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

APPELLANT'S REPLY BRIEF

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ARGUMENT

I. The trial court's order plainly prohibits speech, expression, and assembly and constitutes a prior restraint.

A. Appellee concedes that the TIO prohibits using Coastal Family Church's facility as a "place of public assembly," and thus necessarily prohibits protected First Amendment activity.

Appellee concedes, as it must, that the TIO categorically prohibits assembly. (Appellee Br., 21 ("the Trial Court restricted Unit 1's use as a place of public assembly.")); (*id.* at 24 ("the only thing that the TIO does is prohibit … the use of Unit 1 as a place of public assembly.")); (*id.* at 29 ("The TIO simply prohibits the assembly of people in Unit 1 for any purpose.").) That concession is fatal. While Appellee insists "there is no restriction in the TIO as to speech and free exercise of religion whatsoever," the fact that the TIO prohibits assembly alone renders it a prior restraint.

"[A] law subjecting the exercise of First Amendment freedoms to the prior restraint . . . is unconstitutional." *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150–51 (1969). The prohibition is not limited to speech but includes a presumption against the constitutionality of prior restraints on assembly. *See Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 130 (1992) (prohibitions and

restrictions on right to assemble are also prior restraints); *United States v. Frandsen*, 212 F.3d 1231 (11th Cir. 2000) (prohibitions on assembly constitute prior restraints). Appellee's concession and the TIO's plain terms prohibiting assembly render it a presumptively unconstitutional prior restraint.

B. Total prohibitions or restrictions on First Amendment rights, including assembly, constitute unconstitutional prior restraints.

Not only does that TIO's explicit prohibition on assembly render it a prior restraint, but the fact that it categorically prohibits all First Amendment activity in Flagler Square bolsters that inescapable conclusion. *See Vance v. Universal Amusement Co., Inc.*, 445 U.S. 308, 312 (1980) ("a general prohibition would operate as a prior restraint"). *See also Gayety Theatres, Inc. v. City of Miami*, 719 F.2d 1550, 1552 (11th Cir. 1983) (noting that total prohibitions operate as prior restraints); *Chiu v. Plano Independent Sch. Dist.*, 339 F.3d 273, 281 (5th Cir. 2003); *Int'l Soc'y for Krishna Consciousness v. Rochford*, 585 F.2d 263, 269 (7th Cir. 1978) (same). The circuit court's categorical prohibition on Appellant's right to assemble is an unconstitutional prior restraint.

C. Neither Arcara nor O'Brien support such Appellee's contention that the TIO is merely an incidental burden on Appellant's First Amendment rights.

Appellee contends that the TIO is merely an incidental burden on speech that is unrelated to religion, so it survives scrutiny under *O'Brien* and *Arcara*. (Appellee Br., 27–29) (citing *United States v. O'Brien*, 391 U.S. 367 (1968); *Arcara v. Cloud Books, Inc.*, 106 S. Ct. 3172 (1986)). This is incorrect.

First, total prohibitions are axiomatically not incidental burdens. *Free Speech Coalition, Inc. v. Paxton*, 606 U.S. 461, 486–87 (2025) ("blanket prohibitions" are distinct from incidental burdens); *Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126–27 (1989) (same). *Strike one*.

Second, even assuming Appellee's contentions regarding conduct vs. speech are correct—which they are not—Appellee's admission that the TIO prohibits assembly demonstrates that it is indeed a prohibition on speech. *See, e.g.*, *United Mine Workers of Am., Dist. 12 v. Illinois State Bar Ass'n*, 389 U.S. 217, 222 (1967) ("[T]he rights to assemble peaceably and to petition for a redress of grievances are among the most precious of the liberties safeguarded by the Bill of Rights. **These rights, moreover, are intimately**

connected both in origin and in purpose, with the other First Amendment rights of free speech and free press. 'All these, though not identical, are inseparable.'" (emphasis added)). To prohibit assembly—as Appellee concedes the TIO does—it necessarily prohibits speech—they are one in the same. *Strike two.*

Third, Appellee's contention that the TIO does not burden First Amendment speech and religious exercise because it does not say on its face that it prohibits speech, but merely prohibits assembly, is plainly incorrect.

> The First Amendment would, however, be a hollow promise if it left government free to destroy or erode its guarantees by **indirect restraints** so long as no law is passed that prohibits free speech, press, petition, or assembly as such. We have therefore repeatedly held that laws which **actually affect** the exercise of these vital rights cannot be sustained merely because they were enacted for the purpose of dealing with some evil within the State's legislative competence.

United Mine Workers, 389 U.S. at 222 (emphasis added). *Strike three*.

And, even if Appellee's contention about incidental burdens on conduct had not already struck out, which it has, it would still fail for a separate and independent reason: effectuating a prohibition on First Amendment activity under the guise of a mere regulation of

conduct with an incidental burden on speech and religious exercise is plainly foreclosed as a matter of law. *See Chiles v. Salazar*, 146 S. Ct. 1010, 1025 (2026) (holding that the government cannot justify "its actions on the ground that the law in question was generally aimed at certain types of conduct" where it prohibits speech and First Amendment activity); *id.* ("Just because a law may generally function as a regulation of conduct . . . does not exempt it from demanding First Amendment review when a government seeks to apply that law to speech alone."). *See also Cohen v. California*, 403 U.S. 15 (1971); *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010). The TIO cannot survive strict scrutiny, and Appellee's failure to advance any argument in its defense is as telling as it is fatal.

II. Appellee admits the TIO "prohibits the assembly of people in Unit 1 for any purpose" which this Court cannot constitutionally sanction as it would create a First Amendment Free Zone and is clearly overbroad.

A. Appellee's admission is case determinative as First Amendment Free Zones are patently unconstitutional.

Appellee suggests it is "absurd" to claim the TIO creates a First Amendment free zone, arguing that courts have only applied such a label to cases involving public property. (Appellee Br., 32–33). That is simply incorrect. The prohibition on First Amendment free zones

extends beyond the traditional public forum. It applies to all First Amendment expression, speech, and assembly – even in private spaces not subject to forum analysis. *Chiles v. Salazar*, 146 S. Ct. at 1027 (holding First Amendment free zones are categorically unconstitutional, even within the private confines of a counselor's privileged counseling sessions). In *Chiles*, the state "stumble[d] out of the gate" by asking the Court to "recognize a cavernous 'First Amendment Free Zone,'" that permitted censorship of "almost any speech they consider[ed] 'substandard care.'" *Id.* (quoting *United States v. Stevens*, 559 U.S. 460, 469 (2010)). The circuit court's TIO similarly stumbles and never recovers because it creates a First Amendment cavern at Flagler Square. Just as *Chiles* extended the bar on First Amendment free zones to private counseling sessions, so too does it extend to a state court order prohibiting speech, assembly, and religious exercise at Flagler Square.

B. Appellee's contention that the TIO evades constitutional scrutiny because Appellant can merely broadcast their religious worship service is incorrect factually and irrelevant legally.

Appellee suggests – without legal support – that there is nothing that prohibits Appellant from simply "setting up an online broadcast"

of its religious services. (Appellee Br., 34 n.10.) This contention fails factually and legally.

First, Appellee's contention demonstrates vagueness. The virtual broadcast of a church service requires *inter alia* a worship team, production crew, multiple pastors, set-up and clean-up teams. Yet the TIO prohibits assembly, and the host of individuals gathering together to produce a virtual worship service is an assembly. According to the TIO's language, if two people are gathered in Unit 1 to broadcast a religious worship service, then more than one person has "assembled." And if more than one person has assembled, then Appellant risks contempt for a violation of the plain language of the TIO.

Second, Appellee's contention is legally incorrect. The First Amendment does not allow courts to dictate how churches worship. *E.g.*, *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020); *Tandon v. Newsom*, 593 U.S. 61 (2021); *Harvest Rock Church, Inc. v. Newsom*, 141 S. Ct. 1289 (2021); *Harvest Rock Church, Inc. v. Newsom*, 141 S. Ct. 889 (2020). Even if this Court somehow read into the TIO the ability for Appellant to broadcasting religious services, which it cannot, "who is to say that every member of the congregation

has access to the necessary technology to make that work." *Maryville Baptist Church, Inc. v. Beshear*, 957 F.3d 610, 615 (6th Cir. 2020). Moreover, a Florida circuit court has no authority to say that every member of the congregation must see it as an adequate substitute for what it means when "two or three gather in my Name." *Id.* (quoting *Matthew* 18:20). As the Supreme Court has recognized, "remote viewing [of religious worship services] is not the same as personal attendance." *Catholic Diocese*, 592 U.S. at 68.

III. *Shelley v. Kraemer* unequivocally held that judicial enforcement of private restrictive covenants that infringe rights protected by the Fourteenth Amendment constitutes state action.

Appellee contends that the TIO, issued by a state court, does not constitute state action. (Appellee Br., 48–49.) This contention is foreclosed by decades of Supreme Court precedent. "That the action of state courts and of judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment, **is a proposition which has long been established by decisions of this Court**." *Shelley v. Kraemer*, 334 U.S. 1, 14 (1948) (emphasis added). And *Shelley* expressly extended

this principle to judicial enforcement of restrictive covenants between private parties:

> We have no doubt that there has been state action in these cases in the full and complete sense of the phrase. . . . 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.

Id. at 19. The circuit court's TIO is precisely the same state intervention, enforced against a church.

Appellee contends that *Davis v. Prudential Securities, Inc.*, 59 F.3d 1186 (11th Cir. 1995) and *Loren v. Sasser*, 309 F.3d 1296 (11th Cir. 2002) render *Shelley* inapplicable here. (Appellee Br., 47–48.) That is plainly incorrect.

Shelley made clear that state court orders are state action. *Period*. *Davis* is wholly inapposite because it involved judicial approval of an arbitration award that involved no discriminatory enforcement of anything. The throwaway dicta of *Davis* that *Shelley* has not been applied beyond discrimination on the basis of race is therefore wholly unhelpful to Appellee's contentions and certainly does not demonstrate that *Shelley*'s plain holding does not apply here.

Loren, too, provides no refuge for Appellee. What the Eleventh Circuit said in *Loren* was that a private defendant's **threat of judicial enforcement** is not enough to show state action. 309 F.3d at 1303. Here, there is no mere threat of judicial enforcement. **Actual judicial enforcement has occurred and is the subject of this appeal**. And the trial court's TIO plainly places this appeal in *Shelley*'s holding—not *Loren* or *Davis*. As *Loren* said, "the Supreme Court has held that **the enforcement** of a racially discriminatory covenant constitutes state action." 309 F.3d at 1303 (emphasis added). That the Fourteenth Amendment right protected against discrimination involves religion (here) versus race (in *Shelley*) is of no moment. "The Constitution confers upon no individual the right to demand action by the State which results in the denial of equal protection of the laws to other individuals." *Shelley*, 334 U.S. at 22. "And it would appear beyond question that the power of the State to create **and enforce** property interests must be exercised within the boundaries defined by the Fourteenth Amendment." *Id. Shelley* applies, and Appellee's contentions to the contrary fails as a matter of law.

IV. Appellee's own efforts to evade the TIO's condemnation for vagueness demonstrates that it is indeed impermissibly vague.

A. Appellee's vagueness contentions fail because Appellee's own brief must resort to reliance on external materials to define the vague terms of the TIO.

Appellee contends that the TIO "relates to only one singular thing" – referring to its categorical prohibition on all public assembly – and suggests that a narrow focus is sufficient to render it not vague. Appellee's argument is essentially that the TIO is not vague because "public assembly" means "that singular activity" of public assembly. (Appellee Br., 41.) But this "self-referential definition merely begs the question": what is the meaning of "public assembly" to which the TIO relates? *Torres v. Tex. Dep't of Public Safety*, 597 U.S. 580, 623 (2022) (Thomas, J., dissenting). It is mere tautology, "defining a word by using the same word," *Dantzler v. Beard*, 2007 WL 5018184, *6 (W.D. Pa. 2007), and "lacking in explanation," *Odom v. Cole*, 2026 WL 942679, *2 (Fla. 6th DCA 2026). That lack of any definitional clarity is "alone … grounds to reverse and remand." *Id.*

Appellee goes further, resorting to Flagler County municipal code to supply a definition of "public assembly," despite the Church

being governed by the City of Flagler Beach's municipal code. (Appellee Br., 5.) That Appellee need reach into the wrong municipality's code to define the TIO's most operative term is itself proof of the TIO's vagueness. Would the TIO magically become not vague by reaching into Miami's definitions? Or Seattle's? Certainly not, but the problem remains the same regardless of geographical reach—Appellee has to reach into something else to define the terms of a document that is required to *internally* define its prohibitions to survive scrutiny. That alone renders the circuit court's injunction invalid under Rule 1.610(c), which 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) (quoting Fla. R. Civ. P. 1.610(c)).

Appellee further contends that the TIO is not vague because it purportedly satisfies the elements for *issuing* a temporary injunction. This contention is as confusing as it is irrelevant. Specifically, Appellee contends that all that is required for a temporary injunction is satisfaction of four elements, and factual findings concerning those

four elements eliminates vagueness. (Appellee Br., 37.) But the standard for obtaining a temporary injunction is wholly distinct from the requirement that the actual prohibitory language of the injunction internally define the acts restrained. *Florida Dep't of Health v. Florigrown*, LLC, 317 So.3d 1101, 1110 (Fla.2021). The elements are prerequisites to entry of a temporary injunction, which is then followed by independent requirements of Rule 1.610(c) that the injunction issued describe the enjoined conduct with reasonable specificity, without reference to extraneous documents. Thus, purported satisfaction of prerequisites to entrance does not save an actually entered injunction that fails the specificity requirements.

B. Even Appellee's own authorities require definitions of the enjoined acts be included in the injunction.

Appellee accuses Appellant of "distort[ing]" the specificity requirements of Rule 1.610(c), but its own authority confirms those inescapable requirements and Appellant's position. (Appellee Br., 35-39.) In *4UOrtho, LLC v. Practice Partners, Inc.*, 18 So.3d 41 (Fla. 4th DCA 2009), the court reversed a temporary injunction prohibiting solicitation of "current or prospective clients" because it failed to identify those clients with specificity. The court held that "'one

against whom [an injunction] is directed should not be left in doubt about what he is to do."' *Id.* (quoting *Pizio v. Babcock*, 76 So.2d 654, 655 (Fla.1954)). In *Clark v. Allied Associates, Inc.*, 477 So.2d 656, 658 (Fla. 5th DCA 1985), the court makes this point most directly holding that "[a]n injunctive order . . . should be adequately particularized, especially where some activities may be permissible and proper." The TIO here wholly fails this standard. The TIO categorically prohibits public assembly but does not define that term and is thus impermissibly vague.

V. The restrictive covenant is discriminatory both as written and as applied, and Appellee's "Natural Person" argument does not insulate the discriminatory restriction from judicial scrutiny.

"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(2) (emphasis added). Appellee contends this statute is inapplicable because it only applies to "natural persons." (Appellee Br., 43.) That is legally incorrect.

First, if this Court were to adopt Appellee's argument, it would produce absurd and unconstitutional results. Pursuant to Appellee's

interpretation of Fla. Stat. §712.065, a landlord could openly discriminate against African American-owned businesses, because the business entity is not a "natural person," while being prohibited from discriminating against an African American tenant. Similarly, a landlord could not discriminate against a Jewish individual but would be free to discriminate against a Synagogue.

"A fair and reasonable interpretation must be made of all laws, with due regard for the ordinary acceptation of the language employed and the object sought to be accomplished thereby." *Johnson v. Presbyterian Homes of Synod of Fla., Inc.*, 239 So.2d 256, 262 (Fla. 1970). An interpretation of Fla. Stat. §712.065 that permits discrimination against religious institutions while prohibiting discrimination against religious individuals is absurd and thus is legally incorrect.

Second, Appellee's contention ignores long-settled precedent under the Equal Protection Clause. For more than a century, courts have uniformly rejected arguments that equal protection of the law is limited to natural persons. *Santa Clara Cnty. v. Southern Pac. R. Co.*, 118 U.S. 394, 396 (1886) ("The Court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment

to the Constitution, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of the opinion that it does.").

Appellee contends that the Florida Legislature, by including the language "natural person" in Fla. Stat. 712.065, intended to place Appellant in constitutional catch-22 – forced to choose between the legal protections of a trust and equal protection of the law. The Florida legislature certainly did not intend that result, and the Court is prohibited from construing a statute in such a manner that infuses it with doubt as to its constitutionality. *E.g.*, *United States v. Davis*, 588 U.S. 445, 463 n. 6 (2019) (noting that constitutional doubt canon prohibits construing statutes in a manner that raises "serious questions about their constitutionality"). Moreover, given the statute's plain intent to advance rights protected by the Fourteenth Amendment (not restrict them), the "presumption against ineffectiveness . . . weighs against interpretations of a statute that would render the law in great measure nugatory," *Garland v. Cargill*, 602 U.S. 406, 427 (2024), because the court is required to presume legislatures do "not enact useless laws." *Id.* Appellee's construction

runs roughshod over these long-settled canons of interpretation and must be rejected.

Article 1, Section 2 of the Florida Constitution uses the term "natural person," but Justice Drew explained in his concurrence in *Faircloth v. Mr. Boston Distiller Corp.*, 245 So.2d 240, 250 (Fla. 1970), that the language "natural persons" does not restrict equal protection of the law:

> By including the term 'natural,' the drafters of the 1968 Revision have retained in different words the meaning of 'all men' used in the 1885 version, thereby continuing to exclude application to artificial 'persons' created as legal fictions, such as corporations. But just as the section does not grant equal protections to corporations, likewise it cannot – and does not pretend to – take away the corporation's well-established right to equal protection granted by Section 1 of the Fourteenth Amendment to the United States Constitution.

Faircloth, 245 So.2d at 250.

Appellee's attempt to evade the infirmity of the TIO by resort to unprincipled interpretations of the statute must fail.

VI. The restrictive covenant is unenforceable due to Appellee's own repeated violations, selected enforcement against only religious activity, and reliance on documents outside its four corners.

When determining the validity of a restrictive covenant, this Court must consider whether the restriction is enforced selectively or arbitrarily. *Grove Isle Ass'n., Inc. v. Grove Isle Assocs.*, 137 So.3d 1081, 1091-92 (Fla. 3d DCA 2014). The lower court itself answered this question: it found that "[t]here are several tenants/owners at the commercial property which uses do violate the aforementioned restrictive covenant[.]" (*See* Record, Doc. 32, 4.) That finding alone voids the TIO, as a court cannot enforce a restrictive covenant against one party while simultaneously permitting other tenants to openly violate it with impunity.

The circuit court attempted to rescue its findings by concluding that these violations of the underlying restrictive covenant "predate the subject restrictive covenant." (Record, Doc. 32, 4.) However, as Appellant pointed out below, "neither competent nor substantial nor even evidence" supports this finding, rather unsworn argument from counsel, (*see* Record, Doc. 1, 60). Appellee had the opportunity to

cure this evidentiary deficiency by providing this Court *some* competent evidence, but it did not because it cannot.

Instead, Appellee retreated to an argument premised on the narrowing of the restrictive covenant – "[t]he restrictive covenant was not *created* to discriminate against churches." (Appellee Br. at 43) (emphasis added). Appellee likely thought the word "created" would do more work for its argument than it actually does. The relevant constitutional and statutory inquiry at issue here is whether the restrictive covenant is **applied** discriminatorily. *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977).

Considering this standard, Appellee's own brief is its undoing. Appellee boasts that the subject restrictive covenant is "equally applied to nightclubs, auditoriums, bowling alleys, and other places of public assembly." (Appellee Br., 43.) The restrictive covenant includes twenty-two (22) prohibitions, yet, as Appellee notes, they are only enforcing the prohibition against "public assembly" and only enforcing that prohibition against Appellants. (*See* Record, Document 4, Ex. 1 at 44.) The restrictive covenant *also* restricts use of any unit as a "bingo parlor," "[a] facility for the sale or rental of used goods

(including thrift shops, secondhand or consignment stores)," and "[a] banquet hall, auditorium or place of public assembly." (*Id.*) Each of these restrictive covenants is currently being violated by other tenants, yet they remain in operation while the only church at Flagler Square is closed. Appellee's claim of equal application is a reflection of what the covenant **says** not how it is **applied**.

For nearly fifty years, Florida Courts have unequivocally held that condominium associations are estopped from selectively and arbitrarily enforcing restrictive covenants. *White Egret Condominium v. Franklin*, 379 So.2d 346 (Fla. 1979). Such restrictions must be invalidated if they are "wholly arbitrary in their application, in violation of public policy, or they abrogate some fundamental constitutional right." *Hidden Harbour Estates, Inc. v. Basso*, 393 So.2d 637, 639-40 (Fla. 4th DCA 1981). Appellee's enforcement of the covenant satisfies all three of these independent grounds for invalidation: it is being applied selectively and wholly arbitrarily (enforced only against the Church while ignoring the violations of other tenants); it violates public policy (it discriminates on the basis of religion and categorically prohibits tenants from assembling); and it abrogates the fundamental constitutional rights of speech,

assembly, and free exercise of religion all of which are guaranteed by the First and Fourteenth Amendments. That is fatal to the TIO premised upon a null and void restrictive covenant.

Appellee addressed none of this in its brief and therefore conceded the argument in whole. *Polyglycoat Corp. v. Hirsch Distributors, Inc.*, 442 So.2d 958, 960 (Fla. 4th DCA 1983); *Figueroa v. Kossiver*, 336 So.3d 1260, 1264 (Fla. 5th DCA 2022) (same). That concession is fatal and requires vacating the TIO.

CONCLUSION

For the foregoing reasons, and all those raised in Appellant's Initial Brief, this Court should vacate the circuit court's TIO.

Respectfully submitted,

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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 4,000 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 30th day of April, 2026, to all counsel of record, including the following:

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