

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA

THE FIRST AMENDMENT FOUNDATION,  
TIMES PUBLISHING COMPANY,  
GANNETT CO., INC., THE MIAMI  
HERALD MEDIA COMPANY, and  
GATEHOUSE MEDIA, LLC,

Plaintiffs,

v.

THE FLORIDA CABINET; RON DESANTIS, in his  
official capacity as the Governor of the State of  
Florida; ASHLEY MOODY, in her official capacity  
as the Attorney General of the State of Florida;  
JIMMY PATRONIS, in his official capacity as the  
Chief Financial Officer of the State of Florida, and  
NIKKI FRIED in her official capacity as the  
Commissioner of Agriculture of the State of Florida.

Defendants.

Case No.: \_\_\_\_\_

**EMERGENCY HEARING  
REQUESTED**

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**EMERGENCY COMPLAINT FOR INJUNCTIVE RELIEF TO PREVENT PUBLIC  
MEETING OF THE FLORIDA CABINET IN VIOLATION OF SUNSHINE LAW**

Plaintiffs the First Amendment Foundation, Times Publishing Company, Gannet Co., Inc., The Miami Herald Media Company, and GateHouse Media, LLC, by and through undersigned counsel, hereby sues: (1) the Florida Cabinet (the "Cabinet");<sup>1</sup> (2) Ron DeSantis, in his official capacity as the Governor of the State of Florida; (3) Ashley Moody, in her official capacity as Attorney General of the State of Florida; (4) Jimmy Patronis, in his official capacity as the Chief Financial Officer of the State of Florida; and (5) Nikki Fried, in her official capacity as Commissioner of Agriculture of the State of Florida, and allege violations of Article I, Section

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<sup>1</sup> Governor DeSantis' cabinet members include the co-defendants in this lawsuit: (1) Florida Attorney General Ashley Moody; (2) Florida Chief Financial Officer Jimmy Patronis; and (3) Florida Commissioner of Agriculture Nikki Fried.

24 of the Florida Constitution and Section 286.011, *et seq.*, of the Florida Statutes (the “Sunshine Law”). This action concerns an upcoming, intentional violation of the open meetings provisions of the Florida Constitution and the “Sunshine Law” by the Cabinet regarding a meeting *set to occur in Jerusalem, Israel at 3:30 p.m. on the afternoon of Wednesday, May 29, 2019* (Jerusalem time) (the “Meeting”).<sup>2</sup> According to published agenda materials, the Meeting—which the Cabinet has termed “Ceremonial”—will be held at the United States Embassy in Jerusalem. Through a spokesperson, Governor DeSantis has claimed that the Meeting will not violate the Sunshine Law because Cabinet members will not be considering board or agency business. Rather, the Meeting has been termed an “information gathering” session. But, even crediting this view, the law is clear that “information gathering” sessions fall within the Sunshine Law’s requirements. Regardless, as set forth below, agenda items for the Meeting demonstrate that it will constitute more than “information gathering.”

Moreover, the Meeting is being held over 6,000 miles away from the citizens of Florida, and in a secured U.S. State Department facility for which the public does not have ready access (indeed, due to Embassy security concerns, the public is being restricted from attending and the news media accompanying Florida’s government delegation to Israel are being severely restricted in how they can cover the Meeting). Holding a meeting at this distance in such a facility violates the constitutional and statutory rights of Florida citizens (and the news media) to personally observe the workings of, and for the public to offer comment to, their state’s highest officials.

This Court must, therefore, issue an injunction preventing the Meeting from taking place as scheduled. Alternatively, if this matter is not heard before the Meeting occurs, this Court

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<sup>2</sup> Jerusalem’s time zone is +3 GMT, which equates to +7 hours ahead of Tallahassee time. Therefore, the scheduled meeting will occur locally on Wednesday, May 29, 2019 at 8:30 a.m.

must issue an order voiding the Meeting and declaring it in violation of applicable law.

### **JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction pursuant to Article I, Section 24(b) of the Florida Constitution and Section 286.011(2) of the Florida Statutes.

2. Venue is appropriate in Leon County because the Cabinet, and the co-defendants comprising the same, are located in Leon County and Cabinet meetings regularly take place there. The official actions of the Governor and Cabinet regularly occur in Leon County.

### **PARTIES**

3. The First Amendment Foundation is a Tallahassee-based 501(c)(3) tax-exempt, non-profit organization created to ensure government openness and transparency in Florida. The Foundation provides education and training, monitors open records and meetings laws, and assists citizens and journalists in obtaining access to government.

4. Times Publishing Company is a Florida corporation. It owns and publishes the *Tampa Bay Times*, a daily newspaper of general circulation, and its affiliated news website [www.tampabay.com](http://www.tampabay.com). It relies on access to government proceedings and records to provide news and analysis regarding these important matters to its readers.

5. Gannett Co., Inc. is the publisher of *Florida Today* (Brevard County), the *Indian River Press Journal* (Treasure Coast Newspapers, Vero Beach), the *Naples Daily News*, *The News-Press* (Fort Myers), *PNJ.com* (Pensacola), *The Stuart News* (Treasure Coast Newspapers), the *St. Lucie News-Tribune* (Treasure Coast Newspapers, Fort Pierce), the *Tallahassee Democrat*, and USA TODAY. It relies on access to government proceedings and records to provide news and analysis regarding these important matters to its readers

6. The Miami Herald Media Company is the publisher of *The Miami Herald*. It relies on access to government proceedings and records to provide news and analysis regarding these important matters to its readers.

7. GateHouse Media, LLC, is the publisher of *The Daytona Beach News Journal*, *The Gainesville Sun*, *The (Lakeland) Ledger*, the *Ocala StarBanner*, the *Palm Beach Post*, and the (Sarasota) *Herald-Tribune*. It relies on access to government proceedings and records to provide news and analysis regarding these important matters to its readers.

8. The Governor's Cabinet consists of the following offices within the State of Florida: (1) the Attorney General; (2) the Chief Financial Officer; and (3) the Commissioner of Agriculture.

9. The Cabinet is a "board or commission of [a] state agency" as used in Section 286.011(1), Florida Statutes, and thus subject to the Sunshine Law.

10. The Cabinet is also a "collegial public body of the executive branch of state government" as used in Article I, Section 24, of the Florida Constitution and thus subject to the open meetings provision of the same.

11. Ron DeSantis is the Governor of the State of Florida, and presides over the Cabinet. Governor DeSantis is scheduled to attend the Meeting.

12. Ashley Moody is the Attorney General of the State of Florida and a member of the Cabinet. Ms. Moody is scheduled to attend the Meeting.

13. Jimmy Patronis is the Chief Financial Officer of the State of Florida and a member of the Cabinet. Mr. Patronis is scheduled to attend the Meeting.

14. Nikki Fried is the Commissioner of Agriculture of the State of Florida and a member of the Cabinet. Ms. Fried is scheduled to attend the Meeting.

## FACTUAL BACKGROUND

15. On May 22, 2019, Governor DeSantis formally announced he would be leading a delegation of over 90 people (consisting of, among others, government officials, business leaders, and academics) on a “business development” trip to Israel. Attorney General Moody, Commissioner Fried, and Mr. Patronis were named as members of the delegation. A true and correct copy of the Governor’s press release announcing the trip is attached as **Exhibit A**.

16. On May 23, 2019, Governor DeSantis released an itinerary for the trip. That itinerary included a “Ceremonial Meeting of the Florida Cabinet,” which is scheduled to occur on Wednesday May 29, 2019. A true and correct copy of the released itinerary is attached as **Exhibit B**.

17. The web homepage for the Cabinet ([www.myflorida.com/myflorida/cabinet](http://www.myflorida.com/myflorida/cabinet)) provides additional detail about the Meeting. It states that the Meeting will occur May 29, 2019 at 8:30 a.m. (EDT) and be held at the U.S. Embassy in Jerusalem. It also states that the meeting will be “livestreamed” in the “Cabinet Meeting Room” at the Capitol Building. A true and correct copy of the Cabinet’s homepage is attached as **Exhibit C**.

18. The agenda for the Meeting has also been posted to the Cabinet’s website. Among other agenda items, the Cabinet will: (1) entertain a “Resolution” regarding the “Israeli-Florida relationship”; (2) consider a “Presentation” titled “Victims of Terror”; (3) consider a “Presentation” titled “Water Quality”; and (4) consider a “Presentation” titled “Emergency Management”. A true and correct copy of the released Meeting agenda is attached as **Exhibit D**.

19. Previous public meetings of the Cabinet in which “resolutions” and “presentations” have been considered were public meetings and held in Tallahassee, Leon

County, Florida. True and correct copies of Cabinet meeting agendas from March 12, 2019 and April 2, 2019 are attached as **Composite Exhibit E**.<sup>3</sup>

20. In justifying a Cabinet meeting occurring over 6,000 miles away from the citizens of Florida, Helen Ferre, spokesperson for Governor DeSantis, has stated that “This meeting of Florida cabinet members is not considering board or agency business; it will be an information gathering meeting where they will listen to Israeli best practices on issues of mutual interest for Florida and Israel, such as water resources and security.” A true and correct copy of a news article where Ms. Ferre’s statement appears is attached as **Exhibit F**.

21. Per the Meeting agenda, among other things, the Cabinet will take official action via resolution with regard to defining the nature of the relationship between Israel and Florida. The Cabinet will also consider matters related to environmental water quality and terrorism/security. Both subjects of direct import to the citizens of Florida and concern issues that could foreseeably come before the Cabinet upon which action could be taken.

22. Governor DeSantis has made clear these agenda items relate to official business, noting in statements to the media that partnerships between Israel and Florida relating to clean water and cybersecurity. Other government officials, including Florida’s Director of emergency management, Jared Moskowitz, have stated that officials are engaging with Israeli officials on emergency response procedures. A true and correct copy of a news article detailing these statements is attached as **Exhibit G**.

23. Fact-finding or informational meetings attended by members of a public body constitute meetings under the Sunshine Law. The right of direct public access attaches to such meetings.

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<sup>3</sup> Archived video of these public meetings is available at the Cabinet’s website and can be found at: <https://thefloridachannel.org/videos/4-2-19-florida-cabinet-meeting/> and <https://thefloridachannel.org/videos/3-12-19-florida-cabinet-meeting/>.

24. The Meeting will occur in Jerusalem, Israel, outside the jurisdictional limits of Florida.

25. Jerusalem is over 6,000 miles from Florida.

26. Among others, Florida citizens who do not maintain a valid travel passport cannot attend the Meeting.

27. Among others, Florida citizens of Palestinian, Arab, and/or Muslim descent would confront travel/access issues that significantly frustrate access to the Meeting.<sup>4</sup>

28. The Meeting will be held in the U.S. Embassy in Jerusalem, a secure facility for which the public has no general right of access.

29. Upon information and belief, due to security concerns, general members of the public will not be permitted to attend the Meeting in person.

30. Upon information and belief, due to security concerns only those individuals specifically authorized to attend the Meeting will be allowed to do so.

31. Upon information and belief, due to security concerns, members of the news media who are traveling with and reporting on the delegation will not be able to use laptops or cellular phones while attending the Meeting. A true and correct copy of a news article detailing media reporting restrictions is attached as **Exhibit H**.

32. Upon information and belief, only the Florida Channel will be permitted to live stream the Meeting. Live streaming the meeting from a single news source is not a legally permissible alternative to allowing the public direct access to the Meeting.

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<sup>4</sup> On May 23, 2019, the American-Arab Anti-Discrimination Committee wrote Governor DeSantis expressing these, and other concerns, related to the Meeting. A copy of that letter can be found at: <https://www.adc.org/wp-content/uploads/2019/05/Letter-to-Ron-DiSantis-FINAL-ADC-Letterhead-2.pdf>.

33. The Meeting is a public meeting subject to the requirements of Article I, Section 24 of the Florida Constitution and the Sunshine Law. By intending to proceed with the Meeting, the Cabinet and its co-Defendant members are willfully violating the law.

34. The public is being willfully denied their constitutional and statutory right to attend the Meeting, offer public comment, and otherwise monitor the official actions of the Cabinet.

### **LEGAL ARGUMENT**

35. Section 286.011(1) states that “[a]ll meetings of any board or commission of any state agency or authority . . . at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule or formal action shall be considered binding except as taken or made at such meeting.” Likewise, Article I, Section 24(b) of the Florida Constitution similarly provides that “[a]ll meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public.”

36. The Florida Supreme Court has held that meetings governed by the Sunshine Law include any gathering, whether formal or informal, where two or more members of the same board or commission are present, concerning matters upon which foreseeable action will be taken by the board or commission. *Tolar v. Sch. Bd. of Liberty Cty.*, 398 So. 2d 427, 428 (Fla. 1981); *see also Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 764 (Fla. 2010).



37. As the Court also explained in *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974):

One purpose of the government in the sunshine law was to prevent at nonpublic meetings the crystallization of secret decisions to a point just short of ceremonial acceptance. Rarely could there be any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. The statute should be construed so as to frustrate all evasive devices. This can be accomplished only by embracing *the collective inquiry and discussion stages within the terms of the statute*, as long as such inquiry and discussion is conducted by any committee or other authority appointed and established by a governmental agency, and relates to any matter on which foreseeable action will be taken. (Emphasis added.)

38. Consistent with the above, “fact-finding” meetings attended by at least two of a body’s ultimate decision makers (in this case, the Cabinet members), are subject to the requirements of the Sunshine Law. *See Finch v. Seminole Cty. Sch. Bd.*, 995 So. 2d 1068 (Fla. 5th DCA 2008) (school board’s non-public bus tour to consider rezoning plans violated the Sunshine Law, even though the school board members were separated from each other during the tour, no opinions were expressed, and no vote was taken during the trip, because “it undoubtedly had the opportunity at that time to make decisions outside of the public’s scrutiny”); *Citizens for Sunshine, Inc. v. Sch. Bd. of Martin Cty.*, 125 So. 3d 184 (Fla. 4th DCA 2013) (violation of Sunshine Law when three schoolboard members met with school administrator, students, and teachers, because issued discussed could foreseeably be subject of later board action).

39. Moreover, the Sunshine law prohibits public meetings from being held in “any facility or location ... which operates in such a manner as to unreasonably restrict public access to such a facility.” § 286.011(6), Fla. Stat. Accordingly, the public must be given a reasonable opportunity to attend public meetings. *See Bigelow v. Howze*, 291 So. 2d 645, 647-48 (Fla. 2d DCA 1974); Fla. Op. Atty. Gen 71-295 (public bodies advised to avoid holding meetings where

public and press are effectively excluded); Fla. Op. Atty. Gen 96-55 (body should not hold meetings in facilities that limit access or would have “chilling effect” on public’s willingness to attend).

40. That the Cabinet intends to “live-stream” the Meeting does not cure the Sunshine Law Violations. *See* Inf. Fla. Op. Atty. Gen, Aug. 5. 2015 (no legal authority permits body to remove public meeting beyond jurisdictional limits of body and claim compliance with Sunshine Law by providing remote, electronic public access to meeting thus improper to apply “fact-finding” exception to body travel to Massachusetts and Connecticut).

41. Considering all of the above, it is clear that the Meeting will violate the Sunshine Law. First, just like previous meetings held publicly in Tallahassee in March and April of this year, it will be a meeting where official actions such as potentially adopting a “resolution” regarding the Israel-Florida relationship will occur. Moreover, and again, just like previous public meetings held this year in Tallahassee, the Cabinet will consider “presentations” on issues very likely to be before it in the future: environmental water quality issues, and terrorism/safety issues. Simply, labeling the Meeting “informational” will not except it from the Sunshine law.

42. Additionally, the Meeting absolutely frustrates the public’s ability to attend. It is being held over 6,000 miles away in Israel. Florida citizens (and only those with valid passports) would need to arrange last-minute, costly travel to a foreign nation to attend the Meeting. Even assuming that travel could be accomplished, the Meeting is being held in the U.S. Embassy, a facility that the public does not have general access to. That the news media’s ability to fully report on the Meeting is being restricted over “security concerns” further evidences the fact that the chosen facility is not one that encourages citizens to attend.

43. Conducting the Meeting in this fashion will cause irreparable harm to the public. This Court should, therefore, hold the Meeting in violation of the Sunshine Law and enter an order enjoining it from occurring.

**COUNT I (VIOLATION OF SECTION 286.011)**

44. The Plaintiffs incorporate the allegations contained in paragraphs 1 through 34 as if fully incorporated in this paragraph.

45. The Sunshine Law requires that *any* gathering of two or more members of the same board or commission of any agency or authority of any county, municipal corporation, or political subdivision to discuss some matter on which *foreseeable* action will be taken be conducted in the Sunshine.

46. Two or more members of the Cabinet will attend the Meeting. The matters to be discussed and considered at the Meeting will foreseeably come before the Cabinet.

47. This Court has the authority to enjoin violations of Section 286.011.

48. Violations of Section 286.011 constitute an irreparable public injury.

49. The Defendants' refusal to make the Meeting open to the public, and to hold it at a time and place that does not allow for reasonable opportunity to attend, violates Section 286.011, Florida Statutes, and Article I, Section 24(b) of the Florida Constitution.

50. The Defendants' refusal to permit the public and/or media to attend the Meeting, and to hold it at a time and place that does not allow for reasonable opportunity to attend, causes and threatens to cause irreparable injury to the public.

51. No adequate remedy at law exists.

### ATTORNEYS' FEE DEMAND

52. Section 286.011(4) provides that “[w]hen an action has been filed . . . to enforce the provisions of this section . . . and the court determines that the defendant or defendants to such action acted in violation of this section, the court *shall* assess a reasonable attorney’s fee against such agency . . . .” See Fla. Stat. § 286.011(4) (emphasis added).

53. Plaintiffs have retained the undersigned counsel and agreed to pay its attorneys a reasonable fee.

### EMERGENCY HEARING/BENCH TRIAL DEMAND

54. Plaintiffs request an immediate, emergency hearing and bench trial on all issues so triable.

### RELIEF REQUESTED

WHEREFORE, Plaintiffs request that this Court:

(a) Set an immediate hearing on this matter to prevent violations of the Sunshine Law *set to occur in less than 24 hours*, which constitutes irreparable injury to the public;

(b) Find that Defendants are in violation of the Sunshine Law for refusing to provide full public access to the Meeting, and for holding the Meeting in an inaccessible foreign country, and at an unreasonably restrictive facility.

(c) Enjoin Defendants from conducting the Meeting and any future Cabinet meetings while in Israel, or, alternatively find that if the Meeting occurs it is void in violation of the Sunshine Law;

(d) Award Plaintiffs their reasonable attorneys’ fees, costs, and expenses incurred in this action pursuant to Section 286.011(4), Florida Statutes; and

(e) Grant such further relief as this Court deems just and proper.

Dated: May 28, 2019.

THOMAS & LOCICERO PL

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