FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 5D2026-0270

RODERICK JAMES PALMER, TRUSTEE OF THE 2501 MOODY BLVD. LAND TRUST AGREEMENT DATED FEBRUARY 7, 2025,

Defendant-Appellant,

v.

FLAGLER SQUARE-JAX, INC.,

Plaintiff-Appellee.

On Appeal for the Circuit Court for the Seventh Judicial Circuit
in and for Flagler County, Florida

APPELLANT'S INITIAL BRIEF

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STATEMENT OF THE CASE AND FACTS

I. Nature of the case.

This is an appeal from a temporary injunction order (TIO) issued by the circuit court of the Seventh Judicial Circuit in and for Flagler County, Florida (circuit court). (*See* Record, Doc. 32.)

Plaintiff-Appellee, Flagler Square-JAX, Inc., is the owner of two of three units in the Flagler Square commercial condominium. Defendant-Appellant, Roderick James Palmer, Trustee of the 2501 Moody Blvd. Land Trust Agreement, serves as trustee of a trust that owns the condominium's third unit. After Appellant successfully petitioned the City of Flagler Beach to rezone the property for use as a church, Coastal Family Church began operating in Unit 1. (*See* Record, Doc. 15, ¶13.) This case involves Appellee's attempt to enforce a property restriction contained in a Declaration of Condominium that categorically bars "public assembly," a term left undefined by the Declaration, to restrict Appellant from operating a church on its property. (*See* Record, Doc. 4, ¶23 ("Unit 1 may not be used as a place of public assembly. This precludes its use as a church[.]").

Appellant challenges the TIO on multiple grounds including that it violates Appellant's First and Fourteenth Amendment rights; is a presumptively unconstitutional prior restraint on Appellant's speech, assembly, and religious exercise; and is impermissibly and unconstitutionally vague and overbroad. And the circuit court's TIO also errs by enforcing a restriction rendered *void ab initio* by the plain text of Florida Statutes §§712.065, 718.123, and 761.01-05. Further, the circuit court abused its discretion by failing to address any of Appellant's affirmative defenses and by failing to define the terms and scope of the TIO. Moreover, the circuit court abused its discretion by failing to make any finding associated with Appellee's alleged irreparable harm, which is a critical and inescapable requirement for the issuance of any TIO. The circuit court also abused its discretion by making a public interest finding that is contradictory, speculative, and unsupported by substantial, competent evidence.

II. Background facts and course of proceedings.

On January 27, 2022, Plaintiff executed the "Declaration of Condominium for Flagler Square, a Condominium." (*See* Record, Doc. 4, Ex. 1.) The Declaration governs Units 1, 2, and 3 of the commercial condominium. (*See* Record, Doc. 4, Ex. 1, 42-43.) The

Declaration references a current lease between the Defendant and Dollar Tree Stores, Inc., and incorporates Dollar Tree's requested land use restrictions into the Declaration. (*See* Record, Doc. 4, Ex. 1, 12.) The Declaration provides that so long as Unit 2 is occupied by a Dollar Tree Store, all other condominium tenants are subject to Exhibit 9 of the Declaration. (*See* Record, Doc. 4, Ex. 1, 44.)

Exhibit 9 of the Declaration restricts use of any unit as a "flea market or pawn shop," "bingo parlor," "[a] facility for the sale or rental of used goods (including thrift shops, secondhand or consignment stores)," "gymnasium, sport or health club," or "[a] banquet hall, auditorium or other place of public assembly." (See Record, Doc. 4, Ex. 1, 44.)

The Declaration includes a list of definitions but does not define "public assembly." (*See* Record, Doc. 4, Ex. 1, 1-2.) The Declaration directs readers to the Condominium Act for additional definitions and guidance. (*See* Record, Doc. 4, Ex. 1, 1.)

The Condominium Act defines an additional 35 terms, but "public assembly" is not among them. Fla. Stat. §718.03. While the term "public assembly" is not included in the Condominium Act, the Act does use the synonymous phrase "peaceably assemble." Fla. Stat.

§718.123. The term "peaceably assemble" is used to clarify that a condominium declaration cannot unreasonably restrict an occupant's right to assembly in common elements of a condominium. Fla. Stat. §718.123.

Prior to this lawsuit, the City of Flagler Beach approved a special zoning exception allowing Coastal Family Church to operate as a church at 2501-A Moody Boulevard, Unit One, Flagler Beach, FL 32136. (*See* Record, Doc. 4, ¶13.) Other tenants, residents, and business owners were given an opportunity to object to Defendant's requested special exception, but there were no objections from anyone, including Appellee. (*See* Record, Doc. 15, ¶14.)

On July 25, 2025, Appellant purchased Unit 1. (*See* Record, Doc. 4, Ex. 2.) Appellee leases Unit 2 to Dollar Tree Stores, Inc. Appellee divided Unit 3 into several smaller store fronts and leases them to a restaurant, law firm, Florida Tax Collector's Office, Junque in the Trunk (a consignment store, prohibited by the alleged restrictions at issue here), and Fraternal Order of Police lodge, which explicitly advertises and hosts numerous public assembly events (also prohibited by the alleged restriction at issue here), including public bingo nights (every week) and rents its facility for public

assembly. (*See* Record, Doc. 15, ¶18-22.) Additionally, despite attempting to enforce the alleged prohibition on public assembly against Appellant, Appellee (itself) has hosted or allowed numerous public assemblies, including car shows, flea markets, and other public assemblies in the Flagler Square parking lot. (*See* Record, Doc. 24, ¶3.)

The undisputed evidence before the circuit court showed that Appellee has engaged in a selective, unreasonable, discriminatory, and, thus, arbitrary, enforcement of the Declaration's land use restrictions. Appellee has targeted only Appellant's religious services, while ignoring other tenants' non-religious gatherings (public assemblies) purportedly in violation of the Declaration, and it has conducted its own activities that constitute the allegedly prohibited "public assembly" restriction in the Declaration. The sworn testimony demonstrating the selective enforcement was not disputed below and is not disputed now.

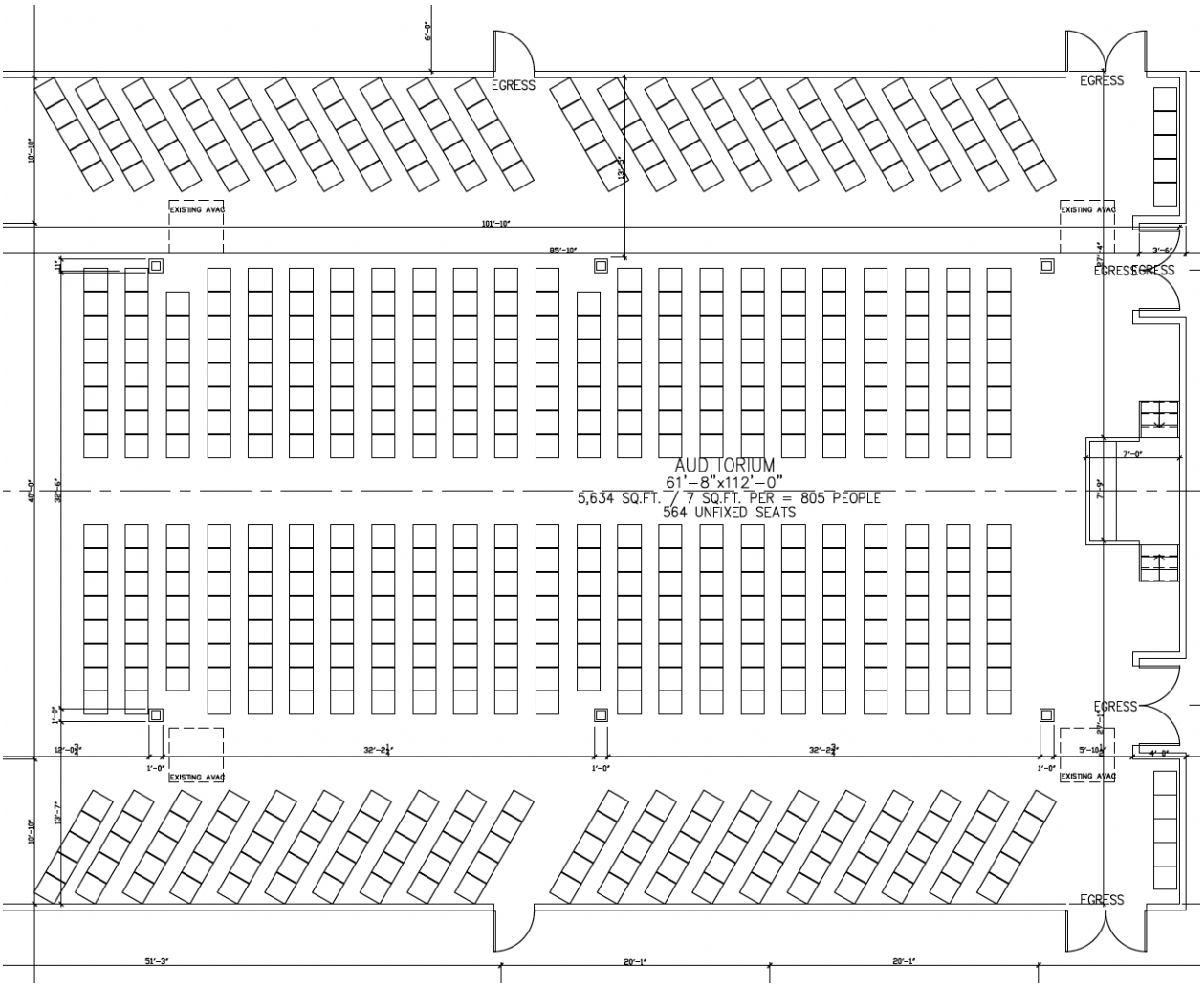
On August 28, 2025, Appellee requested the circuit court take state action by enforcing the Declaration, to deny Appellant equal protection of the law, citing parking congestion as the alleged (and

only) irreparable harm from which it needs immediate relief. (*See* Record, Doc. 4.) Specifically, Appellee's complaint provides:

> The Defendant's planned use of the Premises would overwhelm the available parking at all times. There are presently 315 parking spaces available for tenants, their employees and customers in the entire Shopping Center. The Defendant's Floor Plan submitted to the City of Flagler Beach reflect seating for the church of 2,401. Simply put, there is not sufficient parking at the Shopping Center to in any way come close to accommodating the church during events that achieve full capacity of 2,401 people, or even events to come close to that.

(*See* Record, doc. 4, ¶14) (emphasis in original).

To the contrary, the floor pan attached to Appellee's complaint makes clear that the Church can only seat 564 individuals. (*See* Record, Doc. 4, Ex. 7.)



(*See* Record, Doc. 30, Ex. G) (image cropped and rotated for clarity) (The document reads: "Auditorium … 564 unfixed seats.").

Further, the undisputed sworn testimony before ethe circuit court demonstrated that no such alleged congestion occurs. The undisputed sworn testimony before the circuit court showed photographs of the parking lot taken during the Church's weekly religious services, which take place from 10:00 AM to 11:00 AM on Sunday mornings, clearly display no parking congestion. Appellant

produced parking records that reveal the Church never used more than 162 of the 315 available parking spaces. (*See* Record, Doc. 16, ¶5.) During the time Coastal Family Church has held religious services at Flagler Square, parking has remained abundant and available for all tenants. (*See* Record, Doc. 24, ¶4.).

(*See* Record, Doc. 24, ¶6.)

(*See* Record, Doc. 24, ¶6.)

This sworn testimony and the evidence before the circuit court concerning Appellee's alleged irreparable injury was not disputed. Despite the Declaration providing Coastal Family Church equal access to all parking spots, the Church directs congregants to only park in those spots furthest from fellow tenants' businesses so that, if they were to operate during church services, customers would find parking available nearest their entrances. (*See* Record, Doc. 24, ¶14); (see also Record, Doc. 4, Ex. 1, 13 ("Article XI of the Declaration notes that "[a]ll parking spaces shown on the attached exhibits shall constitute Common Elements and shall be available for the non-exclusive and unallocated uses of all Units.").) Appellee, despite having the unquestioned burden to demonstrate the need for a temporary injunction with competent and substantial evidence, produced no evidence of alleged injury. Appellee likewise presented no evidence, much less compelling and substantial evidence, to refute the sworn testimony and evidence Appellant put forward in the circuit court.

III. Disposition below.

On January 23, 2026, the circuit court granted a temporary injunction prohibiting Appellant from "utilizing Unit 1 as a place of

public assembly," "from allowing public assemblies put on by any entity to occur there," and from "proceeding with any construction or modification to Unit 1 one which would facilitate public assemblies." (*See* Record, Doc. 32, 3.)

On January 26, 2026, Appellant sought emergency relief from the TIO from the circuit court. (*See* Record, Doc. 34.) The circuit court did not rule on Appellant's emergency motion to stay the TIO. On January 28, 2026, Appellant filed an emergency motion for stay pending review with this Court. (*See* Emergency Motion.) On January 30, 2026, this Court granted in part Appellant's emergency motion staying enforcement of the TIO pending this Court's review of the order. (*See* January 30, 2026, Order of the Court.) And, after receiving further briefing on the issue, this Court denied the emergency motion pending review. (*See* February 13, 2026, Order of the Court.)

SUMMARY OF THE ARGUMENT

"Neither a state nor the Federal Government can … force nor influence a person to go or remain away from church against his will." *Everson v. Bd. of Educ. Of Ewing Tp.*, 330 U.S. 1, 15 (1947). On Friday, January 23, 2026, the circuit court issued a temporary

injunction (TIO) that did precisely that - it enjoined a pastor from preaching the Gospel to his congregation and prohibited congregants from gathering to worship at their church. (*See* Record, Doc. 32.)

Appellee sued Appellant to enforce a property restriction in the Declaration of Condominium that categorically and unlawfully bars all "public assembly." (*See* Record, Doc. 4, Ex. 1, 44.) The property restriction was added to the Declaration at the request of Dollar Tree Stores, Inc.

While "public assembly" is left undefined by the Declaration and despite neither Dollar Tree nor any tenant objecting to Appellant's use of its property as a church, Appellee sought, and the circuit court granted a TIO that categorically bars Appellant from all "public assembly," which Appellee interprets to mean "religious services," including all speech, assembly, and religious exercise inherent in religious services.

The vague phrase "public assembly" was left undefined by the Court in the TIO and, until this Court granted Appellant's request for an emergency stay of the TIO, remained a loaded gun for the parties to wield at their discretion. Appellee immediately seized the opportunity. Just two days after the circuit court issued its TIO, and

before Appellee even paid its required bond to render the TIO effective, Appellee, armed with three contracted Florida police officers, laid wait at the Church's doors on Sunday morning to enforce the TIO. (*See* image below) (Emergency Motion, Appendix B, Declaration of Pastor George Gourlay, ¶6.)

What harm did Appellee seek to avoid by barring Florida residents from participating in religious services and showing up to

a church on a Sunday morning with Florida police officers? While the circuit court failed to state the "harm" in its TIO (*see* Record, Doc. 32), Appellee argued for a TIO to prevent potential, future parking congestion. (*See* Doc. 12, ¶3.) Apart from this harm being wholly speculative and non-existent according to evidence in the record, such a purported injury does not even represent an irreparable injury and therefore could not serve as a basis for injunctive relief as a matter of law. (*See* Record, Doc. 24.)

Nevertheless, the circuit court issued a TIO without any finding of irreparable harm or basing such a finding on evidence to support such a contention. And it could not base it on any evidence in the record because Appellee provided none. The circuit court entirely bypassed its required assessment of the elements for temporary injunctive relief and failed to address *any* of Appellant's affirmative defenses. (*See* Record, Doc. 32.) Florida law is unequivocal: trial courts must consider and address affirmative defenses raised at temporary injunction hearings. *Salazar v. Hometeam Pest Defense, Inc.*, 230 So.3d 619 (Fla. 2d DCA 2017). Chief among those defenses is Florida Statute §712.065, which renders all discriminatory

restrictions null and *void ab initio* as a matter of binding law. This, too, was wholly ignored by the circuit court.

Further, the circuit court's public interest finding is contradictory, speculative, and unsupported by competent evidence. (*See* Record, Doc. 32, ¶15.) The circuit court found that several tenants violated the subject restrictions, but that their leases predate the declaration. However, the alleged public interest articulated in the TIO is that those same non-conforming tenants "acquired their interest in property because of the restrictive covenant" and would be harmed if Appellant were able to violate it. (*See* Record, Doc. 32, ¶4.) Leaving aside the questionable public interest finding associated with the *other* tenants and the more fatal problem that there was no evidence in the record to support such a finding, the circuit court ignored the fact that Appellee, itself, has also chosen to violate the alleged restrictions on multiple occasions and is unquestionably subject to it. Thus, the findings are inherently contradictory, unsupported by competent evidence, speculative, and reversible error.

Ultimately, the circuit court issued a TIO that bars Appellant, Coastal Family Church, and the Church's congregants from speech,

assembly, and religious exercise. As a matter of settled law, the TIO is a presumptively unconstitutional prior restraint. To contend otherwise requires turning a blind eye to significant and binding precent holding that court orders are state action, that court orders can violate the First Amendment, and that court orders can violate Florida's Religious Freedom Restoration Act (Florida RFRA).

ARGUMENT

"The standard of review of trial court orders on requests for temporary injunctions is hybrid. To the extent the trial court's order is based on factual findings, we will not reverse unless the trial court abused its discretion; however, any legal conclusions are subject to de novo review." *Housman v. Housman*, 370 So.3d 1006, 1009 (Fla. 5th DCA 2023) (quoting *Gainesville Woman Care, LLC v. State*, 210 So.3d 1243, 1258 (Fla. 2017)). *See also City of Cocoa v. Villas of Cocoa Vill., LLC*, 343 So.3d 122, 124 (Fla. 5th DCA 2022) ("The trial court's factual findings are reviewed for abuse of discretion, and its legal conclusions are reviewed de novo.").

However, where—as here—the trial court's order implicates First Amendment rights, "appellate courts apply a de novo standard of review to determine whether a temporary injunction constitutes an

unconstitutional prior restraint." *Thoma v. O'Neal*, 180 So.3d 1157, 1159 (Fla. 4th DCA 2015). Importantly, "though an injunction order generally comes to this court clothed with a presumption of correctness, orders restraining protected speech must be considered presumptively invalid and will only be permitted if there are no less restrictive means available." *Gawker Media, LLC v. Bollea*, 129 So.3d 1196, 1200 (Fla. 2d DCA 2014) (citation modified). Because the circuit court's TIO implicates the Church's First Amendment rights, this Court "has an obligation to make an independent examination of the whole record in order to make sure that the judgment does not constitute a forbidden intrusion on the field of free expression." *Fla. Med. Ctr., Inc. v. New York Post Co., Inc.*, 568 S02d 454, 457 (Fla. 4th DCA 1990).

On de novo review of the circuit court's legal conclusions, the circuit court's TIO fails. The circuit court's TIO represents a presumptively unconstitutional prior restraint on the constitutionally protected First Amendment activities of Coastal Family Church and its religious congregants. The circuit court's TIO represents a total ban on the constitutionally protected religious assembly, speech, and exercise of Coastal Family Church and its

religious congregants. The circuit court's TIO is impermissibly and unconstitutionally vague and overbroad. In addition, the circuit court's TIO violates the Florida Religious Freedom Restoration Act, the federal Religious Land Use and Institutionalized Persons Act, and the Florida Condominium Act.

Additionally, the circuit court abused its discretion by applying the "incorrect legal standard" as it relates to the issuance of a temporary injunction, and must be reversed on that basis. *E.g.*, *Curvey v. Avante Grp., Inc.*, 327 So.3d 401, 402–03 (Fla. 5th DCA 2021) (holding that a district court abuses it discretion by a "failure to apply the correct legal standard"). The circuit court abused its discretion by not requiring or even stating that Appellee had demonstrated irreparable harm, and by making a logically impossibly finding associated with public interest. The circuit court did not (and cannot) even make a finding of irreparable harm, which is an irreducible minimum requirement for injunctive relief.

In short, the circuit court's TIO is unconstitutional and its legal conclusions plainly reversible error. For those matters committed to the circuit court's discretion, it abused it. The temporary injunction must be reversed and vacated as a matter of binding law.

I. The circuit court's TIO must be reversed and vacated because Appellant is substantially likely to prevail of the merits that the TIO violates the First and Fourteenth Amendments to the United States Constitution.

A. The circuit court's TIO is a presumptively unconstitutional prior restraint on Appellant's religious speech, assembly, and religious exercise.

"The term prior restraint is used 'to describe administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur." *Alexander v. United States*, 509 U.S. 544, 549 (1993) (quoting N. Nimmer, Nimmer on Freedom of Speech §4.03, p.4-13 (1984)). "Temporary restraining orders and permanent injunctions – i.e., court orders that actually forbid speech activities – are classic examples of prior restraints." *Alexander*, 509 U.S. at 550. "Prior restraints on speech and publication are the most serious and least tolerable infringement on First Amendment rights." *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). It is axiomatic that prior restraints are highly suspect and disfavored. *See Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 130 (1992).

The circuit court has enjoined Appellant, Coastal Family Church, and its religious congregants from engaging in a host of First

Amendment activities, including gathering/assembling together for religious worship services, from engaging in speech and religious sermons, and from exercising their sincerely held religious beliefs that they are to gather together for religious worship services. In other words, the circuit court's TIO prohibits First Amendment protected activities in advance of their occurrence and is thus indisputably a prior restraint on speech, assembly, and religious exercise. As a matter of law, an injunction, "so far as it imposes prior restraint on speech and publication constitutes restraint on First Amendment rights." *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 418 (1971) (citing *Near v. Minnesota*, 283 U.S. 697 (1931)).

"[T]he injunction at issue here operate[s] as a prior restraint on the First Amendment rights," including religious worship and assembly, is a blatant violation of the First Amendment, "and is therefore presumed unconstitutional." *Post-Newsweek Stations Orlando, Inc. v. Guetzloe*, 968 So.2d 608, 610 (Fla. 5th DCA 2007) (citing *Alexander*, 509 U.S. at 550). This heavy burden is not limited to injunctions involving press but rather extends to land use restrictions too. *Vance v. Universal Amusement Co., Inc.*, 445 U.S. 308, 310 (1980). "To overcome this presumption of

unconstitutionality, the proponent of the injunction bears a 'heavy burden,'" which Appellee cannot bear in this case. *Post-Newsweek Stations Orlando*, 968 So.2d at 611 (quoting *Neb. Press Ass'n*, 427 U.S. at 559).

"Although the Supreme court has never articulated a clear test that we can apply to determine when this 'heavy burden' has been met, the Court has demonstrated the weight of this burden by consistently holding that the prohibition against such restraints attaches even when substantial competing interests are at stake." *Post-Newsweek Stations Orlando*, 968 So.2d at 611.

Indeed, the Supreme Court and Florida courts have invalidated prior restraints even when the speech at issue threatened far weightier interests than Appellee's only suggested (though not proved) injury of purported parking congestion. Prior restraints on speech have been deemed impermissible to prevent the publication of stolen, classified government documents, *New York Times Co. v. United States*, 403 U.S. 713 (1971); to prevent infringement on a defendant's right to a fair trial, *Neb. Press Ass'n*, 427 U.S. 539; to prevent the disclosure of a witness's grand jury testimony, *Butterworth v. Smith*, 494 U.S. 624 (1990); to prevent the showing of

obscene movies at an adult movie theater, *Vance*, 445 U.S. at 310; and to prevent defamatory speech, *Vrasic v. Leibel*, 106 So.3d 485, 486 (Fla. 4th DCA 2013).

Whatever interest this Court perceives Appellee has alleged (though not proved) below, it does not outweigh any interest Florida and Federal Courts have previously assessed as insufficient to warrant a prior restraint on First Amendment rights. And, regardless of the comparators, the circuit court's TIO "operates as a prior restraint" because it is "the equivalent of a total prohibition on the exercise of constitutionally guaranteed rights." *Int'l Soc'y for Krishna Consciousness v. Rochford*, 585 F.2d 263, 269 (7th Cir. 1978). Thus, the issuance of a temporary injunction banning all public assembly, speech, and religious exercise at Flagler Square is, as a matter of law, impermissible. The circuit court's TIO must be vacated.

B. The circuit court's TIO represents an unconstitutional total prohibition on religious exercise, assembly, and speech.

"On its face," the TIO at issue in this case "reaches the universe of expressive activity, and, by prohibiting *all* protected expression, purports to create a virtual 'First Amendment Free Zone'" at Flagler Square. *Bd. of Airport Comm'rs of City of L.A. v. Jews for Jesus, Inc.*,

482 U.S. 569, 574 (1987). The TIO expressly applies to all "public assembly," and the words of the TIO "simply leave no room for a narrowing construction." *Id.* A total ban on religious exercise, assembly, and speech does not and cannot satisfy constitutional muster. Any total prohibitions on First Amendment rights are, per se, substantially broader than any conceivable government interest could justify. *Id.*; *Shapero v. Kentucky Bar Ass'n*, 486 U.S. 466, 476 (1988) (holding that the First Amendment does not countenance "a total ban" on protected activity.). "No compelling reason justifies that total abridgement," yet the circuit court entirely failed to assess this matter, mandating reversal and vacatur of the TIO. *C.C.B. v. State*, 458 So.2d 47, 50 (Fla. 5th DCA 1984).

This Court has long held that any "total prohibition [on protected First Amendment activity] is an unconstitutional abridgment of the right to free speech as guaranteed by the first and fourteenth amendments of the Constitution of the United States and article I, section 4 of the Constitution of the State of Florida." *C.C.B.*, 458 So.2d at 50 (citing *Coates v. Cincinnati*, 402 U.S. 611 (1971)). "[T]he power to restrain and regulate does not include the power to *prohibit* an activity" protected by the First Amendment. *Id.* Even

commercial speech, which is unquestionably less protected than religious speech and exercise, "may not be subject to blanket suppression." *Bates v. State Bar of Arizona*, 433 U.S. 350, 383 (1977); *see also Shapero*, 486 U.S. at 473-74 ("[T]he First Amendment does not permit a ban on certain speech merely because it is more efficient[.]").

In *Jews for Jesus*, the government tried – as the circuit court's TIO does here – to "prohibit all protected expression, purport[ing] to create a virtual 'First Amendment Free Zone.'" 482 U.S. at 575. The restriction did "not merely regulate [First Amendment activity] … that might create problems such as congestion or the disruption of activities of those who use LAX." *Id.* The prohibition represented a "sweeping ban" prohibiting all First Amendment activity in a certain location. Though the circuit court found no problem with such a sweeping ban, the Supreme Court of the United States held that "it was *obvious* that such a ban cannot be justified" because "no conceivable government interest would justify such an absolute prohibition on speech." *Id.* at 575 (emphasis added). Again, as this Court has held, "[n]o compelling reason justifies [a] total prohibition." *C.C.B.*, 458 So.2d at 50.

Simply put, "[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." *NAACP v. Button*, 371 U.S. 415, 433 (1963). The government cannot "burn the house to roast the pig." *Sable Commc'ns of California, Inc. v. F.C.C.*, 492 U.S. 115, 127 (1989) (quoting *Butler v. Michigan*, 352 U.S. 380, 383 (1957)). The circuit court did just that, issuing a TIO that prohibits all "public assembly," an order issued with such vague terminology that it constitutes a total ban on religious exercise, speech, and assembly, which neither the First Amendment, nor this Court tolerate. The circuit court's TIO must be vacated.

C. The circuit court's TIO is impermissibly and unconstitutionally vague.

The circuit court's TIO is also unconstitutional in that it is impermissibly vague. The TIO attempts to enforce a property restriction that categorically bars "public assembly," the definition of which is a central issue in this case. The TIO's failure to define "public assembly" renders the TIO unenforceable, as the acts restrained cannot be determined without reference to a pleading or another document, or in this case, cannot be determined *even* with reference

to other documents. These defects mandate reversal and vacatur of the temporary injunction.

"In issuing a temporary injunction, Rule 1.610 requires that the trial court's order 'specify the reasons for entry [and] describe in reasonable detail the act or acts restrained without reference to a pleading or another document.'" *Wayne's Aggregate and Materials, LLC v. Lopez*, 391 So.3d 633, 636 (Fla. 5th DCA 2024). Temporaray injunctions must be "definite and certain," *Orlando Sports Stadium, Inc. v. State*, 262 So.2d 881, 884 (Fla. 1972), and be "carefully tailored to remedy *only* the specific harms shown," *Pediatric Pavilion v. Ag. For Health Care Admin.*, 883 So.2d 927, 930 (Fla. 5th DCA 2004) (emphasis added). "It must be adequately particularized and phrased in such language that it can with definiteness be complied with." *Id.* at 930 (quoting *Fla. Peach Orchards, Inc. v. State*, 190 So.2d 796, 798 (Fla. 1st DCA 1966)).

Simply put, "one against whom an injunction is directed should not be left in doubt about what he is to do." *Planned Parenthood of Greater Orlando v. MMB Prop.*, 148 So.3d 810, 812 n.1 (Fla. 5th DCA 2014) (quoting *Pizio v. Babcock*, 76 So.2d 654, 655 (Fla. 1954)). The government must "articulate its aims with a reasonable degree of

clarity," and an action—such as an injunction—is void-for-vagueness when it "either forbids or requires the doing of an act in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 629 (1984) (quoting *Connally v. Gen. Const. Co.*, 269 U.S. 385, 391 (1926). The circuit court's TIO violates this principle. Appellant is left guessing whether the congregation – who ultimately owns the property as Appellant is merely a trustee – can even use its property, let alone for what purpose.

The TIO prohibits Defendant from using Unit 1 "as a place of public assembly," and from "proceeding with any construction or modification to Unit 1 one which would facilitate public assemblies." (*See* Record, Doc. 32, 3.) None of the terms are defined.

After the circuit court issued its TIO, to determine what activity might be enjoined, Appellant first turned to the Declaration of Condominium to determine the definition of "public assembly." (*See* Record, Doc. 4, Ex. 1, 2.) The Declaration includes no definition of the term. *Strike one.*

Appellant then looked to Article II of the Declaration provides, "[t]he terms used in this Declaration and in the Article of

Incorporation, the Bylaws and the Rules and Regulations shall have the meaning stated in the Condominium Act and as follows, unless the context otherwise requires." (*See* Record, Doc. 4, Ex. 1, 2.) Appellant then turned to the Condominium Act. The Act also included no definition of "public assembly." *Strike two.*

The Condominium Act defines an additional 35 terms, but "public assembly" is not among them. Fla. Stat. §718.03. Instead, the Condominium Act uses the comparable term "peaceably assembly" to clarify that a condominium declaration cannot unreasonably restrict an occupant's right to assemble in common elements. Fla. Stat. §718.123. Because the TIO categorically prohibits "public assembly," but leaves the term undefined and the Declaration upon which it is based provides no definition, the TIO must mean something other than "peaceably assemble," because the Declaration would otherwise be unlawful under Florida law that says such restrictions are impermissible. *Strike three.*

After striking out in the search for a definition under the documents that would be permissible in defining the scope of the TIO, Appellant was next forced to turn to the municipal code in search of a definition, which is itself an impermissible requirement

to consult extrinsic documents to obtain a definition of the prohibited conduct. Appellee argues that the Court should use "[t]he code of the city of Flagler Beach" to define "public assembly." (*See* Record, Doc. 48, 15:19). Appellee has opined that "[t]he code of the city of Flagler Beach says a church is a place of public assembly," (*See* Record, Doc. 48, 15:19), but that is not the case. The Flagler Beach City Ordinances do not define "public assembly," but they do separate "[c]hurches or other places of worship" from other forms of public assembly in its zoning ordinances. Flagler Beach Municipal Code, Article 2, Sec. 2.06.02. ("Churches or other places of worship One per six permanent seats in the main auditorium."). Whereas the city defines "Public place" as "any street, alley, park, canal, waterway, beach, public building or any place of business or *assembly* open to the public or frequented by the public." Flagler Beach, Municipal Codee, Article 1, Sec. 1-2 (emphasis added). Thus, despite Appellee's contentions, there is no definition of the term "public assembly" in the relevant codes. In other words, no matter where Appellant turned to understand the prohibitions of the TIO, he was left empty handed. An injunction cannot be phrased in such vague terms when it targets

protected First Amendment activity. That *alone* is reversible error and mandates vacatur of the injunction.

Does the TIO prohibit Appellant from "assembling" with a congregant of Coastal Family Church for a counseling session? After all, that would be an assembly of people.

Does the TIO prohibit elders of the Church from gathering with an individual to administer Holy Communion? Again, that would be an assembly of people.

Does it prohibit Appellant from calling on the elders of the church to lay hands on and pray for a congregant of Coastal Family Church who is sick, as required by *James* 5:14? That would require more than one individual and thus be an assembly.

Does the injunction prohibit Pastor Gourlay from following *Matthew* 18:19 and having two or three of his elders gather with him to agree with one another in prayer over the Church, its congregants, and even what to do about the circuit court's TIO? That would be an assembly as well, but Appellant has no idea whether it was prohibited.

Rule 1.610(c) exists precisely to prevent this problem. Injunctions must be self-contained and comprehensible from their

four corners. The circuit court's TIO simply leaves too many questions unanswered, and if Appellant selects the wrong answer, he is subject to a contempt charge. The First and Fourteenth Amendments to the United States Constitution do not permit punishments for speech, assembly, and free exercise to lurk like the Sword of Damocles hanging by a single horsehair above the head of Pastor Palmer, as he sits at the head of his Congregation.

D. The circuit court's TIO is impermissibly and unconstitutionally overbroad.

"Injunctions must be specifically tailored to each case and they must not infringe upon conduct that does not produce the harm sought to be avoided." *Angelino v. Santa Barbra Enterprises, LLC*, 2 So.3d 1100, 1104 (Fla. 3d DCA 2009) (citing *Clark v. Allied Assocs., Inc.*, 477 So.2d 656, 657 (Fla. 5th DCA 1985)). "[T]he temporary injunction here is overly broad and cannot stand on this basis." *Angelino*, 2 So.3d at 1104. Furthermore, the scope of a temporary injunction is meant to be tailored to the harm sought to be avoided. The circuit court did not determine what, if any, harm was sought to be avoided; however, the TIO enjoins, categorically, all "public assembly" to prevent an undefined (and fatally unproved) harm. This

disconnect creates unsalvageable legal error that certainly warrants reversal and vacatur.

In *Spagnuolo v. Insurance Office of America, Inc.*, 356 So.3d 908, 919 (Fla. 5th DCA 2023), an injunction sought to prohibit a party from making "any comments" about the opposing party and their business entities. This Court determined the injunction was "overly broad, as it prohibits Spagnuolo from making and posting comments that are perfectly acceptable and protected by the First Amendment." *Id.* Notably, in this case, not some, but *all* expressive activity enjoined by the TIO is protected by the First Amendment.

Consider also, *Delgado v. Miller*, in which "the Third District held that the relevant order was overbroad when it 'prohibit[ed] either party from engag[ing] in any social media of any nature which comments, directly or indirectly, on the other party's emotion or mental health or personal behavior.'" *Spagnuolo*, 356 So.3d at 919 (quoting *Delgado v. Miller*, 314 So.3d 515, 518 (Fla. 3d DCA 2020)). "Neither the trial court nor the general magistrate made findings of necessity, nor did they engage in any tailoring to narrow or limit the scope[.]" *Delgado*, 314 So.3d at 518.

This was reversible error, yet the Circuit Court in this case categorically enjoined "public assembly," a much more blatant, and thus reversible, violation of Appellant's First Amendment rights still too, without engaging in any tailoring to narrow or limit the scope of its broad order.

First, the circuit court's TIO identifies no specific harm. The only mention of an injury, whatsoever, in the TIO was in the alleged balancing of interest, which stated the injury to Appellee outweighed the injury to Appellant, without defining either. (*See* Record, Doc. 32, 2, ¶14.) The TIO does not further address this "injury" or any "harm."

Turning to Appellee's complaint, the harm alleged was that Coastal Family Church's religious worship services, which occur one day a week from 10:00 AM to 11:00 AM on Sunday mornings, may, in the future, cause congestion in the parking lot. (*See* Record, Doc. 12, ¶4 ("the Defendant is adversely affecting the members of the Association, and will be overwhelming the 315 available parking spaces at the Plaza (based on the admitted **intended scope** of the use of Unit 1 as evidenced in public filings by the Defendant, as well as unduly burdening the physical infrastructure by such a heavy (and unanticipated) increase in traffic to the Plaza.") (emphasis

added). Thus, even assuming *arguendo* that the circuit court adopted the unproven allegations of harm, which it did not state, the allegations fail for a number of independent reasons. First, Appellee's alleged harm is speculative, remote, and future harm. Second, despite having the burden to demonstrate irreparable injury, Appellee presented no evidence of this alleged harm. Third, even if the alleged harm was what the circuit court found, which we do not know, and even if it was not speculative and unproven future harm, which it is, the TIO would still fail because the undisputed sworn evidence below demonstrated that the alleged harm was nonexistent. (*See* Record, Doc. 24.) Fourth, even assuming none of that was true, the alleged harm is constitutionally irrelevant and not irreparable. Each one of these issues would *alone* be reversible error, and each of them are based on the flaws of an alleged injury on which the circuit court made no findings. The reason for this is simple: Appellee, despite having the burden to demonstrate each element for injunctive relief, failed to put forward any evidence demonstrating the harm it alleged, and the undisputed evidence that was put forward refuted the claim.

Appellee provided: "Plaintiff has suffered, and will continue to suffer, irreparable harm unless or until injunctive relief is entered, due to Defendant's impermissible and extensive burden upon the existing parking facilities at the Plaza." (*See* Record Doc. 12, ¶26.) Yet the record is clear – there is no such harm. Defendant has never used more than 162 of the 315 available parking spaces. No tenant has complained about parking congestion. And no evidence shows that parking has ever been inadequate.

In light of this evidence, Appellee changed its tune during argument and clearly stated that there is no harm, but rather the harm is the mere existence of the church.

> Court: So you're saying that their harm is their very existence itself, not the ramifications – or not the consequences of it? It's not the fact that Dollar Tree – or was it Dollar Tree?
> Appellee: Yea.
> Court: It's not the fact that Dollar Tree may terminate their lease? It's not the fact that parking may or may not be available? It's just a flat-out violation; that's the harm?
> Appellee: It's a flat-out violation.
> Court: And that's the harm?
> Appellee: Yes. And sometimes you can't see the ripple effects right away because you don't know which tenants aren't getting business or people that pull up to the shopping center don't see parking and go away or the breakfast restaurant that struggled with customers

> because of them. You don't see those quite right away, but it doesn't justify or give credence to what they're doing. It would be like me coming in, on my hypothetical, and putting in a strip joint, and they're coming in for declaratory relief, and go "What's the impact? You're still operating as a church and members are still coming. Why do you care that there's a strip joint next to you when you're operating as a place of public assembly, a church?" The harm is the violation of the declaration that needs to be stopped.

(*See* Record, Doc. 48, 52:22 – 54:1.)

This portion of the transcript is telling. The harm Appellee argues exists is the harm it seeks to prevent through declaratory relief. This is not the type of harm that is prevented through the extraordinary, equitable remedy of temporary injunctive relief. There is no current, emergent harm, requiring the court's immediate intervention. This is most evident by the fact that the Court was forced to substitute the legally required concrete, tailored remedy addressing a specific harm with an overbroad prohibition on all undefined "public assembly," since, in fact, there is no harm.

"The rule is, also, that an injunction order should never be broader than is necessary to secure to the injured party the full relief warranted by the particular facts of the case without injustice to his

adversary." *Moore v. City Dry Cleaners & Laundry*, 41 So.2d 865, 871 (Fla. 1949). In *Moore*, the trial court issued an injunction that plainly prohibited protected First Amendment activity. *Moore*, 41 So.2d at 869. The Supreme Court of Florida determined such an overbroad injunction was unlawful. Peaceful picketing "will not be enjoined if carried on for a lawful purpose." *Id.* at 870. Further, there is "no lawful authority under which a court of equity may proceed to enjoin a free discussion of the facts and circumstances surrounding such labor difficulties[.]" *Id.* at 873. To do either would violate the State and Federal Constitutions. And "an injunctive order which permanently restrains a defendant 'from resuming, continuing or repeating the acts complained of in the bill of complaint,' without particularization of the specific acts enjoined, will be held to violate the principles stated; especially where the bill charges the commission of many different and varied acts and activities some of which may be perfectly permissible and proper." *Id.* at 871.

The circuit court's TIO suffers from the same errors. It enjoins constitutionally protected activity and seeks to enjoin all activities complained of by Appellee, without defining the harms suffered by Appellee. This Court should come to the same conclusion, especially

given the fact that the peaceful activities of Coastal Family Church cause Appellee no harm.

II. The circuit court's TIO must be reversed and vacated because the court ignored Florida statutory law that rendered all discriminatory restrictions null and void *ab initio*.

A. Florida Statute §712.065 rendered all discriminatory restrictions null and void ab initio as a matter of binding law.

Most notably, the circuit court's TIO ignored the fact that Florida statutory law has rendered the restrictive covenant upon which Appellee's suit was premised *void ab initio*. Florida's Legislature explicitly and unequivocally voided discriminatory property restrictions, like the one at issue in this case: "*A discriminatory restriction is not enforceable in this state, and all discriminatory restrictions contained in any title transaction recorded in this state are unlawful, are unenforceable, and are declared null and void.*" Fla. Stat. §712.065 (emphasis added).

> The statute defines the term 'discriminatory restriction' as: [A] provision in a title transaction recorded in this state which restricts the ownership, occupancy, *or use of any real property in this state* by any natural person on the basis of a characteristic that has been held, or is held after September 4, 2020, by the United States Supreme Court or the Florida Supreme Court to be protected against discrimination under the Fourteenth Amendment to the

> United States Constitution or under s. 2, Art. 1 of the State Constitution, including race, color, national origin, *religion*, gender, or physical disability.

Fla. Stat. §712.065(2) (emphasis added).

This law was enacted because "discriminatory restrictions can be difficult to remove from the public record as they run with the land," and there is a "common problem in HOAs, making restrictive covenant amendments challenging[.]" (*See* Record, Doc. 30, 132.) [T]he bill defines 'discriminatory restriction,' providing that such a restriction is unlawful and unenforceable." (*See* Record, Doc. 30, 132.) Because Florida Statute §712.065 rendered all discriminatory restrictions "null and void," any such restriction must be treated "as if it never existed." *Hoffman v. State*, 474 So.2d 1178, 1182 (Fla. 1985). Thus, there was and is no covenant for the circuit court or this Court to enforce. That *too* requires vacatur.

B. The restrictions upon which the circuit court issued its TIO have been rendered null and void *ab initio* and therefore do not even exist to enforce against Appellant.

To issue a TIO, the circuit court was required to assess whether the restrictive covenant was being discriminatorily enforced against Defendant. "Determining whether invidious discrimination purpose was a motivating factor demands a sensitive inquiry into such

circumstantial and direct evidence of intent as may be available." *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977); *See also Burton v. City of Belle Glade*, 178 F.3d 1175, 1189 (11th Cir. 1999) (same). Discriminatory purpose may be established by proof that Appellee used protected class "as a substantial or motivating factor" in its "decisions and practices." *Burton v. City of Belle Glade*, 178 F.3d 1175, 1189 (11th Cir. 1999). "Indeed, all 'actions having foreseeable and anticipated disparate impact are relevant evidence to prove the ultimate fact, forbidden purpose.'" *Burton v. City of Belle Glade*, 178 F.3d 1175, 1189 (11th Cir. 1999) (quoting *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 464 (1979)).

In this case, "[t]he evidentiary inquiry is relatively easy." *Village of Arlington*, 429 U.S. at 266. The evidentiary record demonstrates that Appellee seeks to selectively and discriminatorily enforce the prohibition on "public assembly" to target Appellant's Church *and only Appellant's Church* while ignoring identical – and in some cases more egregious – violations of the same restrictive covenant by other tenants. Tenants that operate consignment shops, bingo parlors, and rent their venues for public assembly may continue operations, while

Appellant, Coastal Family Church, and its congregants are enjoined from gathering for religious services. Put simply, *religious is out and bingo is in*. Even the circuit court's TIO recognized that other tenants were in violation of the restrictive covenant upon which the circuit court issued an injunction against Appellant, but the circuit court still issued a TIO. (*See* Record, Doc. 32, ¶4.)

That is because the circuit court entirely misunderstood how to assess the weaponization of the property restriction for evidence of discrimination. Instead, the Court rejected, whole cloth, the idea that there could be discrimination because the phrase "public assembly" does not invoke religion. In fact, the Court implied that a church is no different from an equestrian club, comparing the two in a lost attempt at proving the secular nature of a "public assembly" restriction.

> Court: So your allegation is that the way that it was worded is discriminatory? It's not discriminatory unless you prove to me that it's discriminatory. Just saying that a public assembly can't happen is not in and of itself discriminatory, correct?
> Appellant: That's correct, ma'am. And there's a few reasons that this provision is discriminatory.
> Court: Okay. But, I mean, a bunch of horseback riders could meet there, talk about their equestrian endeavors, and that would be as much a public

> assembly as any other group meeting there, right?
>
> Appellant: That's correct, ma'am. And it would still be unlawful, because that's not the only public policy that this particular restriction violates.

(*See* Record, Doc. 48, 25:18 – 26:10.)

Under the circuit court's own understanding of the proof necessary for discriminatory enforcement, the restriction fails. To be sure, the equestrian club would constitute an assembly. But *so is a gathering of Bingo lovers*. Appellee plainly permits that, and prohibits the Church. *That is discriminatory*. Or, take the car shows and public assemblies that Appellee itself has permitted. A gathering or assembly of car enthusiasts is unquestionably an assembly. Appellee permits that and prohibits the Church. *That is discriminatory.* The undisputed sworn evidence below demonstrates that Appellee is exclusively attempting to enforce the restriction against Appellant, and the reason for that is because it is a religious worship service that Appellee believes diminishes the prospects of the condominium. The targeting of religious assemblies and only religious assemblies is discriminatory, plain and simple, and it renders the restriction null and void.

Appellee, through its pleadings, has expressed a great deal of discriminatory sentiment towards churches. Appellee has made clear that the churches presence in the Flagler Square shopping center represents the shopping center's decline, may impact its standing with speculative, future, national tenants, and the mere presence of a church on its grounds will significantly and materially diminish the value of the shopping center. (See Record, Doc. 4, ¶14.) Leaving aside that such allegations are fatally unsupported by any evidentiary basis, these arguments are the all-too familiar arguments made to enforce racially discriminatory property restrictions. *See Tovery v. Levy*, 401 Ill. 393, 396 (Ill. 1948) ("The amended complaint alleged that the leasing to and occupancy by a Negro or Negroes is a breach and violation of the covenants, conditions and provisions contained in the agreement and tends to depreciate the value of complaints' property and to cause them irreparable loss and injury.").

Collectively, this evidence is sufficient to determine that discrimination is a motivating factor in Appellee's enforcement of its restrictive covenant against Appellant. The First and Fourteenth Amendments do not allow this disparate treatment, and Florida

Statute §712.065(2) renders the restriction as if it never existed, yet the circuit court did not address this argument at all.

In response, Appellee contends that Florida Statute §712.065 only applies to "natural persons." (See Record, Doc. 28, 12) ("Hence, contrary to the Defendant's assertions, this provision of the Statute is completely inapplicable in the instant case. The Defendant is the Trustee of a Trust – not a "natural person" as contemplated by the Statute[.]"). Appellee reading of the statute is wholly incorrect.

The purpose of statutes, such as Florida Statute §712.065, is to protect individual rights. The corporate form does not diminish the protections otherwise provided under the act. After all, "the purpose of [the corporate entity] is to provide protection for human beings." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 706 (2014); *see also Faircloth v. Mr. Boston Distiller Corp.*, 245 So.2d 240, 250 (Fla. 1970) (Drew, J., concurring), receded from on other grounds, *National Distributing Co., Inv. v. Office of Comptroller*, 523 So.2d 156 (Fla. 1988) (Corporations enjoy established rights to equal protection of the law, regardless of the semantics applied in a statutory definition.). And to say that the discriminatory restrictions would be unconstitutional and nullified by the statute if the Appellant was not

a trustee would lead to absurd results. So, if the pastor was the named defendant the restriction would be null and void, but the restriction stands when pastor as trustee is the named defendant? Or, take Appellee's logic a step further: Appellant could this day execute a quit claim deed to any individual parishioner in the church and the restriction would thereby immediately become null and void because it would operate on an individual rather than a corporate form? This turns "the First Amendment . . . to a simple semantic exercise." *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 547 (2001).

"A fair and reasonable interpretation must be made of all laws, with due regard for the ordinary acceptation of the language employer and the object sought to be accomplished thereby." Appellee's interpretation of Fla. Stat. §712.065 allows discrimination against religious institutions while prohibiting discrimination against religious individuals. That is an absurd result, which this Court cannot countenance.

III. The circuit court's TIO must be reversed and vacated because it violates the Florida Religious Freedom Restoration Act.

A. Florida RFRA applies to restrictive covenants such as the one upon which the circuit court's TIO is based.

The circuit court's TIO is state action that substantially burdens Appellant's religious exercise, violating FRFRA and RLUIPA. Congress enacted RFRA "in order to provide very broad protection for religious liberty." *Hobby Lobby Stores*, 573 U.S. at 693. Florida, too, enacted its own version of RFRA. Fla. Stat. §761.03. Florida's RFRA reads:

> (1) The government shall not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, except that the government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person: (a) is in furtherance of a compelling governmental interest; and (b) is the least restrictive means of furthering that compelling government interest.

Fla. Stat. §761.03.

In the wake of the Supreme Court's decision in *City of Boerne v. Flores*, 521 U.S. 507, 511 (1997), striking down the federal RFRA as applied to the States, Congress enacted RLUIPA to protect religious exercise at the state and local level, especially as it relates to land-use regulations. RLUIPA provides parallel protections specifically for land use regulations affecting religious exercise. *See* 42 U.S.C.

§2000cc(a)(1) (requiring all discriminatory land use restrictions to survive strict scrutiny).

While the Declaration is an agreement between private actors, this Court's enforcement of Plaintiff's discriminatory restriction is state action. The Supreme Court best articulated this form of state action as it relates to judicial enforcement of restrictive covenants in *Shelly v. Kraemer*, 341 U.S. 1 (1948). In *Shelley*, the Supreme Court was called upon to consider whether enforcement by state courts of racially discriminatory restrictive agreements may be deemed to be the acts of those States; and, if so, whether the action denies petitioners equal protection of the laws which the Fourteenth Amendment was intended to safeguard. 341 U.S. at 18. The Court unequivocally held that it was.

> We have no doubt that there has been state action in these cases in the full and complete sense of the phrase. The undisputed facts disclose that petitioners were willing purchasers of properties upon which they desired to establish homes. The owners of the properties were willing sellers; and contracts of sale were accordingly consummated. It is clear that but for the active intervention of the state courts, supported by the full panoply of state power, petitioners would have been free to occupy the properties in question without restraint.

Shelly, 341 U.S. at 18.

The law is clear, "[j]udicial enforcement of private agreements contained in a declaration of condominium constitutes state action and brings heretofore private conduct within the scope of the Fourteenth Amendment, through which the First Amendment's guarantee of free speech is made application to the states." *Gerber v. Longboat Harbour N. Condo., Inc.*, 757 F. Supp. 1339, 1341 (M.D. Fla. 1991). The same is true of the First Amendment right to free exercise.

B. The circuit court's TIO substantially burdens the religious exercise of Appellant, Coastal Family Church, and its religious congregants.

Appellant, Coastal Family Church, and its religious congregants desire to use its building for religious worship services is plainly religious exercise. "The party claiming that a government action constitutes a violation of FRFRA or RLUIPA 'bears the initial burden of showing that a regulation constitutes a substantial burden on his or her exercise of religion.'" *Westgate Tabernacle, Inc. v. Palm Beach Cnty.*, 14 So.3d 1027, 1031 (Fla. 4th DCA 2009) (quoting *Warner v. City of Boca Raton*, 887 So.2d 1023, 1034 (Fla. 2004)). RLUIPA's definition of religious exercise includes the following: "The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or

entity that uses or intends to use the property for that purpose." 42 U.S.C. 2000cc-5(5)(B). The circuit court's TIO "substantially burden[s] the congregants' sincerely held religious practices – and *plainly so*.

The circuit court's TIO plainly imposes a substantial burden on Appellants', Coastal Family Church's, and its religious congregants' right to religious exercise, assembly, and speech. (*See* Emergency Motion, Appendix B, Declaration of Pastor George Gourlay, 14-22.) The TIO enacts a total prohibition on religious worship and deprives the Church and its congregants of the ability to follow their sincerely held religious beliefs. "*Religion motivates the worship services*." *Maryville Baptist Church, Inc. v. Beshear*, 957 F.3d 610, 613 (6th Cir. 2020) (emphasis added).

A substantial burden exists where, as the circuit court's TIO does here, the regulation "either compels the religious adherent to engage in conduct that his religion forbids or forbids him to engage in conduct that his religion requires." *Warner*, 887 So.2d at 1033 (citing *Mack v. O'Leary*, 80 F.3d 1175, 1178 (7th Cir. 1996)). "[B]ut for the active intervention of the state courts, supported by the full panoply of state power," Appellant would remain free to occupy Unit

1 without restraint, to host religious worship services, to exercise their sincerely held religious beliefs, and to gather together to follow the commands of scripture. *Id.* The circuit court's TIO prohibits them from doing all of this, under the guise of the broad terminology "public assembly." That is a substantial burden under any meaning of the term.

C. The circuit court's TIO is neither based on a compelling interest nor is it the least restrictive means.

"Once that [substantial burden] threshold determination has been made, the government bears the burden of establishing that the regulation furthers a compelling government interest and is the least restrictive means of furthering that interest." *Warner*, 887 So.2d at 1034 (citing Fla. Stat. §§761.02(3), 761.03(1) (2003)). Summarily, the regulation is subject to strict scrutiny, *id.* at 1033, "the most demanding test known to constitutional law." *City of Boerne*, 521 U.S. at 534. The circuit court's TIO unquestionably fails this standard.

A government action, such as the circuit court's TIO here, is not supported by a compelling interest where it leaves the same conduct engaged in from a nonreligious perspective unrestrained. *E.g.*, *Tandon v. Newsom*, 593 U.S. 61, 63 (2021). And, more fatally, even if

there was some compelling interest in enjoining religious worship services on the basis of a null and void restrictive covenant, which there is not, "[i]t is not enough to show that the Government's ends are compelling; the means must be carefully tailored to achieve those ends." *Sable*, 492 U.S. at 126. Total prohibitions on constitutionally protected speech are substantially broader than any conceivable government interest could justify. *Jews for Jesus*, 482 U.S. at 574. Indeed, a narrowly tailored regulation of speech is one that achieves the government's interest "without unnecessarily interfering with First Amendment freedoms." *Sable*, 492 U.S. at 127. The circuit court's TIO runs roughshod over the First Amendment rights of Appellant, Coastal Family Church, and its religious congregants, and is *ipso facto* not the least restrictive means. It therefore fails strict scrutiny, and violates Florida FRFA.

IV. The circuit court abused its discretion by failing to even mention, let alone find that Appellee had demonstrated irreparable harm.

"Basic to jurisdiction in equity is the rule that there must be a lack of an adequate remedy at law, and injunctive relief will not lie unless irreparable injury will result otherwise." *First Nat'l Bank in St. Petersburg v. Ferris*, 156 So.2d 421, 423 (Fla. 2d DCA 1963) (citing

Stoner v. South Peninsular Zoning Commission, 75 So.2d 831 (Fla. 1954)). "[A]n injury is irreparable when the damage is estimable only by conjecture, and not by an accurate standard." *Sun Elastic Corp. v. O.B. Indus.*, 603 So.2d 516, 517, n.3 (Fla. 3d DCA 1992). Irreparable injury will never be found where the injury complained of is "doubtful, eventual or contingent[.]" *First Nat'l Bank in St. Petersburg*, 156 So.2d at 424. "The party seeking the injunction has the burden to provide *competent, substantial, evidence*" to support its claimed irreparable injury. *Bautista REO U.S., LLC v. ARR Invest., Inc.*, 229 So.3d 362, 365 (Fla. 4th DCA 2017) (emphasis added).

Appellee put forward *no evidence whatsoever* for any contentions concerning parking congesting or *anything else*. That *alone* warranted a denial of injunctive relief, and mandates vactur here. All that was left after the circuit court's hearing was the *allegations* in Appellee's complaint below. Nothing more. Without evidence in the record, Appellee's mere allegations are plainly insufficient to warrant injunctive relief. Indeed, "mere general allegations of irreparable injury will not suffice." *First Nat'l Bank in St. Petersburg*, 156 So.2d at 423-24. The trial court is tasked with judging whether "the injury will in fact be irreparable[.]" *First Nat'l*

Bank in St. Petersburg, 156 So.2d at 424. "[G]eneral allegations of irreparable harm are insufficient to state a claim of issuance of a temporary injunction." *Hialeh, Inc. v. B&G Horse Transp., Inc.*, 368 So.2d 930, 934 (Fla. 3d DCA 1979).

Instead of attempting to prove an irreparable injury concerning the alleged harms, Appellee contended that the existence of a church in the condominium was all that was needed. (*See* Record, Doc. 48, 12:16-24 (arguing that Appellant is "a church . . . That's really the end of the story.") In other words, having failed to produce competent evidence of irreparable injury, Appellee retreated to a different argument altogether, one focused on the Church as a Church, and claimed that was the end of things. But the law requires Appellee to demonstrate, with competent and substantial evidence the existence of "*irreparable harm absent entry of an injunction*." *Florida Dep't of Health v. Florigrown, LLC*, 317 So.3d 1101, 1110 (Fla. 2021) (emphasis added). Appellee failed, and the circuit court issued the TIO anyway. That is reversible error in every sense of the word, and mandates vacatur.

Worse still, Appellant—though shouldering no burden—was the only party below who came forward with sworn evidence concerning

the alleged harms. And that undisputed sworn testimony demonstrated that the alleged harm was nonexistent. There is no congested parking, were no tenant complaints, and no businesses are impacted by Coastal Family Church's one hour, once a week religious services. That should have ended the inquiry. Reversibly, it did not.

Appellee's only response to its evidentiary failures was to retreat to a second position that it *could, at some point in the future,* be faced with an enforcement action. (*See* Record, Doc. 48, 42:24 – 43:1 ("And it's not speculative to say that Dollar Tree may enforce that against us at some point in time."). Leaving aside that future, potential actions are the definition of speculation, it still fails for not being irreparable injury. Even *if* it ever occurred *in the future*, this alleged *potential, future* alleged harm would amount to the breaking of a lease, which is most certainly calculable by monetary relief and thus not irreparable.

All the speculation aside, however, leaves the seminal and critical error of the circuit court front and center. Appellee had the burden to prove with *competent, substantial* evidence that it was suffering *irreparable harm*. It failed, and the TIO must as well.

V. The circuit court abused its discretion by ignoring Appellant's affirmative defenses below.

Florida law is unequivocal: trial courts must consider and address affirmative defenses raised at temporary injunction hearings. *Salazar*, 230 So.3d at 619; *Bradley v. Health Coalition, Inc.*, 687 So.2d 329 (Fla. 3d DCA 1997). The failure to do so constitutes reversible error. Here, Appellant raised multiple affirmative defenses including estoppel and waiver and the application of Fla. Stat. §§718.123, 712,065, and 761, as well as federal protections under RLUIPA. The TIO makes no mention of any of these defenses and contains no analysis of whether the alleged discriminatory restriction – a categorical ban on "public assembly" – is valid under unequivocal Florida statutes or survives the strict scrutiny standard applied by Federal and Florida statutory protections of religious exercise. The TIO's silence on these matters is not harmless — it is per se reversible error and mandates vacatur.

Because a temporary injunction is a form of equitable relief, Appellee's request necessarily invited the circuit court to consider equitable defenses, including estoppel and waiver. Yet the circuit court did not even consider, much less address, them.

In *Salazar*, 230 So.3d at 621, Mr. Salazar raised multiple affirmative defenses, including illegality and laches. The trial court's order did not address these defenses, and the "trial court's order makes no mention of these, nor does the record reflect that the trial court considered and disposed of them. This was error." *Id.* at 622. "The trial court declined to consider either of these defenses, ruling that they could not be considered at a temporary injunction hearing." *Id.* at 334. "[T]his was error." *Id.* So, too, here.

Similarly, in *Bradley*, 687 So.2d at 329-33, an employee argued that a request for an injunction should be denied pursuant to the affirmative defense, the doctrine of unclean hands. "The trial court declined to consider either of these defenses, ruling that they could not be considered at a temporary injunction hearing." *Id.* at 334. "[T]his was error." *Id.* So, too, here.

The reason trial courts must consider affirmative defenses is clear – once a defendant raises an affirmative defense and presents supporting evidence, the burden is on moving party "'to demonstrate the likelihood of success on the merits as to this issue.'" *Id.* (quoting *Cordis Corp. v. Prooslin*, 482 So.2d 482, 490 (Fla. 3d DCA 1986)). Indeed, once an affirmative defense is supported in the record, the

party seeking a temporary injunction "must demonstrate likelihood of success on the merits *as to the asserted affirmative defenses* as well as … elements of plaintiff's prima facie case." *Id.* (quoting *Cordis Corp. v. Prooslin*, 482 So.2d 486, 490 (Fla. 3d DCA 1986)) (emphasis added). The circuit court did not hold Appellee to that burden.

Additionally, when determining the validity of a restrictive covenant, courts must consider whether the restriction is enforced selectively or arbitrarily. *Grove Isle Ass'n., Inc. v. Grove Isle Associates, LLLP*, 137 So.3d 1081, 1091-92 (Fla. 3d DCA 2014). This principle has particular force in religious exercise cases. As the Supreme Court held in *Tandem v. Newsom*, "[w]here the government permits other activities to proceed with precautions, it must show that the religious exercise at issue is more dangerous than those activities even when the same precautions are applied." 593 U.S. 61, 63 (2021). Here, the evidence of selective enforcement is overwhelming.

Appellee contends that Flagler Square should be limited to tenants that operate commercial retail stores. The subject property restriction restricts use of any unit as a "bingo parlor," "[a] facility for the sale or rental of used goods (including thrift shows, secondhand

or consignment stores)," and "[a] banquet hall, auditorium or other place of public assembly." (*See* Record, Document 4, Ex. 1 at 44.) The record below showed, indisputably, that each of these alleged restrictive covenants is currently being violated. Flagler Square's tenants include a Junque in the Trunk, a consignment shop. (*See* Record, Doc. 30, 99) ("Welcome to Junque in the Trunk, an upscale consignment and resale store in picturesque Flagler Beach, Florida."). Flagler Square includes a Fraternal Order of Police Lodge (Lodge #171), which hosts public Bingo Nights open to the public and rents its facility for public assembly. (*See* Record, Doc. 30, 99) ("We officer our lodge for rental to various organizations making it an idea space for Bingo events, HOA meetings, NRA Classes, and Law Shield classes."). Flagler Square also includes a restaurant, a legal office, and a State of Florida Tax Collector's Office. *None of these tenants conform with the subject property restriction.*

And the undisputed evidence below demonstrates that Appellee, itself, "either hosted, or allowed others to host Flea Markets, Car Shows, and other public assemblies in the Flagler Square parking lot." (*See* Record, Doc. 30, 78.) That, too, is in violation of the alleged restriction.

Appellee has never attempted to enforce the restriction against any of these nonconforming uses and has not imposed on itself compliance with the alleged restrictions. That is the definition of arbitrary and unreasonable enforcement of the restrictive covenant. Appellant raised this as an affirmative defense, and produced evidence to support this defense. Appellee came forward with no evidence to refute any of it. Appellee failed to provide evidence that *any* tenant was in compliance with the restriction. The evidence in the record makes clear that Appellee has selectively enforced the restriction against only religious assembly. This is textbook arbitrary and unreasonable enforcement – conduct that waives the right of Appellee to enforce the restriction against Appellant.

The circuit court even recognized that no other tenant conformed to the restriction: "There are several tenants/owners at the commercial property which uses do violate the aforementioned restrictive covenant[.]" (*See* Record, Doc. 32, 4.) Unfortunately, the circuit court went on to find, "those uses predate the subject restrictive covenant." (*See* Record, Doc. 32, 4.) The second half of the circuit court's finding is legal and factual error.

The circuit court made this finding without supporting evidence in the record. Instead, the Court solely relied on the following exchange with Appellee's counsel:

> Court: So are all of the tenants that are there arguably in violation of the declaration were all of them there prior to the declaration being put in place, like the gym or the – there were several others that he said.
> Appellee: No. The only one that's in violation is the church. The ones that –
> Court: So all of the other tenants that he mentioned that were violating the current declaration – he mentioned a gym. He mentioned an antique store. He mentioned Junque in the Trunk. He mentioned a few others. Do all of those leases predate the declaration?
> Appellee: Yes. Yes. And the Junque in the Trunk is a retail consignment store, appropriate for a shopping center. Its lease predates the declaration.
> Court: Okay.
> Appellee: Same thing with the Fraternal Order of Police, which by the way, as we point out, it's a 1200-square-foot space that has bingo once a week and meetings. 1200 square feet. That's the equivalent of going to a shopping center to a nail salon or a hair salon, not 18,000 square feet.

(*See* Record, Doc. 48, 49:7 – 50:9.)

What should stand out to the Court is the fact that Appellee *admits that public assemblies and bingo are permitted in the Fraternal Order of Police*, despite being clear violations of the restriction. Appellee further admits Junque in the Trunk is a consignment shop,

which also violates the restriction. Has Appellee attempted to enforce these restrictions against any of these nonreligious, nonconforming uses? *No.*

So what is Appellee's answer for why nonreligious, nonconforming uses are overlooked while the religious assembly is subject to the instant suit? Well, Bingo is only once a week and its smaller so no big deal. That is discriminatory and arbitrary enforcement of a restriction under any definition of the term.

More fatally still is the fact that all of the alleged "evidence" concerning the other uses—which also prove the affirmative defense compelled rejection of the injunction—were not evidence at all.

First, as a matter of law, [a]n attorney's unsworn argument does not constitute evidence." *Concerned Citizens for Judicial Fairness, Inc. v. Yacucci*, 162 So.3d 68, 72 (Fla. 4th DCA 2014). The same defect infects this TIO because the only basis upon which the circuit court made its findings was counsel's oral statements at a hearing. Nothing more. That is neither competent nor substantial nor even evidence.

Second, even if the circuit court's findings were supported by evidence, which they are not, Appellee presented no relevant legal authority establishing that tenants may indefinitely violate a

condominium declaration simply because their lease predates it. The circuit court too, provided no law in the TIO to support the notion that a three-year violation of a Declaration somehow immunizes a tenant from the Declaration's requirements simply because the tenant's lease was executed prior to the creation of the Declaration.

Third, even if there was some precedent for allowing indiscriminate violation of a restrictive covenant, the circuit court's "predating" rationale does not explain Appellee's own violations of the restriction. The undisputed record shows that "Plaintiff either hosted, or allows others to host Flea Markets, Car Shows, and other public assemblies in the Flagler Square parking lot." (*See* Record, Doc. 30, 78.). Appellee is certainly bound by the terms of the agreement yet is treating its own similarly situated conduct entirely differently than Appellant's religious services. This disparate treatment renders enforcement arbitrary and unreasonable.

Ultimately, each defense Appellant raised goes to the heart of whether there is even an operative restrictive covenant remaining after Florida voided discriminatory restrictions. Appellee produced no evidence rebutting Appellant's affirmative defenses. The circuit court permitted Appellee to shirk its evidentiary burdens and issued a TIO

without the requisite evidence. That is reversible error and mandates vacatur.

VI. The circuit court abused its discretion by making a public interest finding that is contradictory, speculative, and unsupported by competent evidence.

Appellant presented constitutional interests, public policy considerations, and the community's interest in proceeding with litigation without a TIO. Here, again, Appellee presented no evidence whatsoever that the issuance of a temporary injunction would serve consideration of the public interest. In its Verified Motion for Temporary Injunctive Relief, Appellee provided the following:

> Injunctive relief preventing Defendant from operating a place of public assembly at the Plaza – whether for 400 or 4,000 guests – serves the public interest by protecting and preserving the rights of the members of the Association to rely upon all parties bound by the Declaration to honor and adhere to its provisions.

(*See* Record, Doc. 12, ¶29.)

The circuit court wholly avoided assessing the interests presented by Appellant. Instead, the circuit court accepted Appellee's allegations in their entirety, without supporting evidence, instead injecting reversible contradictory factual findings into the already defunct TIO:

> A temporary injunction is appropriate as it serves interest, specifically the interest of those owners and tenants in the subject commercial development who are impacted by the violation many of whom may have acquired their interest in the property because of the restrictive covenant which appears to favor multiple tenancies to improve retail opportunities and appears to attempt to protect parking for the good of all of the owners/tenants.

(*See* Record, Doc. 32, ¶15.)

Appellee's argument and the circuit court's finding suffer from three, independent, fatal flaws: (1) it logically contradicts Appellee's own argument and the Court's own factual findings; (2) it rests entirely on speculation prohibited by Florida law; and (3) it reflects a failure to consider, let alone balance, the public interests presented by Appellant.

The circuit court's public interest rationale, that tenants "acquired their interest in property because of the restrictive covenant," (*See* Record, Doc. 32, ¶4), cannot coexist with the Court's separate finding that "there are several tenants/owners at the commercial property which uses do violate the aforementioned restrictive covenant however these uses predate the subject restrictive covenant," (*See* Record, Doc. 32, ¶4.) These findings are

mutually exclusive. If the existing tenants predate the covenant they could not have "acquired their interest" in reliance upon it.

Further, the speculative nature of the circuit court's public interest finding is evident in its own language: "… those owners and tenants in the subject commercial development who are impacted by the violations many of whom *may* have acquired their interest in the property because of the restrictive covenant…." (*See* Record, Doc. 32, ¶15 (emphasis added).) "Speculative testimony is not competent substantial evidence." *Realauction.com, LLC v. Grant St. Grp., Inc.*, 82 So.3d 1056, 1059 (Fla. 4th DCA 2011). Here, there was no testimony. There was only allegation, and that is per se insufficient for a temporary injunction.

Third, the required balancing of public interests could not have taken place below, because one party's interests were entirely removed from the scale. The circuit court wholly avoided assessing the public interests presented by Appellant. The law is clear: "an injunction will not be granted where it is readily apparent that it will result in confusion and disorder and produce an injury to the public that outweighs the individual right of the complainant to have the

relief sought." *Florida Land Co. v. Orange County*, 418 So.2d 370, 372 (Fla. 5th DCA 1982).

Consider, *Sanders v. Sanders*, 410 So.3d 1285, 1287 (Fla. 5th DCA 2025), wherein a trial court enjoined "Appellant from engaging in various activities" associated with his business, which he owned in partnership with Appellee, his brother. This Court reversed and remanded because Appellee "failed to meet his evidentiary burden of showing a substantial likelihood of success on the merits *or consideration of the public interest*[.]" *Id.* at 1288. In fact, Appellee "failed to present any evidence whatsoever that the issuance of a temporary injunction would serve consideration of the public interest." *Id.*

The presence of Coastal Family Church serves the spiritual needs of the Flagler Beach community. Shuttering the doors of the church negatively impacts that community, while infringing on the constitutional rights of the Appellant and the church's congregants. The complete absence of any recognition or analysis of these interests is not the "balancing" of public interests required by law. For this reason alone, the TIO should be reversed and vacated.

VII. Even if all of these factors did not require vacatur of the circuit court's TIO, the TIO is defective for failing to set a bond conditioned on payment of costs and damages sustained by Defendant.

"[W]hen the trial court issues a temporary injunction, Rule 1.610 requires the trial court to set a bond." *Wayne's Aggregate and Materials*, 391 So.3d at 636 (quoting Fla. R. Civ. P. 1.610(b)). The bond must be "conditioned for the payment of costs and damages sustained by the adverse party is wrongfully enjoined." Fla. R. Civ. P. 1.610(b)). "The plain language of the rule is compulsory." *Wayne's Aggregate and Materials*, 391 So.3d at 636. This ordinarily requires all parties be given an opportunity to present evidence as to the appropriate amount of a bond." *Fla. High Sch. Activities Ass'n v. Mander ex rel. Mander*, 932 So.2d 314, 316 (Fla. 2d DCA 2006).

This requirement is not perfunctory. "Since damages recoverable for wrongfully obtaining an injunction are limited to the amount of the injunction bond, the court must provide both parties the opportunity to present evidence as to the amount of an appropriate bond." *Richard v. Behavioral Healthcare Options, Inc.*, 647 So.2d 976, 978 (Fla. 2d DCA 1994). The bond amount should operate as a recovery calculated to protect the wrongfully enjoined

party, rather than punish it. This makes its proper calculation essential to protecting the wrongfully enjoined party.

The TIO implemented a bond without even asking for, much less considering evidence of its appropriateness. Instead of a proper calculation, the bond set by the circuit court improperly punishes Appellent rather than protects it from harm that could be suffered by wrongful enjoinment. The TIO reads, in pertinent part:

> Plaintiff will be required to post a bond in the amount of $50,000.00 (Fifth Thousand Dollars) for the payment of costs and damages sustained by Defendant if it determined at a later date that Defendant had been properly enjoined. *This amount is not deemed nominal or de minimus but rather is the Court's recognition that many, if not all, of the costs incurred by Defendant could have been avoided had the restrictive covenants been recognized at the outset prior to the purchase as Defendant was on direct notice of the same.*

(*See* Record, Doc. 32, 3) (emphasis added).

The circuit court's rationale for its bond is to dimmish harm done to Appellee, rather than protect the interests of Appellant, the enjoined party. *That impermissibly flips the relevant analysis on its head*. The circuit court's finding that Appellant's costs "could have been avoided" by complying with the restriction – the restriction that Appellant argues is unlawful and nonexistent under Florida law. The

Court's assessment of the bond issue impermissibly inverts Rule 1.610. Bonds are put in place to compensate the adverse party if wrongfully enjoined, not to punish Appellant for alleged wrongdoing. The circuit court explicitly stated that it was tethering the bond amount to Appellant's alleged ability to avoid this litigation, a fact Appellant vehemently denies. That *alone* is reversible error.

CONCLUSION

Because the First and Fourteenth Amendments, Florida RFRA, RLUIPA, and Fla. Stat. §§712.065 and 718.123, all prohibit the court from categorically barring Appellant, Coastal Family Church, and its congregants from speech, assembly, and free exercise in their own church, the circuit court's order must be reversed.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with all applicable font and word count requirements. It was prepared in 14-point Bookman Old Style font and conforms with Fla. R. App. P. 9.210(a)(2)(B) by not exceeding 13,000 words.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by electronic service through the Florida Courts E-Filing Portal on this 16th day of February, 2026, to all counsel of record, including the following:

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