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.

_____/

JOINT MOTION TO INTERVENE AS DEFENDANTS BY AMALGAMATED TRANSIT UNION INTERNATIONAL AND TRANSPORT WORKERS UNION OF AMERICA

Amalgamated Transit Union International ("ATU") and Transport Workers Union of America ("TWU"), collectively "Proposed Intervenors," jointly move to intervene as defendants as a matter of right under FRCP 24(a) or, in the alternative, permissively under FRCP 24(b). They do so with the express understanding and commitment to this Court that if intervention is granted, ATU and TWU will make joint submissions on all motions or other matters coming before the Court. This commitment includes, in particular, a commitment to file joint opening and reply memoranda of law in support of a joint motion to dismiss that ATU and TWU plan to file if granted intervenor-as-defendants status. And of course, so as not to cause any delay in these proceedings, ATU and TWU further commit to filing these joint memoranda on the same dispositive motions briefing schedule proposed by the existing parties in their Joint Motion filed on October 19, 2023. See ECF No. 8.

Because ATU and TWU intend to file a joint motion to dismiss if granted intervenor-as-defendants status, they also request that the Court excuse both unions from the Rule 24(c)

requirement that an intervention motion "be accompanied by a pleading that sets out the claim or defense for which intervention is sought." Along similar lines and presumably for similar reasons, the existing parties' above-referenced Joint Motion explicitly requests that the Court enter an order providing that Defendants do not need to file an answer to Florida's Complaint.

BACKGROUND

A. The Proposed Intervenors and the Federal Statutory Rights and Interests They Seek To Protect Through Their Intervention As Defendants In This Case

ATU is an international labor union which, together with its affiliated local unions, represents over 3,000 employees of state and local transit bodies in Florida, including the approximately 950 transit employees employed by the transit system operated by Broward County. See Ex. 1, Declaration of Daniel B. Smith ("Smith Decl.") ¶ 2. And TWU is a national union that, together with its affiliated local unions, represents nearly 3,000 employees of state and local transit bodies in Florida, including the over 2,500 transit employees employed by the transit system operated by Miami-Dade County. See Ex. 2, Declaration of Willie Brown ("Brown Decl.") ¶¶ 2-3.

The public transit employees that the Proposed Intervenors represent are afforded *specific legal rights and protections* under a provision in a federal Spending Clause statute that is commonly referred to in the caselaw as § 13(c), and that is codified as amended at 49 U.S.C. § 5333(b). Section 13(c), aptly titled "**Employee protective arrangements**," begins by stating that "as a condition of financial [mass transit] assistance" to state and local transit bodies, "the interests of [public transit] employees affected by the assistance *shall be protected* under arrangements the Secretary of Labor concludes are fair and equitable." 49 U.S.C. § 5333(b) (emphasis added). Section 13(c) goes on to state that "[t]he agreement granting the assistance . . . shall specify the arrangements," and that those arrangements "*shall include* provisions that

may be necessary for" protecting six separately-enumerated-by-subsection employee rights and interests. Id. (emphasis added). As relevant here, the protected employee rights and interests enumerated in § 13(c) include "the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise," § 13(c)(1), and "the continuation of collective bargaining rights," § 13(c)(2).

On its face, § 13(c) contemplates that, in the normal course, state and local transit bodies applying for federal grant money and the public transit unions (including ATU and TWU) that represent those transit bodies' employees for collective bargaining purposes will negotiate and consummate what are known as "§ 13(c) agreements" affording covered transit employees the protections to which they are entitled under § 13(c) as a condition for federal funding. See generally Jackson Transit Auth. v. Local Div. 1285, ATU, 457 U.S. 15, 18-29 (1982). It also contemplates that if the bargaining parties succeed in consummating a § 13(c) agreement satisfying each of the statute's employee-protective conditions, the Defendant United States Department of Labor ("DOL") will issue a certification of compliance enabling the sought-after federal grant money to flow. Id. at 18-19. On occasions that have proven rare, however, a state legislature with plenary authority over the conduct of the public transit bodies operating within its borders will enact a statute that, in the affected transit unions' view, denies those public transit bodies applying for federal grant money the ability to provide the affected transit employees the full measure of protections to which they are entitled under § 13(c). In such a case, the affected unions have the right to object to the issuance of a DOL certification of compliance with § 13(c)'s employee-protective conditions, and if the DOL finds those objections sufficient, it will *deny* the grant application *unless* the state agrees to take and does take remedial measures to adequately address the unions' objections.

ATU was instrumental in the legislative efforts that led to the inclusion of § 13(c) in the Urban Mass Transportation Act of 1964 ("UMTA"). See Smith Decl. ¶ 3.a. Since UMTA's enactment in 1964, ATU has participated in tens of thousands of grant applications in which compliance with § 13(c) was an issue. See id. ¶ 3.c. And in the 1980s, ATU and/or its affiliated locals were a party to each of the seminal appellate court cases involving the proper interpretation and application of § 13(c). See id. ¶ 3.d. Most recently and relevantly for present purposes, ATU and nine of its affiliated locals *were granted intervention as of right as defendants* on a cross-complaint brought against the DOL in the California § 13(c) case that yielded a district court decision and judgment relied on heavily by Florida in support of its claims in this lawsuit—a decision and judgment that both the ATU intervenor-defendants and the DOL defendants in that California case are currently challenging on appeal to the Ninth Circuit. See id. ¶ 3.e. ATU also has been actively involved in the numerous administrative proceedings before the DOL giving rise to this lawsuit. See id. ¶ 4.

TWU has participated in legislative activities regarding the scope and application of § 13(c), including with regard to proposals to amend that provision, proposals to expand its application, and Congressional hearings concerning application of those labor protections. TWU has also engaged with DOL with regard to issuance of regulations and development of administrative guidelines applying the protections. Additionally, TWU reviews communications from DOL regarding proposed terms for certification of federal transit grants to entities (including Florida entities) that seek to receive such grants. When TWU believes that a grant applicant is not, or cannot be, party to an arrangement that satisfies the requirements of § 13(c), TWU objects to DOL's certification that the grant applicant is eligible to receive the requested

grant, see Brown Decl. ¶¶ 7-8, as TWU has done here with regard to two Florida grant applicants including Miami-Dade County, see id. ¶¶ 9-11.

B. The Instant Dispute

This lawsuit arises out of Florida's enactment of SB 256 and the actions and positions subsequently taken by the DOL and the Florida Public Employee Relations Commission ("PERC") based on that enactment.

As outlined in Florida's Complaint and its pending motion for injunctive relief (to be treated as a dispositive motion under the existing parties' proposed dispositive motions briefing schedule), SB 256 makes several changes to the collective bargaining process governing the relationship between public sector employees and public sector unions in Florida, with certain stated exemptions not relevant here. These changes include: (i) a prohibition on dues check-off provisions in collective bargaining agreements, under which public sector employers can agree to deduct union dues and uniform assessments from the salaries of the public sector employees covered by those agreements upon each individual employee's express written authorization of such deductions; and (ii) an annual renewal-and-recertification application process under which a public transit union may have its certifications revoked for an inaccuracy in its application and, moreover, must petition PERC for a "recertification" of its right to continue as the lawful exclusive bargaining representative of the employees it currently represents if the union is unable to show that a supermajority (60%) of those employees are dues-paying members of the union.

As also outlined in Florida's Complaint and pending injunction motion, the instant matter came to a head based on events occurring in August and September of this year.

First, on August 4, the DOL wrote a letter to a Florida grant applicant (Broward County) reaffirming and "further explain[ing]" its previously-stated public position that the foregoing changes in the collective bargaining process diminished the collective bargaining rights of union-

represented transit employees, thereby precluding the DOL from certifying compliance with § 13(c)(2)'s continuation-of-collective-bargaining-rights condition on the provision of federal assistance to Florida grant applicants absent a waiver of those rights-diminishing changes that extended beyond the strict time limits of prior waivers that had been granted by PERC.[1] SB 256 expressly authorizes PERC to "waive" the statute's rights-diminishing provisions "to the extent necessary for the public employer to comply with the requirements of [§ 13(c)]," see Fla. Stat. § 447.207(12), and thereby ensure the continued flow of federal assistance to that employer. DOL had sent a similar letter to Miami-Dade County on July 19. See Brown Decl. ¶ 11.

Second, on August 31, PERC issued a decision ("Dec.") involving the same Broward County grant application dealt with in the DOL's August 4 letter.[2] In that decision, PERC questioned the DOL's interpretation of § 13(c)(2), but nevertheless granted a non-time-limited extended waiver to Broward County, citing the "financial hardship" that Broward County and other Florida transit bodies would otherwise suffer "given DOL's refusal to certify various pending federal grants absent an extended waiver." See Dec. at 12. Importantly, however, the non-time-limited extended waiver granted to Broward County is *conditional* in the sense that it "shall immediately expire upon any final decision of DOL or a court of competent jurisdiction declaring that the above-stated [SB 256 rights-diminishing] provisions do not violate the protections imposed by [§ 13(c)], or if Congress changes the effect of that law." See id. at 13. PERC made a similar determination in granting a conditional waiver to Miami-Dade County on September 29, see Brown Decl. ¶ 11, and has granted conditional waivers to other Florida transit bodies as well, see Injunction Motion (ECF No. 6) at 8.

[1] This letter is attached as Exhibit 3 to Florida's Complaint (ECF No. 1-3).

[2] This decision is attached as Exhibit 4 to Florida's Complaint (ECF No. 1-4).

As foreshadowed by a footnote in PERC's Broward County decision stating that the granting of a conditional waiver "is not intended to waive or limit the right of the State of Florida, on behalf of its FTA grantees, to challenge the DOL's determination" that such waivers are necessary to ensure the continued flow of federal funds to Florida grant applicants, see Dec. at 13 n.6, Florida has now brought this lawsuit against the DOL (and other federal defendants) seeking to enjoin the DOL from adhering to and acting on the position taken in its August 4 letter to Broward County and in its July 19 letter to Miami-Dade County. Florida does so on two asserted grounds set out in its Complaint and pending injunction motion. The first ground is that § 13(c)(2) is facially unconstitutional under the Spending Clause in the Federal Constitution and thus not subject to enforcement by the DOL in *any* context, see Injunction Motion at 9-14; and the second ground is that the DOL's interpretation of § 13(c)(2) and its application in the present context is "contrary to law under the [Administrative Procedure Act]," id. at 14-15. Moreover, in asserting these constitutional and statutory grounds for injunctive relief, Florida argues—citing directly to the district court's decision and judgment in the California § 13(c) litigation—that § 13(c)(2) is subject to an exceedingly narrow interpretation under which it *only* protects ATU and TWU represented public transit employees against a complete elimination of their collective bargaining rights. See id. at 1-2, 11-12.

ARGUMENT

I. ATU AND TWU ARE ENTITLED TO INTERVENE AS OF RIGHT

"On timely motion, the court must permit anyone to intervene" who "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." See FRCP 24(a). These requirements for intervention as of right under Rule 24(a) are clearly met here, as we now show.

A. Timeliness

The Proposed Intervenors have acted expeditiously to file their joint motion to intervene within three weeks of Florida's Complaint, and well in advance of the proposed December 15, 2023 due date for Defendants' dispositive motion that the Proposed Intervenors have committed to meet for their own dispositive motion if granted intervenor-as-defendants status. Accordingly, this joint motion plainly is a timely one that carries with it no appreciable risk of undue delay in the fair and final resolution of this lawsuit on its merits. Indeed, even if this Court is unable to rule on this joint motion to intervene by December 15—and under Local Rule 7.1, this joint motion will be fully briefed and ripe for decision by no later than November 14—ATU and TWU hereby commit to tendering their dispositive motion papers by December 15 together with a request that they be accepted for filing if and when intervention is granted, in an effort not to disrupt in any way the dispositive motions briefing schedule proposed by the existing parties.

B. The Proposed Intervenors' Interests and Their Threatened Impairment

As the Proposed Intervenors will show in their dispositive motion if granted intervenor-as-defendants status, the DOL's position that SB 256 diminishes the statutorily-protected collective bargaining rights of ATU and TWU represented public transit employees in violation of § 13(c)(2)—thus precluding the DOL from certifying compliance with that provision's continuation-of-collective-bargaining-rights condition absent an extended waiver of SB 256's rights-diminishing provisions—is both manifestly correct on a proper interpretation of § 13(c)(2) and manifestly constitutional given § 13(c)(2)'s more-than-sufficient clarity on this point.

For present purposes, however, what matters is that ATU and TWU undeniably have a keen interest in that DOL position being upheld in this lawsuit. That is true from both a case-specific and broader standpoint. From a case-specific standpoint, if the DOL's position is upheld, PERC's conditional waivers of SB 256's rights-diminishing provisions will stand, and

future waivers will surely be forthcoming on PERC's avoidance-of-financial-hardship rationale for granting them in the first place—with the end result being that ATU and TWU represented public transit employees in Florida will retain rather than lose the collective bargaining rights they enjoyed prior to SB 256's enactment. From a broader perspective, given that § 13(c)(2) is a statute of nationwide application, a court ruling upholding the DOL's position against Florida's constitutional and statutory attack on § 13(c)(2) will likely deter other states from taking legislative action diminishing (or even gutting) the collective bargaining rights of other ATU and TWU represented public transit employees who work outside of Florida.[3]

By a parity of reasoning, it is equally clear that ATU's and TWU's case-specific and broader interests in this lawsuit will be impaired if this Court rejects the DOL's position on either constitutional or statutory grounds and enjoins the DOL from acting on that position. From a case-specific standpoint, PERC's conditional waivers of SB 256's rights-diminishing provisions will immediately expire by their own terms upon the issuance of an injunction in Florida's favor, and PERC has made it abundantly clear in its decisions grudgingly granting those conditional waivers that there will be no more such waivers going forward if Florida obtains such an injunction. Indeed, on its face, the entire point of Florida's injunction action to prevent the DOL from enforcing § 13(c)(2) is to free PERC from the necessity of granting such waivers of SB 256's rights-diminishing provisions as a condition for an estimated $800 million in federal funding to Florida transit bodies. See Injunction Motion at 1. Thus, if Florida obtains the injunction it seeks, ATU and TWU represented employees will lose rather than retain the

[3] Although a proposed intervenor is not required to make an independent showing of standing to sue, see Chiles v. Thornburgh, 865 F.2d 1197, 1212-13 (11th Cir. 1989), labor unions like ATU and TWU unquestionably are proper parties with standing to sue in an effort to vindicate the statutory rights and interests of the employees they represent in an injunction action like this one, see AFSCME Council 79 v. Scott, 278 F.R.D. 664, 670 (S.D. Fla. 2011).

collective bargaining rights they had prior to SB 256's enactment. More broadly, a ruling in this lawsuit that § 13(c)(2) is unconstitutional or that it protects public transit employees against *only* a complete loss of their collective bargaining rights would open the door to a further diminution (or even gutting) of the collective bargaining rights of ATU and TWU represented employees in Florida as well as other states within the Eleventh Circuit at least.

C. The Inadequacy of Representation of the Proposed Intervenors' Interests

Under § 13(c), the DOL is the federal agency charged with the duty of enforcing § 13(c)(2)'s requirement that state and local transit bodies continue the collective bargaining rights of public transit employees as a condition on federal funding. See ATU v. Donovan, 767 F.2d 939, 947 n.9 (D.C. Cir. 1985) ("hold[ing] that where a state, through its laws or otherwise, fails to satisfy the requirements of § 13(c), the [DOL] must cut off funds by denying certification"). And where a government agency defendant has such a duty to enforce the statutorily-protected rights and interests of private parties, a presumption concededly arises under Rule 24(a) that the agency will take adequate steps to fulfill that duty throughout the course of the litigation implicating those statutorily-protected rights and interests. See Clark v. Putnam Cnty., 168 F.3d 458, 461 (11th Cir. 1999). But as the Eleventh Circuit made abundantly clear in Clark, this presumption is a weak one that is not difficult for a proposed intervenor to overcome through the presentation of *some evidence* tending to show that the government defendant *may not* adequately fulfill its enforcement duty as the litigation unfolds. See id. ("The requirement of the Rule is satisfied if the applicant shows that the representation of his interest *may be inadequate* and the burden of making that showing should be treated as *minimal*.") (quoting Trbovich v. United Mine Workers, 404 U.S. 528, 538 n.10 (1972) (cleaned up) (emphasis

added)). There undeniably is some such evidence meeting the Proposed Intervenors' minimal burden here, *as Florida itself tacitly acknowledges in its Injunction Motion*.

At page 13 footnote 2 of its Injunction Motion, Florida alludes in passing to the fact that succeeding presidential administrations have treated § 13(c)(2) as something of a political football by "*twice*" changing their respective positions regarding the proper interpretation of § 13(c)(2) in the "long running" California § 13(c) litigation dispute. The relevant details of that litigation dispute and the DOL's yo-yo like actions during the life of that dispute (which is still pending in the Ninth Circuit on separate appeals filed by ATU and the DOL) are as follows:

That dispute generated two successive but closely-related § 13(c) lawsuits against the DOL in the United States District Court for the Eastern District of California, the first one initiated by the State of California and docketed as Case No. 13-2069, and the latter one initiated by ATU (joined by nine of its affiliated locals) and docketed as Case No. 20-953. On remand from the district court's initial decision in the first case, the Obama Administration DOL issued a decision adopting a position respecting the proper interpretation of § 13(c)(2) that the Proposed Intervenors submit is the only plausible interpretation of that provision, see Case No. 13-2069, ECF No. 87-3, but which the district court invalidated in a final, appealable judgment dated January 25, 2018, see id., ECF No. 136. Although the Trump Administration DOL initially filed an appeal from that judgment, it subsequently filed a motion to voluntarily dismiss that appeal which was granted by the Ninth Circuit on December 19, 2018 over California's objection. See Ninth Circuit Appeal No. 18-15509, ECF No. 33. As foreshadowed by that voluntary dismissal, the Trump Administration DOL subsequently adopted what it characterized as a more "lenient" (towards the states) interpretation of § 13(c)(2) that is squarely at odds with § 13(c)(2)'s clear meaning and intent and thus prompted ATU to file the second § 13(c) lawsuit against the DOL

identified above. See Case No. 20-953, ECF No. 1. That second lawsuit by ATU continued into the Biden Administration, and for an extended litigation period the Biden Administration DOL defended the Trump Administration's more "lenient" (and indefensible) interpretation of § 13(c)(2) by, inter alia, opposing ATU's motion for summary judgment and cross-moving for a summary judgment of its own. But on the eve of oral argument on those cross-motions, the Biden Administration issued a decision reverting to the Obama Administration DOL's interpretation of § 13(c)(2), see id., ECF No. 65, after which the district court granted California's unopposed motion to file a cross-complaint against the DOL and ATU's unopposed motion to intervene as of right as a defendant on that cross-complaint, see id., ECF No. 76.

Against this backdrop, it cannot be denied that the Proposed Intervenors face a very real and tangible risk that the DOL's position regarding the proper interpretation of § 13(c)(2) *may* shift once again (perhaps even multiple times) during the life of this lawsuit. Under the Eleventh Circuit's decision in Clark and the Supreme Court decision in Trbovich on which the Clark decision firmly rests, the existence of that risk more than suffices to satisfy Rule 24(a)'s inadequacy-of-representation requirement for intervention as of right. See also Kleissler v. U.S. Forest Serv., 157 F.3d 964, 973-74 (3d Cir. 1998) (finding that the proposed intervenor lumber companies had raised sufficient "doubts" about the adequacy of the government agency defendant's representation of their interests to justify intervention as of right given the fact that the agency had chosen not to appeal an adverse ruling against similarly-situated companies in a companion case and the attendant risk of future "unanticipated policy shifts" by the agency).

II. IN THE ALTERNATIVE, INTERVENTION SHOULD BE PERMITTED UNDER RULE 24(b)

For the foregoing reasons, the Proposed Intervenors' right to intervene under Rule 24(a) is clear. Out of an abundance of caution, however, ATU and TWU move in the alternative for permissive intervention under Rule 24(b).

Permissive intervention is allowed under Rule 24(b)'s express terms if the motion to intervene is "timely" and if the proposed intervenor "has a claim or defense that shares with the main action a common question of law or fact." We have already shown that this joint motion to intervene clearly is timely, and it is equally clear based on the above discussion of ATU's and TWU's interests in this lawsuit that both unions have a defense to Florida's claims against the DOL that "shares with the main action" the "common question[s] of law" respecting the constitutionality of and the proper interpretation of § 13(c)(2).

Nonetheless, permissive intervention is by its nature discretionary, and "[t]he district court has the discretion to deny intervention [under Rule 24(b)] even if both of th[e] [foregoing] requirements are met." Chiles, supra, 865 F.2d at 1213. In the normal course, and as a logical matter, the touchstone for a district court's exercise of its discretion under Rule 24(b) is whether the proposed intervenors "will add" something of genuine substance to the litigation (or, in colloquial terms, bring something to the table). See AFSCME Council 79, supra, 278 F.R.D. at 671. Given the extensive experience of both unions in litigating § 13(c) issues in various judicial and agency forums as outlined in the accompanying Declarations of Daniel B. Smith and Willie Brown, we submit that this bring-something-to-the-table criteria argues strongly in favor of granting the Proposed Intervenors' alternative request for permissive intervention if intervention as of right is denied. Indeed, that is especially so given the DOL waffling that occurred over the

life of the California § 13(c) litigation, which might at a minimum dampen the vigor with which the DOL presses its position in this lawsuit.

From the time of § 13(c)'s enactment way back in 1964, ATU and TWU have consistently taken and pressed with vigor and confidence the position that § 13(c)(2) *unambiguously* conditions federal funding on the avoidance of *any* diminution in the collective bargaining rights of the transit employees whom the unions represent, and ATU and TWU can be relied upon vigorously and confidently to press that position in this lawsuit as well if they are granted intervention as of right *or* permissively (and, to reiterate, the unions commit to pressing that position in jointly-filed memoranda of law for both the Court's and the other parties' benefit).

CONCLUSION

ATU's and TWU's joint motion to intervene as defendants should be granted under Rule 24(a) or, in the alternative, under Rule 24(b).

CERTIFICATE OF GOOD FAITH CONFERENCE; CONFERRED BUT UNABLE TO RESOLVE ISSUES PRESENTED IN THE JOINT MOTION

Pursuant to Local Rule 7.1(a)(3), we hereby certify that counsel for the movants have conferred with all parties or non-parties who may be affected by the relief sought in this joint motion in a good faith effort to resolve the issues but have been unable to resolve the issues. In these conferences, Plaintiff State of Florida has requested that undersigned counsel represent that Florida opposes this joint motion and will be filing a response, whereas Defendants have stated that they do not oppose the joint motion.

Respectfully submitted,

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Attorneys for TWU

*Motions to Appear Pro Hac Vice forthcoming

Exhibit 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

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

STATE OF FLORIDA,

Plaintiff,

v.

PETE BUTTIGIEG, *et al.*,

Defendants.

_____/

DECLARATION OF DANIEL B. SMITH

1. My name is Daniel B. Smith, and I serve as General Counsel of Amalgamated Transit Union International, AFL-CIO, CLC ("ATU"), a position I have held since July 1, 2021. Previously, between March 1, 2011 and June 30, 2021, I served as Assistant General Counsel of ATU. I make this declaration on personal knowledge in support of ATU's motion (joined in by an unaffiliated labor union) to intervene as a defendant in this lawsuit as of right or permissively.

2. ATU is an international labor organization which, together with its affiliated local unions, represents over 190,000 workers throughout the United States and Canada. Transit employees of state and local transit bodies make up over 75% of ATU's membership. ATU and two of its affiliated locals in Florida (Locals 1267 and 1591) represent the approximately 950 public transit employees employed by Broward County, a county that operates the second largest transit system in Florida and that filed the waiver petition the disposition of which is central to this lawsuit. ATU and seven other ATU-affiliated locals in Florida also represent the public transit employees of six other public transit bodies in Florida. In total, ATU and its affiliated

Florida locals represent over 3,000 public transit employees whose federal statutory rights and interests under § 13(c) of the Urban Mass Transportation Act of 1964 ("UMTA") are directly implicated by this lawsuit and will be directly impacted by its outcome.

3. ATU has played an integral role in the creation and development of § 13(c) since the UMTA's enactment in 1964.

a. ATU was instrumental in the legislative efforts that led to the inclusion of § 13(c) in the UMTA.

b. Since the UMTA's enactment in 1964, ATU, acting in its capacity as "Special Section 13(c) Counsel" for its affiliated local unions, has negotiated and developed thousands of § 13(c) agreements with state, regional, and local transit bodies.

c. Further, ATU has participated in tens of thousands of grant applications in which compliance with § 13(c) was an issue and has initiated litigation against public transit bodies in every Circuit Court of Appeals from shortly after § 13(c)'s enactment through the early 1980s.

d. In the 1980s, ATU and/or its affiliated locals were litigants in three seminal appellate court cases involving the proper interpretation and application of § 13(c): Jackson Transit Authority v. Local Division 1285, Amalgamated Transit Union, 457 U.S. 15 (1982); Amalgamated Transit Union v. Donovan, 767 F.2d 969 (D.C. Cir. 1985); and Amalgamated Transit Union v. Brock, 809 F.2d 909 (D.C. Cir. 1987).

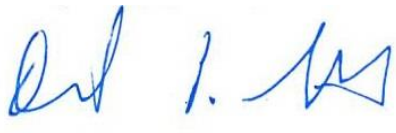
e. Most recently and relevantly for present purposes, ATU and nine of its affiliated locals were granted intervention as of right as defendants on a cross-complaint brought by the State of California against the United States Department of Labor ("DOL") in a California federal court case involving the proper interpretation and application of § 13(c). See ATU, et al.

v. DOL, No. 20-953, ECF No. 76 (E.D. Cal. Dec. 2, 2021). Notably in this regard, Florida relies heavily on the decision and judgment in that California § 13(c) case in support of its claims in this lawsuit, see Complaint (Dkt. No. 1) ¶¶ 8, 67; Injunction Motion (ECF No. 6) at 1-2, 10-12, 14—a decision and judgment that the ATU intervenor-defendants and the DOL defendants are currently challenging on appeal in Consolidated Ninth Circuit Appeal Nos. 23-15503, 23-15617.

4. Moreover, ATU, in its capacity as "Special Section 13(c) counsel" for its affiliated Florida locals, was a party to the numerous administrative proceedings that led to this lawsuit and participated fully in those proceedings. Specifically, ATU filed objections with the DOL asserting that the DOL was duty bound under § 13(c) to deny certification of nearly two dozen Florida transit body grant applications absent a waiver of certain provisions in a recently enacted Florida statute (SB 256) that diminish the statutorily-protected collective bargaining rights of ATU-represented transit employees in Florida.

I declare under penalty of perjury under the laws of the United States of America that the above-stated facts are true and correct.

Dated this 24th day of October 2023.



Daniel B. Smith

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
Fort Lauderdale Division

Case No. 23-cv-61890- SMITH/REID

STATE OF FLORIDA	)
	)
Plaintiff,	)
	)
v.	)
	)
PETE BUTTIGIEG, et al.,	)
	)
Defendants.	)
	)

DECLARATION OF WILLIE BROWN

I, Willie Brown, hereby declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the following is true and correct and based upon personal knowledge.

1. I am the Director of the Transit, Utilities, Universities and Services ((TUUS") Division of the Transport Workers Union of America ("TWU" or "Union"), as well as an International Vice President of the Union. I have held my current position since 2020. Prior to that, I held the position of President of TWU Local 234 in Pennsylvania. Before I became a TWU officer, I was a transit worker employed by the Southeastern Pennsylvania Transportation Authority as a trolley operator.

2. TWU represents over 155,000 workers including more than 70,000 transit workers in various states, including Florida, New York, Pennsylvania, Texas, and California. In Florida, TWU represents nearly 3,000 transit workers, including more than 2,500 transit workers employed by the County of Miami-Dade (which operates a transit system known as Miami-

Dade-DPTW) as bus and light rail operators, mechanics, and others; as well as nearly 100 transit and paratransit workers employed by the Lakeland Area Mass Transit District (which operates a transit system known as Citrus Connection) as bus and shuttle drivers, mechanics, and other maintenance workers.

3. TWU Local No. 291 represents transit workers employed by Miami-Dade DPTW, and it has been certified as the representative of those employees by the Florida Public Employees Relations Commission ("PERC") under the Florida Public Employee Relations Act codified at Chapter 447 of the Florida Statutes. TWU Local No. 525 represents transit workers employed by Citrus Connection, and it has been certified as the representative of those employees by the PERC under the Florida Public Employee Relations Act.

4. TWU Local 291 is party to a collective bargaining agreement with Miami-Dade DPTW that covers Miami-Dade DPTW transit workers represented by Local 291. Among other things, that agreement provides for employees to pay their dues to the Local through Miami-Dade DPTW deductions from their paychecks. TWU Local No. 525 is party to a collective bargaining agreement with Citrus Connection that covers Citrus Connection transit workers represented by Local 525. Among other things, that agreement provides for employees to pay their dues to the Local through Citrus Connection deductions from their paychecks.

5. As part of its representation of its transit worker members TWU ensures that when state, county and municipal entities receive funds from Federal grants from the U.S. Department of Transportation ("DOT") under the Federal Transit Act ("FTA"), 49 U.S.C. §5301, TWU's members employed by those transit system are covered by labor protections mandated by 49 U.S.C. §53333(b). Among other things, Section 5333(b) requires that for an applicant to receive

a Federal transit grant, the U.S. Department of Labor ("DOL") must certify that the grant recipient is party to an arrangement that protects employees from adverse employment and financial impacts of such grants; and that such arrangements preserve employee rights, privileges and benefits under existing collective bargaining agreements, and continue the collective bargaining rights of those employees.

6. The requirement for labor protections covering transit workers affected by Federal transit grants originated with the Urban Mass Transportation Act and was codified at 49 U.S.C. §13 (c); that provision was later recodified in the FTA as Section 5333(b).

7. As representative of tens of thousands of transit workers, TWU has participated in legislative activities regarding the scope and application of Section 13(c)/5333(b), including proposals to amend that provision, proposals to expand its application, and Congressional hearings concerning the labor protections. TWU has also engaged with DOL with regard to regulations and administrative actions applying the protections. Additionally, TWU receives and reviews communications from DOL regarding proposed terms for certification of FTA grants to entities that seek to receive Federal transit grants.

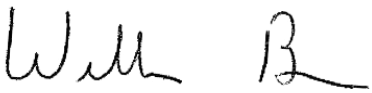
8. When TWU believes that FTA grant applicants are not, or cannot be, parties to arrangements that satisfy the requirements of Section 5333(b), TWU will inform the DOL that TWU objects to DOL's certification to the DOT that the grant applicant is eligible to receive an FTA grant. TWU performs this function on behalf of its Locals that represent transit workers in Florida, as well as Locals that represent transit workers (including commuter rail workers) in other States.

9. In the Spring of 2023, TWU learned that Florida had enacted Senate Bill 256 ("SB 256"), which, among other things, 1) prohibits public employers in Florida from entering collective bargaining agreements that provide for payroll deductions for the payment of union dues, and 2) requires unions representing public employees to make annual filings for renewals of their certifications by PERC by showing that 60 percent or more of the employees in the bargaining unit they represent have paid union dues (by direct payment to the union), and if a union cannot show that 60 percent of the employees it represents have paid union dues, it's certification must by revoked by PERC and the union must petition for recertification as representative of the bargaining unit through a representation election if the union seeks to continue to represent that bargaining unit. Senate Bill 256 exempted unions that represent law enforcement officers, correctional officers and correction probation officers and firefighters from those requirements. SB 256 also provides that a public employer that provides mass transit services may petition the PERC for a waiver of those requirements if the public employer is notified by DOL that the public employer cannot satisfy the requirements of Section 5333(b) as a result of application of SB 256 to that employer.

10. After enactment of SB 256, TWU objected to DOL certification of FTA grants for Miami-Dade DPTW and Citrus Connection under Section 5333(b) because of the provisions of SB 256 described above. In response to TWU's objections, DOL determined that TWU's objections were valid, and that DOL could not certify the applications for grants for Miami-Dade DPTW and Citrus Connection under Section 5333(b). Miami-Dade DPTW and Citrus Connection then applied to PERC for waivers of the provisions of SB 256 described above.

11. PERC granted waivers of the provisions of SB 256 described above to Miami-Dade DPTW and Citrus Connection for the duration of their then current collective bargaining agreements with TWU Locals 291 and 525. TWU renewed its objections to DOL certification of FTA grants for Miami-Dade DPTW and Citrus Connection under Section 5333(b) because the waivers granted by PERC were limited to the duration of their collective bargaining agreements. Upon consideration of TWU's renewed objections, on July 19, 2023, DOL determined that it could not certify the applications for grants for Miami-Dade DPTW and Citrus Connection under Section 5333(b). On August 31, 2023 and September 29, 2023, PERC granted waivers for Citrus Connection and Miami-Dade DPTW for so long as any protective arrangement is required by 49 U.S.C. §5333(b), unless the DOL or a court declares that the disputed provisions of SB 256 do not violate Section 53339(b), or Congress changes that law.

I declare under penalty of perjury, that the foregoing is true and correct.



10/24/2023
Date

Willie Brown