, 667 F.2d at 1343, and DOL's interpretation is well within its authority.

The Court should deny Plaintiff's motion and grant Defendants' motion to dismiss or, in the alternative, enter summary judgment for Defendants.

STATUTORY AND REGULATORY BACKGROUND

I. The Urban Mass Transportation Act of 1964 and Section 13(c)

In the mid-20th century, an increase in the use of automobiles led to substantial declines in the use of mass transit, imperiling the financial stability of mass transit systems. *See* H.R. Rep. No. 88-204, 1964 U.S.C.C.A.N. 2569, 2572. Congress enacted the Urban Mass Transportation Act ("UMTA") to provide States and municipalities with federal grants to help "public and private transit systems … acqui[re], construct[], and improve[] … mass transportation facilities and equipment." *Id.* at 2580. But Congress was concerned about the Act's "possible adverse effects" on the "interests of those engaged in transit employment," including that "public acquisition of existing private companies" could affect "the established status and bargaining rights of employees." *Id.* at 2583.

Thus, to ensure that "Federal funds … not be used in a manner that is directly or indirectly detrimental to legitimate interests and rights of such workers" and that collective bargaining rights were not "eliminate[d] or curtail[ed]," 1964 U.S.C.C.A.N. at 2583-84, Congress enacted Section 13(c) of the UMTA. Section 13(c) conditions transit systems' eligibility for federal grants on the Secretary of Labor's certification that "the interests of employees affected by the assistance" are "protected under arrangements" that "the Secretary of Labor concludes are fair and equitable." 49 U.S.C. § 5333(b) (codifying Section 13(c) as amended). The statute defines "arrangements" to

> include provisions that may be necessary for—
>
> (A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;
>
> (B) the continuation of collective bargaining rights;
>
> (C) the protection of individual employees against a worsening of their positions related to employment;
>
> (D) assurances of employment to employees of acquired public transportation systems;

> (E) assurances of priority of reemployment of employees whose employment is ended or who are laid off; and
>
> (F) paid training or retraining programs.

Id. § 5333(b)(2).

When a transit system applies for federal funding subject to this provision, the Secretary of DOT refers the application to DOL for Section 13(c) certification. 29 C.F.R. § 215.2. If the application involves employees represented by a union, DOL provides a copy of the application to that union, which can file objections. *Id.* § 215.3(b), (d). The parties—the union and the transit agency—are then directed to discuss and negotiate over those objections, and DOL may provide mediation assistance where appropriate. *Id.* § 215.3(d)(6). The parties may agree to waive such negotiations if DOL develops new terms and conditions that meet the requirements of Section 13(c) and that are acceptable to the parties. *Id.* In that instance, DOL will then issue a final certification decision. *Id.* § 215.3(d)(7). If, on the other hand, the parties are not in agreement, then DOL will establish a briefing schedule on the disputed issues and issue a final decision resolving those issues and determining whether to grant or deny certification. *Id.* § 215.3(e).

II. Florida Senate Bill ("SB") 256

Numerous public transit agencies and regional authorities in Florida receive federal funding governed by Section 13(c) and are parties to collective bargaining agreements with public sector unions that represent mass transit employees.

In 2023, Florida enacted certain changes to its laws regulating collective bargaining.[1] As relevant here, first, Section 3 of SB 256 provides that a union "may not have its dues and uniform assessments deducted and collected by the employer from the salaries of" union members. Fla. Stat. § 447.303(1) (2023). Second, Section 4 of SB 256 requires that, in connection with each registration

[1] The law, with changes marked up, is available on the Florida Senate's website at https://perma.cc/544Z-S4KA, and is attached here as DEX 1 for convenience.

renewal application, a union must also petition Florida's Public Employees Relations Commission ("PERC") "for recertification" as the collective bargaining representative if "less than 60 percent of the employees eligible for representation … pa[id] dues during its last registration period." *Id.* § 447.305(6). If a union does not comply with the requirements of Section 4, or if PERC finds that a union's re-registration application "is inaccurate or does not comply with this section," then PERC "shall revoke the registration and certification" of the union. *Id.* § 447.305(6), (7).[2]

SB 256 additionally provides for a waiver of the above requirements in the context of a Section 13(c) funding application:

> Upon a petition by a public employer after it has been notified by the Department of Labor that the public employer's protective arrangement covering mass transit employees does not meet the requirements of 49 U.S.C. s. 5333(b) and would jeopardize the employer's continued eligibility to receive Federal Transit Administration funding, [PERC] may waive, to the extent necessary for the public employer to comply with the requirements of 49 U.S.C. s. 5333(b), any of the following for an employee organization that has been certified as a bargaining agent to represent mass transit employees:
>
> (a) The prohibition on dues and assessment deductions provided in s. 447.303(1).
>
> (b) The requirement to petition [PERC] for recertification.
>
> (c) The revocation of certification provided in s. 447.305(6) and (7).

Id. § 447.207(12).

III. Administrative Proceedings

As set forth more fully in Defendants' accompanying Statement of Material Facts ("DSMF"), *see* ECF No. 18, beginning in early 2023, various public transit agencies and regional authorities within Florida (collectively, "transit agencies") submitted new applications for federal funding subject to Section 13(c). DSMF ¶¶ 1-2. DOT referred those applications to DOL, which provided the unions

[2] Although Plaintiff identifies a third legislative change, requiring a signed membership authorization form from union members, *see* Compl. ¶ 43; ECF. No. 6 ("Pl.'s Br.") at 5, that change was not at issue in the underlying proceedings and did not affect DOL's Section 13(c) certification decisions, *see, e.g.*, ECF No. 18-1 ("AR") at 634-36—and Plaintiff does not argue otherwise. *See generally* Compl.; Pl.'s Br.

representing the affected transit employees with the opportunity to object to certification. *Id.* ¶¶ 3-4. The unions objected on two grounds: that Sections 3 and 4 of SB 256 preclude transit agencies from (1) preserving rights, privileges, and benefits under existing collective bargaining agreements, as required by 49 U.S.C. § 5333(b)(2)(A); and (2) ensuring the continuation of collective bargaining rights, as required by § 5333(b)(2)(B). *Id.* ¶¶ 5-7. Only the second objection, that Sections 3 and 4 of SB 256 fail to ensure the continuation of collective bargaining rights, is relevant in this action. *See* Pl.'s Mot. at 7 ("For purposes of this suit, Florida does not contest that [] waivers were necessary to comply with § 5333(b)(2)(A)."); Compl. ¶ 52 (similar).

DOL directed the unions and transit agencies to negotiate a mutually acceptable resolution, and the parties proposed that, if necessary, the transit agencies would seek a waiver from PERC under Fla. Stat. § 447.207(12). DSMF ¶¶ 10-11, 13-14. The parties waived briefing, and no transit agency submitted briefing on whether SB 256 is inconsistent with Section 13(c) certification or whether a waiver was necessary. *Id.* ¶ 11-12. Instead, the parties requested that DOL issue a determination that application of SB 256 to the transit agencies, without a waiver, would jeopardize the transit agencies' continued eligibility for funds under Section 13(c). *Id.* ¶ 13.

In light of the parties' agreement to resolve the issue in this manner, DOL provided the requested determination, and the transit agencies petitioned PERC for a waiver. *Id.* ¶¶ 15-16. PERC ultimately granted the waivers, although it questioned DOL's interpretation of Section 13(c) as it pertains to the provision requiring continuation of collective bargaining rights, and it set the waivers to expire upon a final decision by DOL or a court that SB 256 does not violate the protections imposed by Section 13(c). *Id.* ¶ 25. Having obtained the waivers, the transit agencies requested that DOL issue its final certifications for pending grant applications. *Id.* ¶ 26. DOL issued those final certifications, and the transit agencies received their requested funds. *Id.* ¶ 27.

IV. This Action

Plaintiff, the State of Florida, initiated this action on behalf of Florida transit agencies, and named as Defendants the United States; the Department of Labor and two Labor officials in their official capacities ("DOL Defendants"); and the Department of Transportation, its component agency the Federal Transit Administration, and three Transportation officials in their official capacities ("DOT Defendants"). Compl. ¶¶ 13-21. Count 1 of the Complaint alleges that Section 13(c) of the UMTA (49 U.S.C. § 5333(b)) is an ambiguous funding condition in violation of the Spending Clause, and thus facially unconstitutional. *Id.* ¶¶ 60-70.[3] Count 2 alleges that DOL's latest application of Section 13(c) to Florida transit agencies, after passage of SB 256, violates the APA. *Id.* ¶¶ 71-80. Plaintiff initially moved for a preliminary injunction. ECF No. 6. On the parties' request, the Court converted that motion into a motion for summary judgment. ECF No. 11.

ARGUMENT

I. The Court Should Dismiss the Claims for Lack of Jurisdiction and Failure to State a Claim

A. Legal Standards

The federal courts are courts of limited jurisdiction, confined by the Constitution to adjudicating only "cases" and "controversies." U.S. Const. Art. III, § 2; *see Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Standing is "an essential and unchanging part of the case-or-controversy requirement of Article III," and "[t]he party invoking federal jurisdiction bears the burden of establishing" the elements of standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). A court

[3] Although Plaintiff's prayer for relief references facial and as-applied relief, the allegations in Count I plead only a facial challenge to Section 13(c), and Plaintiff's subsequent filings have similarly focused on its facial challenge. *See, e.g.*, Compl. ¶ 70 ("Eleventh Circuit law requires finding § 5333(b) unconstitutional."); Pl.'s Br. at 11 (arguing that Section 13(c) should be "condemn[ed] … to the constitutional trash heap"); ECF No. 14, Pl.'s Opp. to Intervention Mot., at 2, 8 ("Florida asserts that a federal statute is unconstitutional …."). Nevertheless, insofar as Plaintiff also intends to assert an as-applied challenge to DOL's actions with respect to particular requests for Section 13(c) certification, Defendants address both challenges in this brief.

must dismiss any claims over which it lacks jurisdiction. Fed. R. Civ. P. 12(b)(1), (h)(3).

Claims are also subject to dismissal under Federal Rule of Civil Procedure 12(b)(6) when the complaint fails to allege facts that state a plausible claim for relief. The plaintiff bears the burden of "plead[ing] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

B. Plaintiff Does Not Challenge Any Conduct by the DOT Defendants

The claims against the DOT Defendants should be dismissed because Plaintiff does not challenge any action by them, let alone one that has caused Plaintiff injury and could give rise to a plausible claim for relief. *See Lujan*, 504 U.S. at 560 (standing requires a concrete injury in fact that is "fairly traceable to the challenged action of the defendant"); *Iqbal*, 556 U.S. at 678 (pleading standards require factual allegations of a defendant's misconduct). Plaintiff's Complaint and claims focus exclusively on 49 U.S.C. § 5333(b)—which provides for actions by "the Secretary of Labor"—and "the Department of Labor's application of § 5333(b)." Compl. ¶¶ 8-9; *id.* ¶¶ 10-11, 28-29, 49-59; *see also* Pl.'s Br. at 9 ("Florida challenges the Department of Labor's actions on two grounds."). The DOT Defendants take no part in those actions, and Plaintiff has not argued otherwise. *See* Pl.'s Br. In fact, Plaintiff admits that "the Department of Labor administers the conditions relevant here." Compl. ¶ 28. Thus, Plaintiff has not alleged and cannot show that the DOT Defendants have caused it any injury, dooming these claims as a matter of both jurisdiction and failure to state a claim. *See, e.g.*, *Bassett v. Gov. of Florida*, 749 F. App'x 955, 956 (11th Cir. 2019) (no standing against governor when he "had no role" in the challenged actions); *Pirela v. Miranda*, 2016 WL 6433061, at *1 (S.D. Fla. Oct. 31, 2016) (plaintiff failed to state a claim when he "named over fifteen Defendants but fail[ed] to identify with particularity how each Defendant caused him injury").

C. Plaintiff Lacks Standing Against the DOL Defendants

The Court should also dismiss the claims against the DOL Defendants because Plaintiff has

not identified any cognizable injury in fact caused by the challenged application (by DOL) of Section 13(c). *See Lujan*, 504 U.S. at 560; *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2206 (2021) (stressing that standing requires "physical, monetary, or cognizable intangible harm traditionally recognized as providing a basis for a lawsuit in American courts"). Plaintiff alleges its injury as either "losing hundreds of millions in federal funding or abandoning the will of the people." Pl.'s Br. at 16; *see also* Compl. ¶¶ 58-59. But no transit agencies within Florida have lost federal funding; the transit agencies received their requested transit grants after DOL provided its Section 13(c) certification. *See* DSMF ¶ 27. As for the "will of the people," SB 256 includes both changes to Florida's collective bargaining laws and an express waiver provision regarding those very changes. Fla. Stat. § 447.207(12). That waiver provision is just as much a reflection of the "will of the people" as any other provision of the Florida Code. Indeed, Florida's transit agencies willingly sought a waiver under that provision—even proposing that course of action to DOL as an acceptable way to resolve the issue and declining to submit briefing contesting the need for a waiver—and Florida's PERC granted those waivers rather than seeking to challenge DOL's interpretation. *See* DSMF ¶¶ 11-14, 16, 20, 25. Under these circumstances, Plaintiff's claimed injury in "abandoning the will of the people" fails to show "cognizable intangible harm traditionally recognized as providing a basis for a lawsuit in American courts." *TransUnion*, 141 S. Ct. at 2206.

II. In the Alternative, the Court Should Enter Summary Judgment for Defendants

A. Legal Standards

"The court shall grant summary judgment" when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Summary judgment "is particularly appropriate in cases in which the court is asked to review … a decision of a federal administrative agency" because "the court considers the record that was before the agency." *Fla. Fruit & Vegetable Ass'n v. Brock*, 771 F.2d 1455, 1459 (11th Cir. 1985).

B. Plaintiff Fails to Establish That Section 13(c) Exceeds Congress's Authority Under the Spending Clause (Count I)

Plaintiff's attempt to invalidate Section 13(c) as an unconstitutionally ambiguous funding condition (Pl.'s Br. at 9-14) fails as a matter of law. At the outset, Plaintiff falls far short of the "especially demanding standard" with respect to its facial challenge. *Am. Fed. of State, Cnty. & Mun. Emps. Council 79 v. Scott*, 717 F.3d 851, 863 (11th Cir. 2013); *see also Benning v. Georgia*, 391 F.3d 1299, 1303 (11th Cir. 2004) (upholding constitutionality of RLUIPA against facial challenge alleging Spending Clause violation).[4] More fundamentally, however, whether framed as facial or as-applied, Plaintiff's challenge erroneously relies on *Pennhurst State School & Hosp. v. Halderman*, 451 U.S. 1 (1981) and the Eleventh Circuit's most recent *Pennhurst* decision (*West Virginia v. U.S. Dep't of the Treasury*, 59 F.4th 1124 (11th Cir. 2023)), which have no relevant application here because Section 13(c) does not require any transit agency to interpret any condition in the statute in expending federal funds it has received.

The question in *Pennhurst* and *West Virginia* was whether a State would have known, when it accepted federal funds, that those funds were subject to an enforceable condition the basic content of which was ascertainable from the statute. In *Pennhurst*, the question was whether the "bill of rights" provision of a federal statute actually stated an enforceable condition at all, or whether it was merely "hortatory." 451 U.S. at 15-27. Construing the statute, the Court found it "clear that the provision[]" was "intended to be hortatory, not mandatory," *id.* at 24, and thus foreclosed the plaintiffs' effort to enforce it against the State defendant. In *West Virginia*, likewise, the question was whether the plaintiff

[4] *See also Gruver v. La. Bd. of Supervisors*, 959 F.3d 178, 184 (5th Cir. 2020) (rejecting Spending Clause claim when the challenged provision "has been on the books for over thirty years, all the while LSU has continued to accept federal funding"); *Miss. Comm'n on Envtl. Quality v. E.P.A.*, 790 F.3d 138, 179 (D.C. Cir. 2015) ("[T]he fact that the State has long accepted billions of dollars notwithstanding the challenged conditions may be an additional relevant factor in the contract-like analysis the Court has in mind for assessing the constitutionality of Spending Clause legislation.").

States could "ascertain" from a federal statute the condition that it placed on their expenditure of federal grant funds. 59 F.4th at 1140. In other cases, the Supreme Court has similarly construed federal funding statutes so as not to subject States to a condition of which the statute did not clearly place them on notice. *See, e.g.*, *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 219 (2022) (construing federal anti-discrimination statute not to authorize an award of emotional distress damages); *Arlington Cent. Sch. Bd. of Educ. v. Murphy*, 548 U.S. 291, 293-94 (2006) (construing fee-shifting provision of the Individuals with Disabilities Education Act not to apply to expert fees).

As an initial matter, Plaintiff misreads these cases—including *West Virginia*, on which it chiefly relies—when it argues that statutory funding conditions must be completely unambiguous in order to fall within Congress's power under the Spending Clause. To the contrary, the Eleventh Circuit expressly did "not question an agency's authority to fill in gaps that may exist in a spending condition." *West Virginia*, 59 F.4th at 1148. For good reason: the Supreme Court has long established that, once Congress makes clear that a condition on the use of federal funds is mandatory and enforceable, it may leave the particulars of implementing the condition to the agency charged with administering the spending program. In *Bennett v. Kentucky Dep't of Educ.*, 470 U.S. 656 (1985), for example, the Court held that the Department of Education should evaluate a State's compliance with conditions on federal funds by looking to "the statutory provisions, regulations, and other guidelines provided by the Department at that time." *Id.* at 670. It thus left no doubt that Congress may provide for Spending Clause legislation, like other legislation, to be implemented by an agency. The Eleventh Circuit cited that holding in *West Virginia*. 59 F.4th at 1148. *Bennett* also rejected the notion that ambiguities in a State's compliance with a funding condition "should invariably be resolved against the Federal Government." 470 U.S. at 669; *see also Florida v. Dep't of Health & Human Servs.*, 19 F.4th 1271, 1276, 1288 & n.1 (11th Cir. 2021) (finding Florida unlikely to succeed on constitutional challenge to COVID vaccination requirement, when "Congress unambiguously conditioned the payment of funds … to

facilities that comply with 'health and safety standards' set by the Secretary").

But more fundamentally, this line of authority simply has no application here because Section 13(c) does not require a State or local governmental authority to interpret and understand a statutory condition attached to its receipt of federal funds. That is the prospect animating *Pennhurst*'s concern for ensuring that a State be able "to ascertain what is expected of it" when it chooses to accept federal funds. 451 U.S. at 17. Section 13(c) does not require a transit agency to determine for itself how to interpret "fair and equitable" and "continuation of collective bargaining rights" in expending any federal funds received. Rather, Section 13(c) provides that before a transit agency can ever receive federal funds, "the Secretary of Labor" must determine whether the arrangements in place for that transit agency "are fair and equitable" and "continu[e] … collective bargaining rights." 49 U.S.C. § 5333(b)(1), (2) (emphasis added). If the Secretary concludes that the arrangements satisfy Section 13(c), then DOL provides its certification, the transit agency receives its requested funds, and the transit agency faces no task in construing the statute to understand how it must spend such funds. If the Secretary concludes that the arrangements do not satisfy Section 13(c), then DOL does not provide its certification, and the transit agency does not receive federal funds and again faces no task in interpreting the statute to inform its expenditure of funds it did not receive. *Cf. Stenger v. Bi-State Dev. Agency*, 808 F.3d 734, 738 (8th Cir. 2015) ("The statutory language [of Section 13(c)] … focuses on steps the Secretary of Labor must take to ensure that employee protections are in place, but does not create any specific rights itself.").

This is not, as Plaintiff argues citing *West Virginia*, impermissibly "delegat[ing] to the Secretary of Labor the power to provide the constitutionally required clarity." Pl.'s Br. at 11. *West Virginia* involved a statutory condition that restricted what States could do with the funds they had received, which the agency implemented through a rule clarifying when a State fails to comply with the statutory restriction. 59 F.4th at 1132-33. In that context, while the Eleventh Circuit recognized that Congress

can delegate authority for agencies to "fill in gaps that may exist in a spending condition," it held that an agency "cannot provide the content that makes a funding condition ascertainable." *Id.* at 1146-48. But Section 13(c) is nothing like the statutory condition in *West Virginia*, as discussed above, because it does not require a transit agency to construe the meaning of the statute in expending federal funds. And *West Virginia* does not aid Plaintiff in any event. Whereas the court in *West Virginia* was not "confident that Congress intended the agency to answer the questions the Act left open," including because it believed the statute said "nothing about the executive agency's power" to answer those questions, *id.* at 1146-47, here Congress could not have been clearer in stating that "the Secretary of Labor concludes" whether a transit agency's arrangements "are fair and equitable." 49 U.S.C. § 5333(b)(1) (emphasis added).

In short, Section 13(c) "requir[es] the approval" of a transit agency's employee protective arrangements "by the Secretary of Labor as a condition of grant assistance." *Loc. Div. 732, ATU v. MARTA*, 667 F.2d 1327, 1343 (11th Cir. 1982). Once that condition of the Secretary's certification has been met, the transit agency receives its requested funds and does not need to determine what constitutes "fair and equitable" arrangements in expending the funds. That does not raise any *Pennhurst* issue, and the Court should enter summary judgment for Defendants on Count I.

C. Plaintiff Fails to Establish an APA Violation (Count II)

Plaintiff's claim that DOL's interpretation is contrary to law in violation of the APA also fails on its merits.[5] As an initial matter, Plaintiff's only argument (Pl.'s Br. at 14-15) finds no support in the relevant authority. Moreover, as Plaintiff acknowledges (*id.* at 14), Section 13(c) is "susceptible to

[5] The Complaint additionally alleged—albeit in cursory fashion—that "[DOL's] decision is arbitrary and capricious." Compl. ¶ 80. In its motion, however, Plaintiff declined to advance any arbitrary and capricious arguments. Pl.'s Br. at 14-15. And Plaintiff asked the Court to convert that same motion into one for summary judgment. ECF No. 8 at 2; *see also* ECF No. 6 at 2 n.1 (requesting consolidation with a final hearing on the merits). "[G]rounds alleged in the complaint but not relied upon in summary judgment are deemed abandoned," and Plaintiff cannot belatedly resuscitate any arbitrary and capricious claim. *Resolution Trust Corp. v. Dunmar Corp.*, 43 F.3d 587, 599 (11th Cir. 1995).

multiple interpretations," and DOL's interpretation is a reasonable interpretation that is well within the agency's broad statutory discretion to make.

i. DOL's Interpretation Is Not Contrary to Law

Plaintiff's sole argument in support of its APA claim is that, even if Section 13(c) is not invalid on its face, DOL's interpretation of it is contrary to law because the *Pennhurst* principle would require DOL to "show that § 5333(b) unambiguously conflicts with SB 256." Pl.'s Br. at 14-15. But the *Pennhurst* principle is inapplicable here, for all the reasons discussed *supra* at 10-13. Indeed, Plaintiff's argument relies exclusively on *Adams v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 815-16 (11th Cir. 2022), which involved a claim that a school board violated Title IX's prohibition on sex discrimination by construing "sex" to mean "biological sex." That claim implicated *Pennhurst* precisely because the statute required the State to interpret a statutory condition attached to its receipt of federal funds—the condition not to discriminate "on the basis of sex." *Id.* at 812. By contrast, as explained above, Section 13(c) does no such thing: it requires the Secretary of Labor to construe the statute before a transit agency receives any funds. If the transit agency receives such funds, the statutory condition has already been satisfied and the transit agency plays no role in construing the statute to determine whether or not its employee protective arrangements are sufficiently "fair and equitable." Thus, *Pennhurst* and *Adams* do not apply, and DOL has the same latitude in construing Section 13(c) as any agency would ordinarily have in construing a statutory provision that Congress charged it with implementing.

ii. DOL's Interpretation Is Reasonable

Given that Plaintiff cannot prevail on the lone argument it advanced in support of its APA claim, the Court should enter summary judgment in favor of Defendants for this reason alone. But Defendants also are entitled to summary judgment because DOL's interpretation is a reasonable one under the broad statutory discretion afforded by Section 13(c).

The plain terms of Section 13(c) make clear the broad scope of DOL's discretionary authority in determining whether a transit agency's arrangements conflict, or are consistent, with Section 13(c) certification. *See Ga. Ass'n of Latino Elected Officials, Inc. v. Gwinnett Cnty. Bd. of Registration & Elections*, 36 F.4th 1100, 1120 (11th Cir. 2022) ("We start, as always, with the language of the statute itself."). The statute requires arrangements that "the Secretary of Labor concludes are fair and equitable." 49 U.S.C. § 5333(b)(1). Such arrangements shall include provisions that "may be necessary" for, among other things, the "continuation of collective bargaining rights." *Id.* § 5333(b)(2)(B). These permissive terms "clearly involve[] an element of judgment or choice and therefore involve[] the exercise of discretion." *Powers v. United States*, 996 F.2d 1121, 1125 (11th Cir. 1993); *see also Florida*, 19 F.4th at 1286, 1288 (statute empowering agency to set "health and safety standards 'as the Secretary may find necessary'" provides "a broad grant of authority"); *Conn. Dep't of Children & Youth Servs. v. Dep't of Health & Human Servs.*, 9 F.3d 981, 983, 985-86 (D.C. Cir. 1993) (statute requiring programs to be implemented to the "satisfaction of the Secretary" affords an "extraordinary grant of discretion," subject to reversal only for an "egregious claim"). The Eleventh Circuit has even held that Section 13(c) "recognizes the Secretary's competence to determine what arrangements are 'fair and equitable' and 'necessary.'" *Loc. Div. 732*, 667 F.2d at 1343 (further noting that other courts have held "it would be inappropriate for a court to substitute its judgment for the Secretary's"). And Plaintiff itself acknowledges that "Congress included this language because it wished to authorize 'the exercise of judgment' by the Secretary." Pl.'s Br. at 11; *id.* at 10-11 (citing cases acknowledging the discretion afforded to DOL); *id.* at 14 (recognizing that "continuation" of "collective bargaining rights" is "susceptible to multiple interpretations").

In exercising that discretionary judgment here, DOL reasonably concluded that SB 256 (excluding its waiver provision) jeopardizes Section 13(c) certification for Florida transit agencies because it interferes with "the continuation of collective bargaining rights" that make a transit agency's

arrangements "fair and equitable." 49 U.S.C. § 5333(b)(2)(B); *see also Cuozzo Speed Techs. v. Lee*, 579 U.S. 261, 276-77 (2016) (when a statute is ambiguous, an agency has "leeway" to exercise its discretion "reasonabl[y] in light of the text, nature, and purpose of the statute"). Section 13(c), DOL explained, "ensure[s] that the process of representation and collective bargaining continues and are not at the mercy of changing state laws while federal funds … are in place." AR 636; *see also ATU v. Donovan*, 767 F.2d 939, 949 (D.C. Cir. 1985) (collective bargaining refers to the process, "universally understood" in 1964 and since, of "good faith negotiations … over wages, hours, and other terms and conditions of employment"). In other words, while "substantive provisions of collective bargaining agreements may change, … section 13(c) requires that the changes be brought about through collective bargaining, not by state fiat." AR 636 (quoting *Donovan*, 767 F.2d at 957).

As noted above, DOL reasonably determined that SB 256 is problematic in two respects. With respect to Section 3, which prohibits dues deduction from union members' salaries, Fla. Stat. § 447.303(1), DOL explained that this provision interferes with the continuation of collective bargaining rights because it "removes" from the bargaining table "a critical mandatory subject of collective bargaining: dues check-off." AR 635; *see also, e.g.*, *Trib. Publ'g Co. v. NLRB*, 564 F.3d 1330, 1331, 1333 (D.C. Cir. 2009) ("dues checkoff"—referring to "payroll deduction of union dues"—is "a mandatory subject for collective bargaining"); *Rockingham Mach.-Lunex Co. v. NLRB*, 665 F.2d 303, 305 (8th Cir. 1981) (similar); *NLRB v. J.P. Stevens & Co.*, 538 F.2d 1152, 1165 (5th Cir. 1976) (similar); *Valley Health Sys. v. Valley Hosp. Med. Ctr.*, 372 NLRB No. 33, at *3 (2022) (dues check-off is a mandatory subject for collective bargaining, even in a right-to-work state like Nevada).[6] DOL

[6] Although the National Labor Relations Act does not apply to state or local governments, DOL reasonably looked to federal labor law to construe the meaning of "collective bargaining rights." The D.C. Circuit has long held, in interpreting the "continuation of collective bargaining rights" provision, that "Congress used the phrase generically, incorporating within the statute the commonly understood meaning of 'collective bargaining,'" and it "inten[ded] to measure state labor laws against the standards of collective bargaining established by federal labor policy." *Donovan*, 767 F.2d at 948-49.

reasonably concluded that such a restriction on the collective bargaining process—one that removes from the bargaining table altogether a critical subject that, under labor law, employees have the right to bargain over—impermissibly interfered with the "continuation" of those employees' "collective bargaining rights." *See, e.g.*, *Donovan*, 767 F.2d at 952 (state statute prohibiting bargaining over mandatory subjects of collective bargaining conflicted with "the continuation of collective bargaining rights" under Section 13(c)); *id.* at 957 (MacKinnon, J., concurring) (while "open to some reasonable definition," collective bargaining "implicitly includes a 'good faith' requirement" for the bargaining process); *ATU v. DOL*, 647 F. Supp. 3d 875, 906-07 (E.D. Cal. 2022) (even while rejecting DOL's position as to whether a different state statute precludes certification, holding that "continuation of collective bargaining rights" can reasonably mean that collective bargaining rights "will not diminish to the point that the bargaining relationship substantially clashes with federal policy on collective bargaining"), *appeal pending*, Nos. 23-15503, 23-15617 (9th Cir. 2023).

DOL additionally found that Section 4 of SB 256 impermissibly interferes with the continuation of transit employees' collective bargaining rights. Section 4 requires a union to petition for recertification if fewer than 60% of eligible employees paid dues, and further provides that Florida's administrative body for labor and employment disputes "shall revoke" a union's registration and certification if it finds that the union's re-registration application "is inaccurate." Fla. Stat. § 447.305(6)-(7). But, as DOL explained, a union that has already been certified is entitled to a "presumption of [] continuing majority status" (meaning a presumption that the union represents a majority of the bargaining unit employees)—which status requires the employer to engage in collective bargaining with that union. AR 636; *see also, e.g.*, *Bickerstaff Clay Prod. Co. v. NLRB*, 871 F.2d 980, 984 (11th Cir. 1989) (a certified union "is entitled to a continuing presumption of majority status"). This presumption is designed "to achieve stability in collective-bargaining relationships" and "remov[e] any temptation on the part of the employer to avoid good-faith bargaining." *Auciello Iron Works, Inc. v.*

NLRB, 517 U.S. 781, 786-87 (1996).

Although an employer may rebut the presumption (and thus refuse to bargain) in case-by-case circumstances that evince lack of majority support, the mere fact that eligible employees have not paid union dues, or that a union's re-registration application contains an inaccuracy, is not one such circumstance. "[T]here is a clear distinction between union membership and majority support for collective bargaining representatives." *NLRB v. Wallkill Valley Gen. Hops.*, 866 F.2d 632, 637 (3d Cir. 1989); *see also, e.g.*, *Bickerstaff*, 871 F.2d at 989 (member withdrawals of dues authorizations, "standing alone, could not justify withdrawal of [union] recognition"); *Retired Persons Pharm. v. NLRB*, 519 F.2d 486, 491 (2d Cir. 1975) (the issue "[i]s not how many employees belonged to the union or paid dues but rather whether a majority desired union representation for purposes of collective bargaining"). And this distinction is particularly significant in right-to-work states (such as Florida), where individuals may not be required as a condition of employment to join or pay dues to a union. In such states, "employees may reap the benefits of union representation without the necessity of being union members," such that "[t]here is no necessary correlation between support for the union as bargaining representative, on the one hand, and the payment of dues or membership in the union, on the other." *NLRB v. N. Am. Mfg. Co.*, 563 F.2d 894, 897 & n.2 (8th Cir. 1977); *see also Terrell Mach. Co. v. NLRB*, 427 F.2d 1088, 1090 (4th Cir. 1970) (similar). Accordingly, DOL reasonably concluded that Section 4 of SB 256 impermissibly interferes with the continuation of collective bargaining rights because it "expands the means and methods" by which transit employees lose their designated bargaining representative "without regard to the existence of any evidence that the union has lost its majority status," AR 636, substantially clashing with the "standards of collective bargaining established by federal labor policy," *Donovan*, 767 F.2d at 948. *See also* AR 636 ("The protections of [Section 13(c)] … ensure that the process of representation and collective bargaining continues.").

Plaintiff's argument that SB 256 imposes "only de minimis burdens on employees," and even

"arguably enhances employee collective bargaining rights" (Pl.'s Br. at 15), cannot be seriously countenanced. For one, no transit agency made such an argument to DOL during the administrative proceedings, and an agency does not violate the APA "by failing to agree with an argument that the petitioner never actually made." *Eat More Produce, LLC v. Sec'y, Dep't of Homeland Sec.*, 2014 WL 1664814, at *3 (M.D. Fla. Apr. 25, 2014); *see also Aerial Banners, Inc. v. FAA*, 547 F.3d 1257, 1260 (11th Cir. 2008) ("We will not consider arguments not raised before the [agency]."). Furthermore, for the reasons explained above, Sections 3 and 4 of SB 256 substantially clash with transit employees' rights to be represented by a designated bargaining agent and to bargain collectively through that representative on critical mandatory subjects. Plaintiff's say-so that this interference is no more than "de minimis," without elaboration or support, cannot disturb DOL's conclusion. Nor can Plaintiff's contention that Sections 3 and 4 of SB 256 advance employees' rights, and the case it relies on—where a union refused to honor an employee's revocation of his dues check-off authorization—has no relevance here. If anything, its only relevance is to reiterate (fully consistent with DOL's reasoning above) that unions "are authorized to bargain for arrangements for a [dues] checkoff by the employer." *See Felter v. S. Pac. Co.*, 359 U.S. 326, 328, 333 (1959). Indeed, when an employer asserts "benevolence as its workers' champion against their certified union," the Supreme Court has expressed "suspicion" and held that "[t]here is nothing unreasonable in giving a short leash to the employer as vindicator of its employees' organizational freedom." *Auciello*, 517 U.S. at 790.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court deny Plaintiff's motion and grant Defendants' motion to dismiss or, in the alternative, for summary judgment.[7]

[7] Because the parties requested consolidation of Plaintiff's preliminary injunction motion with the merits, and the Court has converted Plaintiff's motion into one for summary judgment, ECF Nos. 8 & 11, Defendants do not respond to Plaintiff's arguments regarding irreparable harm and balance of the equities. If the Court desires such a response, Defendants will provide one.

Dated: December 15, 2023

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

JULIE STRAUS HARRIS
Assistant Branch Director

/s/ Catherine M. Yang
CATHERINE M. YANG (Bar #A5503131)
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, DC 20005
Tel: (202) 514-4336
Email: Catherine.M.Yang@usdoj.gov
Counsel for Defendants

DEX 1

ENROLLED
2023 Legislature **CS for CS for SB 256, 2nd Engrossed**

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An act relating to employee organizations representing public employees; amending s. 447.301, F.S.; requiring a public employee who desires to be a member of an employee organization to sign a membership authorization form beginning on a specified date; requiring that such form include a specified statement; authorizing a public employee to revoke membership in an employee organization at any time of the year; requiring an employee organization to revoke a public employee's membership upon receipt of his or her written request for revocation; prohibiting an employee organization from limiting an employee's right to revoke membership to certain dates; prohibiting a revocation form from requiring a reason for the public employee's decision to revoke his or her membership; requiring employee organizations to retain such authorization forms and requests for revocation for inspection by the Public Employees Relations Commission; providing applicability with respect to certain employee organizations; authorizing the commission to adopt rules; amending s. 447.207, F.S.; authorizing the commission to waive certain provisions for specified employee organizations under certain circumstances; amending s. 447.303, F.S.; prohibiting certain employee organizations from having dues and uniform assessments deducted and collected by the employer from certain salaries; authorizing public employees to pay dues and uniform assessments directly to the employee organization; authorizing certain employee organizations to have dues and uniform assessments deducted and collected by the employer from certain salaries; amending s. 447.305, F.S.; revising requirements for applications for initial registrations and renewals of registration of employee organizations; providing procedures for incomplete applications; requiring certain employee organizations to petition the commission for recertification as bargaining agents; authorizing a public employer or bargaining unit employee to challenge an employee organization's application for renewal of registration; requiring the commission or one of its designated agents to review the application; requiring the commission to revoke the registration and certification of the employee organization in certain

circumstances; authorizing the commission to conduct investigations for specified purposes; authorizing the commission to revoke or deny an employee organization's registration or certification under certain circumstances; specifying that certain decisions issued by the commission are reviewable final agency actions; providing applicability with respect to certain employee organizations; requiring certain employee organizations to provide their members with an annual audited financial report; requiring employee organizations to notify their members annually of all costs of membership; amending s. 447.509, F.S.; revising prohibitions for employee organizations and certain persons and entities relating to employee organizations; amending s. 1012.2315, F.S.; removing duplicative provisions; reenacting ss. 110.114(3) and 447.507(6)(a), F.S., relating to employee wage deductions and violation of strike prohibition and penalties, respectively, to incorporate the amendment made to s. 447.303, F.S., in references thereto; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 447.301, Florida Statutes, is amended to read:

447.301 Public employees' rights; organization and representation.—

(1)(a) Public employees shall have the right to form, join, and participate in, or to refrain from forming, joining, or participating in, any employee organization of their own choosing.

(b)1. Beginning July 1, 2023, a public employee who desires to be a member of an employee organization must sign and date a membership authorization form, as prescribed by the commission, with the bargaining agent.

2. The membership authorization form must identify the name of the bargaining agent, the name of the employee, the class code and class title of the employee, the name of the public employer and employing agency, if applicable, the amount of the initiation fee and of the monthly dues which the member must pay, and the name and total amount of salary, allowances, and other direct or indirect disbursements, including reimbursements, paid to each of the five highest compensated officers and employees of the employee organization disclosed under s. 447.305(2)(c).

3. The membership authorization form must contain the following statement in 14-point type:

The State of Florida is a right-to-work state. Membership or non-membership in a labor union is not required as a condition of employment, and union membership and payment of union dues and assessments are voluntary. Each person has the right to join and

pay dues to a labor union or to refrain from joining and paying dues to a labor union. No employee may be discriminated against in any manner for joining and financially supporting a labor union or for refusing to join or financially support a labor union.

4. A public employee may revoke membership in the employee organization at any time of the year. Upon receipt of the employee's written revocation of membership, the employee organization must revoke a public employee's membership. The employee organization may not limit an employee's right to revoke membership to certain dates. If a public employee must complete a form to revoke membership in the employee organization, the form may not require a reason for the public employee's decision to revoke his or her membership.

5. An employee organization must retain for inspection by the commission such membership authorization forms and any revocations.

6. This paragraph does not apply to members of an employee organization that has been certified as a bargaining agent to represent law enforcement officers, correctional officers, or correctional probation officers as those terms are defined in s. 943.10(1), (2), or (3), respectively, or firefighters as defined in s. 633.102.

7. The commission may adopt rules to implement this paragraph.

Section 2. Subsection (12) is added to section 447.207, Florida Statutes, to read:

447.207 Commission; powers and duties.—

(12) Upon a petition by a public employer after it has been notified by the Department of Labor that the public employer's protective arrangement covering mass transit employees does not meet the requirements of 49 U.S.C. s. 5333(b) and would jeopardize the employer's continued eligibility to receive Federal Transit Administration funding, the commission may waive, to the extent necessary for the public employer to comply with the requirements of 49 U.S.C. s. 5333(b), any of the following for an employee organization that has been certified as a bargaining agent to represent mass transit employees:

(a) The prohibition on dues and assessment deductions provided in s. 447.303(1).

(b) The requirement to petition the commission for recertification.

(c) The revocation of certification provided in s. 447.305(6) and (7).

Section 3. Effective July 1, 2023, section 447.303, Florida Statutes, is amended to read:

447.303 Dues; deduction and collection.—

(1) Except as authorized in subsection (2) or subject to a waiver granted pursuant to s. 447.207(12)(a), an employee organization that has been certified as a bargaining agent may not have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees in the unit. A public employee may pay dues and uniform assessments

directly to the employee organization that has been certified as the bargaining agent.

(2)(a) An ~~Any~~ employee organization that ~~which~~ has been certified as a bargaining agent to represent law enforcement officers, correctional officers, or correctional probation officers as those terms are defined in s. 943.10(1), (2), or (3), respectively, or firefighters as defined in s. 633.102 has ~~shall have~~ the right to have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction and collection of said dues and uniform assessments. However, such authorization is revocable at the employee's request upon 30 days' written notice to the employer and employee organization. Said deductions shall commence upon the bargaining agent's written request to the employer.

(b) Reasonable costs to the employer of said deductions is ~~shall be~~ a proper subject of collective bargaining.

(c) Such right to deduction, unless revoked under ~~pursuant to~~ s. 447.507, is ~~shall be~~ in force for so long as the employee organization remains the certified bargaining agent for the employees in the unit.

(3) The public employer is expressly prohibited from any involvement in the collection of fines, penalties, or special assessments.

Section 4. Effective October 1, 2023, section 447.305, Florida Statutes, is amended to read:

447.305 Registration of employee organization.—

(1) Every employee organization seeking to become a certified bargaining agent for public employees shall register with the commission pursuant to the procedures set forth in s. 120.60 prior to requesting recognition by a public employer for purposes of collective bargaining and prior to submitting a petition to the commission requesting certification as an exclusive bargaining agent. Further, if such employee organization is not registered, it may not participate in a representation hearing, participate in a representation election, or be certified as an exclusive bargaining agent. The application for registration required by this section shall be under oath and in such form as the commission may prescribe and shall include:

(a) The name and address of the organization and of any parent organization or organization with which it is affiliated.

(b) The names and addresses of the principal officers and all representatives of the organization.

(c) The amount of the initiation fee and of the monthly dues which members must pay.

(d) The current annual audited financial statement of the organization.

(e) The name of its business agent, if any; if different from the business agent, the name of its local agent for service of process; and the addresses where such person or persons can be reached.

(f) A pledge, in a form prescribed by the commission, that the employee organization will conform to the laws of the state

and that it will accept members without regard to age, race, sex, religion, or national origin.

(g) A copy of the current constitution and bylaws of the employee organization.

(h) A copy of the current constitution and bylaws of the state and national groups with which the employee organization is affiliated or associated. In lieu of this provision, and upon adoption of a rule by the commission, a state or national affiliate or parent organization of any registering labor organization may annually submit a copy of its current constitution and bylaws.

(2) A registration granted to an employee organization pursuant to the provisions of this section shall run for 1 year from the date of issuance. A registration shall be renewed annually by filing application for renewal under oath with the commission, which application shall reflect any changes in the information provided to the commission in conjunction with the employee organization's preceding application for registration or previous renewal, whichever is applicable. Each application for renewal of registration shall include a current annual audited financial statement, certified by an independent certified public accountant licensed under chapter 473 and ~~report,~~ signed by the employee organization's ~~its~~ president and treasurer or corresponding principal officers, containing the following information in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year and in such categories as the commission may prescribe:

(a) Assets and liabilities at the beginning and end of the fiscal year;

(b) Receipts of any kind and the sources thereof;

(c) Salary, allowances, and other direct or indirect disbursements, including reimbursed expenses, to each officer and also to each employee who, during such fiscal year, received more than $10,000 in the aggregate from such employee organization and any other employee organization affiliated with it or with which it is affiliated or which is affiliated with the same national or international employee organization;

(d) Direct and indirect loans made to any officer, employee, or member which aggregated more than $250 during the fiscal year, together with a statement of the purpose, security, if any, and arrangements for repayment; and

(e) Direct and indirect loans to any business enterprise, together with a statement of the purpose, security, if any, and arrangements for repayment.

(3) In addition to subsection (2), an employee organization that has been certified as the bargaining agent for public employees must include for each such certified bargaining unit the following information and documentation as of the 30th day immediately preceding the date of renewal in its application for any renewal of registration on or after October 1, 2023:

(a) The number of employees in the bargaining unit who are eligible for representation by the employee organization.

(b) The number of employees in the bargaining unit who have

submitted signed membership authorization forms without a subsequent revocation of such membership.

(c) The number of employees in the bargaining unit who paid dues to the employee organization.

(d) The number of employees in the bargaining unit who did not pay dues to the employee organization.

(e) Documentation provided by an independent certified public accountant retained by the employee organization which verifies the information provided in paragraphs (a)-(d).

(4) The employee organization must provide a copy of its application for renewal of registration relating to a public employer's employees to the public employer on the same day the application is submitted to the commission.

(5) An application for renewal of registration is incomplete and is not eligible for consideration by the commission if it does not include all of the information and documentation required in subsection (3). The commission shall notify the employee organization if the application is incomplete. An incomplete application must be dismissed if the required information and documentation are not provided within 10 days after the employee organization receives such notice.

(6) Notwithstanding the provisions of this chapter relating to collective bargaining, an employee organization that had less than 60 percent of the employees eligible for representation in the bargaining unit pay dues during its last registration period must petition the commission pursuant to s. 447.307(2) and (3) for recertification as the exclusive representative of all employees in the bargaining unit within 1 month after the date on which the employee organization applies for renewal of registration pursuant to subsection (2). The certification of an employee organization that does not comply with this section is revoked.

(7) The public employer or a bargaining unit employee may challenge an employee organization's application for renewal of registration if the public employer or bargaining unit employee believes that the application is inaccurate. The commission or one of its designated agents shall review the application to determine its accuracy and compliance with this section. If the commission finds that the application is inaccurate or does not comply with this section, the commission shall revoke the registration and certification of the employee organization.

(8) The commission may conduct an investigation to confirm the validity of any information submitted pursuant to this section. The commission may revoke or deny an employee organization's registration or certification if it finds that the employee organization:

(a) Failed to cooperate with the investigation conducted pursuant to this subsection; or

(b) Intentionally misrepresented the information it submitted pursuant to subsection (3).

A decision issued by the commission pursuant to this subsection is a final agency action that is reviewable pursuant to s. 447.504.

(9) Subsections (3)-(8) do not apply to an employee organization that has been certified as the bargaining agent to represent law enforcement officers, correctional officers, or correctional probation officers as those terms are defined in s. 943.10(1), (2), or (3), respectively, or firefighters as defined in s. 633.102.

(10)~~(3)~~ A registration fee shall accompany each application filed with the commission. The amount charged for an application for registration or renewal of registration shall not exceed $15. All such money collected by the commission shall be deposited in the General Revenue Fund.

(11)~~(4)~~ Every employee organization shall keep accurate accounts of its income and expenses, which accounts shall be open for inspection at all reasonable times by any member of the organization or by the commission. In addition, each employee organization that has been certified as a bargaining agent must provide to its members an annual audited financial report that includes a detailed breakdown of revenues and expenditures, and an accounting of membership dues and assessments. The employee organization must notify its members annually of all costs of membership.

Section 5. Paragraphs (d) and (e) are added to subsection (1) of section 447.509, Florida Statutes, to read:

447.509 Other unlawful acts.—

(1) Employee organizations, their members, agents, or representatives, or any persons acting on their behalf are hereby prohibited from:

(d) Offering anything of value to a public officer as defined in s. 112.313(1) which the public officer is prohibited from accepting under s. 112.313(2).

(e) Offering any compensation, payment, or thing of value to a public officer as defined in s. 112.313(1) which the public officer is prohibited from accepting under s. 112.313(4).

Section 6. Effective October 1, 2023, paragraph (c) of subsection (4) of section 1012.2315, Florida Statutes, is amended to read:

1012.2315 Assignment of teachers.—

(4) COLLECTIVE BARGAINING.—

~~(c)1. In addition to the provisions under s. 447.305(2), an employee organization that has been certified as the bargaining agent for a unit of instructional personnel as defined in s. 1012.01(2) must include for each such certified bargaining unit the following information in its application for renewal of registration:~~

~~a. The number of employees in the bargaining unit who are eligible for representation by the employee organization.~~

~~b. The number of employees who are represented by the employee organization, specifying the number of members who pay dues and the number of members who do not pay dues.~~

~~2. Notwithstanding the provisions of chapter 447 relating to collective bargaining, an employee organization whose dues paying membership is less than 50 percent of the employees eligible for representation in the unit, as identified in subparagraph 1., must petition the Public Employees Relations~~

~~Commission pursuant to s. 447.307(2) and (3) for recertification as the exclusive representative of all employees in the unit within 1 month after the date on which the organization applies for renewal of registration pursuant to s. 447.305(2). The certification of an employee organization that does not comply with this paragraph is revoked.~~

Section 7. Effective July 1, 2023, for the purpose of incorporating the amendment made by this act to section 447.303, Florida Statutes, in a reference thereto, subsection (3) of section 110.114, Florida Statutes, is reenacted to read:

110.114 Employee wage deductions.—

(3) Notwithstanding the provisions of subsections (1) and (2), the deduction of an employee's membership dues deductions as defined in s. 447.203(15) for an employee organization as defined in s. 447.203(11) shall be authorized or permitted only for an organization that has been certified as the exclusive bargaining agent pursuant to chapter 447 for a unit of state employees in which the employee is included. Such deductions shall be subject to the provisions of s. 447.303.

Section 8. Effective July 1, 2023, for the purpose of incorporating the amendment made by this act to section 447.303, Florida Statutes, in a reference thereto, paragraph (a) of subsection (6) of section 447.507, Florida Statutes, is reenacted to read:

447.507 Violation of strike prohibition; penalties.—

(6)(a) If the commission determines that an employee organization has violated s. 447.505, it may:

1. Issue cease and desist orders as necessary to ensure compliance with its order.

2. Suspend or revoke the certification of the employee organization as the bargaining agent of such employee unit.

3. Revoke the right of dues deduction and collection previously granted to said employee organization pursuant to s. 447.303.

4. Fine the organization up to $20,000 for each calendar day of such violation or determine the approximate cost to the public due to each calendar day of the strike and fine the organization an amount equal to such cost, notwithstanding the fact that the fine may exceed $20,000 for each such calendar day. The fines so collected shall immediately accrue to the public employer and shall be used by him or her to replace those services denied the public as a result of the strike. In determining the amount of damages, if any, to be awarded to the public employer, the commission shall take into consideration any action or inaction by the public employer or its agents that provoked, or tended to provoke, the strike by the public employees.

Section 9. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.