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IN THE SUPREME COURT OF FLORIDA

CASE NO. 75,375

4TH DCA CASE NO. 89-1338

TOWN OF LAKE CLARKE SHORES,

Petitioner,

v.

ALAN PAGE,

Respondent.

ON PETITION TO INVOKE DISCRETIONARY REVIEW OF A DECISION OF THE DISTRICT COURT OF APPEAL FOURTH DISTRICT OF FLORIDA

BRIEF OF AMICUS CURIAE, CITY OF LAKE WORTH

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State

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STATEMENT OF THE CASE AND OF THE FACTS

This action was brought by the Respondent, a former police officer fired by the Petitioner, upon a claim pursuant to **42** U.S.C. §1983, one of the Federal Civil Rights acts of 1871. He claimed that his termination resulted in a deprivation of various Federal Constitutional rights. The Petitioner, **TOWN** OF LAKE CLARKE SHORES, is a municipality, chartered under the laws of the State of Florida. The action was dismissed by the Trial Court upon the ground that it was lacking the subject matter jurisdiction to entertain the action. This decision was reversed by the District Court of Appeal, Fourth District, in the decision presented before this Court upon conflict review.

The CITY OF **LAKE** WORTH is appearing in this cause as an ***Amicus*** *Curiae* upon consent of the parties and leave of this Court.

This *Amicus Curiae* adopts the Statement of Case and Facts of the Petitioner

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SUMMARY OF ARGUMENT

The District Court of Appeals, in its decision below, misconstrued the issue presented in this cause. It held that the Trial Court had subject matter jurisdiction to entertain this claim brought under 42 U.S.C. §1983 because the *Monell* decision held that municipalities were "persons" who could be liable under the Federal Act. *Monell*, however, does not consider the issue presented of whether a municipality in Florida may be sued on a claim founded upon 42 U.S.C. 01983 in ***state*** court.

An examination of the law of sovereign immunity in Florida establishes that the doctrine is founded upon the concept that the Courts of this State have not been empowered to entertain claims against the State and its agencies (i.e. that they lack subject matter jurisdiction) except to the extent that the immunity has been waived. This doctrine has, as a result of the enactment of 0768.28, ***Florida Statutes,*** been extended to encompass municipalities.

Neither the general waiver statute, §768.28, nor any other statute enacted to waive immunity, has waived the immunity of the State and its agencies -- including municipalities -- in cases similar in nature to those which arise under 42 U.S.C. 01983. Such waiver as exists and is relevant herein extends only to suits in tort based upon vicarious, ***respondeat superior*** liability. Claims under 42 **U.S.C.** 01983 do not sound in tort, and they do not encompass claims based upon ***respondeat superior,*** or any other form of vicarious liability. Hence the immunity of the State and of municipalities such as the present Defendant has not been waived. Although this lack of waiver does not mean that such state "agencies" -- as defined in 0768.28 ***Florida Statutes*** -- as municipalities, counties or school boards cannot be sued as "persons" under the Federal Civil Rights Act, it does mean that such suits may not be brought in State Courts which lack the subject matter jurisdiction to consider them.

Although jurisdiction to entertain actions under 42 U.S.C. §1983 is concurrent between the state and Federal courts, that jurisdiction is not mandatory or compulsory in instances such as that presented herein where the State Courts lack subject matter jurisdiction under their own constitution or organic law, and where their declining to

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entertain the Federal action is not discriminatorily based on the mere fact that it is a Federal action. Here the lack of the Florida Courts' jurisdiction would extend to any claim similar to that arising under 42 U.S.C. §1983 which is not founded in tort and does not arise out of the vicarious liability doctrine of ***respondeat superior.*** Consequently, the Florida State Courts which lack subject matter jurisdiction over such claims as the present one when the Defendant is the State or one **of** its agencies, including such local agencies as municipalities, is not compelled to assume such jurisdiction under any superceding Federal constitutional rule.

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I.

OVERVIEW: THE ISSUE PRESENTED

In the opinion below, the District Court of Appeal held that the Trial Court improperly dismissed the Plaintiff's claim founded upon 42 U.S.C. § 1983 and brought against a Florida municipality in the state courts of Florida. The action was dismissed in the Trial Court upon the doctrine of sovereign immunity -- i.e. upon the determination by the Trial Court that it lacked subject matter jurisdiction to entertain an action founded upon 42 U.S.C. $1983 when brought against the State of Florida or one of its agencies, including municipalities.[1]

The Court of Appeals held that state courts did have subject matter jurisdiction over such actions, relying upon the cases of *City* of *Riviera Beach v. Langevin,* 522 So.2d 857 (Fla. 4th DCA 1987) and *Southern Alliance Corp. v. City of Winter Haven,* 505 So.2d 489 (Fla. 2d DCA 1987). It rejected the application of the rule in *Hill v. Department of Corrections, 513 So.2d 129 (Fla. 1987) and Howlett By Howlett v. Rose,* 537 So.2d 706 (Fla. 2d DCA 1987), finding that those cases did not concern municipalities. In doing so, the Court cited *Monell v. Department of Social Services* of *City of New York,* 98 S.Ct. 2018 (1978), apparently of the view that the *Monell* doctrine, finding subordinate governmental entities liable under 42 U.S.C. § 1983, provided a sufficient distinguishing point.[2]

The analysis of the District Court below, and the analysis in the two cases upon which it relies, misapprehends the true issue involved in this case and its reliance upon the

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1 There is no issue raised of the power of the Courts of Florida to adjudicate claims founded upon 42 U.S.C. § 1983 and brought against individuals -- whether governmental employees or private citizens acting in concert with government officials. The nature of the conduct implicated in an action under 42 U.S.C. $1983 is of such character as to avoid the limitation of §768.28(9)(a). see Daniels v. Williams, 106 S.Ct. 662 (1986).

2 The rule of Monell, holding that subordinate governmental entities are "persons" who may be sued under 42 U.S.C. $1983, applies not only to municipalities, but also to counties, sheriffs and school boards. Monell supra at 2035, Jett v. Dallas Independent School District, 109 S.Ct. 2702 (1989); Pembaur v. City of Cincinnati, 106 S.Ct. 1292 (1986); Parker v. Williams, 862 F.2d 1471 (11th Cir. 1989). Hence it does not distinguish this case from Howlett (School Board) nor does it distinguish it from Lloyd v. Ellis, 520 So.2d 59 (Fla. 1st DCA 1988) (Sheriff and County). See also City of North Miami v. Schy, 408 So.2d 670 (Fla. 3d DCA 1982). Of course the question of whether an entity is a "person" under 42 U.S.C. § 1983 and therefore capable of being sued does not address the issue of whether a claim against such "person" may be pursued in state court or whether it must be pursued in Federal Court.

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rule in *Monell* is totally inapposite.

At the heart of this cause on appeal is not the question of whether the ***Town*** *of Lake Clarke Shores* is a "person" who may be sued for redress under 42 U.S.C. 81983. Nor is it a question of whether the sovereign immunity of the *Town,* as recognized by 0768.28, *Florida Statutes* (1989), insulates the *Town* from suit in *Federal* Court -- where the Eleventh Amendment to the Constitution **of** the United States recognizes the sovereign immunity of the States and their statewide agencies from suit in Federal Court but not that of local governmental entities. Rather, it is the issue of whether an action under 42 U.S.C. 01983 may be brought against a municipality in the state court system of Florida or whether the sovereign immunity recognized in 0768.28, *Florida Statutes* (1989) deprives *State* courts of their subject matter jurisdiction. Following upon this issue is one of whether, if the law of Florida is such that its courts lack such subject matter jurisdiction, the Federal Constitution would nonetheless require that such jurisdiction be assumed. The following analysis will demonstrate that Florida State Courts, as a result of the sovereign immunity of the State and its agencies, including municipalities, lack the subject matter jurisdiction to entertain such causes as the present one. Further,it will demonstrate that the Federal Constitution, and laws enacted pursuant thereto, would not require that the Courts of Florida assume a jurisdiction not granted to them under such circumstances.

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II.

FLORIDA COURTS LACK SUBJECT MATTER JURISDICTION TO ENTERTAIN CLAIMS AGAINST STATE AGENCIES, INCLUDING MUNICIPALITIES, BROUGHT UNDER 42 U.S.C. § 1983

A long line of authority, both from this Court and from the various District Courts of Appeal, have held that the subject matter jurisdiction of the Courts of the State of Florida does not extend to the entertaining of suits against the State or its agencies except to the extent that the State Legislature has waived the sovereign immunity of the State and its agencies by general law. ***Bloxham v. Florida Cent. & P.R. Co.,*** 35 Fla. 625, 17 ***So.*** 902, 919 (Fla. 1895) citing ***Hans v. Louisiana,*** 10 S.Ct. 504 (1890); ***State v. Love,*** 99 Fla. 333, 126 So. 374, 377 (Fla. 1930); ***State Road Department v. Brill,*** 171 So.2d 229, 230 (Fla. 1st DCA 1964) ("Such a defense relates solely to the jurisdiction of the Court over the subject matter of the cause, and has no relationship to any question concerning the jurisdiction of the court over the person of the defendant State Road Department" - opinion of Wigginton, J.); ***Kirk v. Kennedy,*** 231 So.2d 246, 248 (Fla. 2d DCA 1970); ***Schmauss v. Snoll,*** 245 So.2d 112, 113 (Fla. 3d DCA 1971); ***Circuit Court, Etc. v. Dept. of Nat. Resources,*** 339 So.2d 1113, 1114 (Fla. 1976) affirming ***Depart. of Nat. Res. v. Circuit Ct. of Twelfth Jud. Cir.,*** 317 So.2d 772 (Fla. 2d DCA 1975).[3]

This principle holds true no matter what the nature of the claim may be -- whether founded in tort, contract or otherwise. ***Davis v. Love,*** supra; ***State v. Atkinson,*** 136 Fla. 528, 188 So. 834, 838 (Fla. 1938); ***Graham Contracting v. Dept. of General Services,*** 363 So.2d 810 (Fla. 1st DCA 1978); ***Pan-Am Tobacco v. Department of Corrections,*** 471 So.2d 4 (Fla. 1985) (receding from rule in ***Gay v. Southern Builders, Inc., 66*** So.2d 499 (Fla. 1953 and ***Bloxham v. Florida Cent. & P.R. Co.,*** supra, as to whether the waiver may be implied from general law empowering an agency to enter into contract, but otherwise acknowledging the general principle discussed herein).

Thus the doctrine has long been established that the Courts of this State have not been empowered to adjudicate causes brought against the State and its agencies except to the extent that the Legislature, by waiving the State's sovereign immunity, has thereby

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[3] **See Art. X, Section** 13, **Fla. Const.** (1968); **Art. III, Section 22, Fla. Const.** (1885)

granted that adjudicative power or competency to the Court. The only exception to this rule was that set forth in *Hans v.* ***Louisiana,*** supra, and recognized in *Bloxham v.* ***Florida Cent. & P.R.*** Co., supra, that one may resort to the judicial power to resist an ***active*** invasion of rights (in the parlance of the era in which the ***Hairs*** decision was authored, the judicial power might be resorted to for the purpose of providing a ***shield*** against a threatened or ongoing invasion of rights; it could not be resorted to for the purpose of serving as a ***sword*** to redress a grievance or obtain compensation).

Although the application of the doctrine of sovereign immunity to municipalities was earlier denied by this Court in the case of ***Hargrove v. Town of Cocoa Beach***, 96 So.2d 130 (Fla. 1957), the effect of the enactment of Section 768.28, ***Florida Statutes,*** (Ch. 73-313 Section 1, Laws of Florida), and of the inclusion of municipalities in subsection (2) of that statute as defined agencies of the State, has been held by this Court to constitute an extension of the full doctrine of sovereign immunity to municipalities with only such waiver of immunity -- i.e. with only such grant of adjudicative power or subject matter jurisdiction to State Courts over controversies involving municipalities -- as is contained within that statute or other statute granting waiver. ***Cauley v. City of Jacksonville,*** 403 So.2d 379 (Fla. 1981). It is now clear, following the adoption of Section 768.28 ***Florida Statutes*** and the opinion of this Court in ***Cauley,*** that the judicial power, or subject matter jurisdiction, of Florida Courts over causes brought against municipalities is precisely coextensive with those courts' judicial power to adjudicate causes involving any other agency of the State of Florida.

The waiver of immunity -- or, conversely, the grant of subject matter jurisdiction -- contained in the provision of Section 768.28 ***Florida Statutes*** is extended only to:

> (a)ctions at law against the state or any of its agencies or subdivisions to recover damages in ***tort*** for money damages against the state or its agencies or subdivisions for injury or loss **of** property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of his office or employment...

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[4] The principle that sovereign immunity equates with an absence of subject matter jurisdiction is commonly accepted in other states and in the Federal system. see Lowry v. Commonwealth, 76 A2d 363 (Pa. 1950); Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d Section 3536.

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§768.28(1) ***Florida Statutes*** (1989)
(emphasis added)

Two provisions of this statutory waiver are of critical importance in this analysis. Immunity is waived only for those actions at law which sound in tort and, amongst such actions, immunity is waived only for the vicarious liability of an agency deriving from the doctrine of ***respondeat superior.*** ***Rabideau v. State,*** 409 So.2d 1045 (Fla. 1982).

42 USC §1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

The Federal Court of Appeals for the Eleventh Circuit had occasion to consider whether the Florida Legislature intended to encompass actions brought pursuant to this Civil Rights Statute within the terms of Section 768.28 ***Florida Statutes*** in the case of ***Gamble v. Florida Dept. of Health and Rehabilitative Services,*** 779 F2d 1509 (11th Cir. 1986). That Court noted that actions under 42 U.S.C. 1983 are not properly characterized as "tort" actions, and only actions brought in tort were within the waiver terms of §768.28 ***Florida Statutes.***[5] This holding in ***Gamble*** was followed by this Court and by various District Courts of Appeal in holding that the State of Florida had not waived its immunity from suits brought under the Civil Rights Statutes in the State Court system. ***Hill v. Dept. of Corrections,*** 513 So.2d 129 (Fla. 1987), cert. denied 108 S.Ct. 1024 (1988), approving in part the holding in ***Department of Corrections v. Hill,*** 490 So.2d 118 (Fla. 3d DCA 1986); ***Skoblow v. Ameri-Manage, Inc.,*** 483 So.2d 809 (Fla. 3d DCA 1986), affirmed 514 So.2d 1077 (Fla. 1987), cert. denied 109 S.Ct. 3184 (1989); ***Spooner v. Department of Corrections,*** 488 So.2d 897 (Fla. 1st DCA 1986), affirmed 514 So.2d 1077 (Fla. 1987), cert. denied 109 S.C. 3184 (1989); *Howlett*

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[5] **The ultimate issue before the Court in Gamble was whether the State of Florida had, in any fashion, waived its Eleventh Amendment immunity from suit in Federal Court. Thus the ultimate holding in Gamble does not bear on the issue here. What is significant for purposes of this analysis is the subsidiary or intermediate holding that §768.28 Florida Statutes does not encompass actions brought under the Federal Civil Rights statutes.**

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by Howlett v. Rose, 537 So.2d 706 (Fla. 2d DCA 1989) rev. denied 545 So.2d 1367 (Fla. 1989); *Lloyd v. Ellis,* 520 So.2d 59 (Fla. 1st DCA 1988).

In addition to the reasoning set out in *Gamble,* and followed in the cases above cited, a further reason exists for concluding that 0768.28 *Florida Statutes* was not intended to encompass actions brought under 42 U.S.C. § 1983. As previously noted, 0768.28 provides for a waiver ***only*** of claims brought against the State or its agencies (including municipalities) under the doctrine of *respondeat superior. Rabideau,* supra. **42** U.S.C. § 1983, conversely, does not provide the basis for a claim under the doctrine of *respondeat superior* or under any other theory of vicarious liability. *Monell v. Department of Social Services,* 98 S.Ct. 2018 (1978); *Nahmod, Civil Rights and Civil Liberties Litigation* 03.15. Hence, 0768.28 simply cannot be held to encompass the type of civil rights actions which can be brought under 42 U.S.C. 01983, or any other similar statute.

To summarize this analysis, the following points may be made:

1. The doctrine of sovereign immunity implies that the Courts of a sovereign or state lack subject matter jurisdiction -- i.e. they lack adjudicative power -- over causes of action brought against the sovereign or state.

2. The State of Florida and its agencies enjoy sovereign immunity from suits in State Courts;

3. Municipalities are now included among the agencies of the State which enjoy such immunity;

4. This immunity, pursuant to the State Constitution may be waived only by the Legislature in enactment of general laws;

5. The Legislature, in partially waiving the immunity of the State and its agencies, has not encompassed Federal Civil Rights Actions, brought under **42** U.S.C. 01983, or other similar statutes, within that waiver;

6. The Courts of the State of Florida have, therefore, not been empowered to adjudicate claims against the State brought under **42** U.S.C. §1983 or other similar statutes.[6]

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[6] **See the concurring opinion of Justices Frankfurter and Jackson in Brown v. Gerdes, 64 S.Ct. 487 (1944) for a full discussion of the issue of the grant of subject matter jurisdiction to the courts of a State.**

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III.

FEDERAL LAW WOULD NOT COMPEL FLORIDA COURTS TO ENTERTAIN A CLAIM UNDER 42 U.S.C. §1983 WHERE THOSE COURTS LACK SUBJECT MATTER JURISDICTION TO ADJUDICATE THEM AND SUCH LACK OF JURISDICTION DOES NOT IMPROPERLY DISCRIMINATE AGAINST FEDERALLY-BASED CLAIMS.

Once it has ben determined that the Courts of a State have not been granted subject matter jurisdiction to entertain **a** cause of action under 42 U.S.C. 01983, a second issue must be considered: does a State, through its Legislature or ,otherwise, act consistent with the United States Constitution in withholding from its Courts the subject matter jurisdiction over such claims.

The United States Supreme Court has held that a state court may, under the doctrine set forth in its seminal decision in *Claflin v. Houseman*, 93 U.S. 130 (1876), entertain actions brought under 42 U.S.C. §1983, ***Martinez v. State of Cal.,*** 100 S.Ct. 553 (1980); *Maine* v. *Thiboutot*, 100 S.Ct. 2502 (1980). In so holding, the Court determined that jurisdiction of the Federal Courts over such claims was not exclusive, but that State courts could exercise concurrent jurisdiction. In both cases the Court expressly declined to rule whether such concurrent jurisdiction was mandatory, ***Martinez*** at 558, ***Maine*** at 2503.

Mandatory or obligatory jurisdiction over Federally based claims by state courts has to date been determined to exist only in respect to claims brought under two Federal statutes, both of which contain an express grant of jurisdiction to the state courts by Congress: the Federal Employers Liability Act, 45 U.S.C. 651-59 and the Emergency Price Control Act 50 **U.S.C.** §925. ***Mondau v. New York N.H. & H.R. Co.,*** 32 S.Ct. 169 (1911) and ***Testa v. Katt,*** 67 S.Ct. 810 (1947).[7] see ***Redish, Federal Jurisdiction: Tensions in the Allocation of Judicial Power,*** especially Chapter 5, "State Courts and Federal Power"

Even in respect to these acts, however, the mandatory or obligatory requirement to entertain jurisdiction is not absolute. see ***State of Missouri v. Mayfield,*** 71 S.Ct. 1 (1950); ***Douglas v. New York, N.H. & H.R. Co.,*** 49 S.Ct. 355 (1929). In order to discern when there is

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[7] **Concurrent state court jurisdictions over claims brought under 42 U.S.C. § 1983 is based on implied rather than an express grant of jurisdiction. That is, Congress has not acted pursuant to its power under the Fourteenth Amendment in respect to the field of court jurisdiction as it did in respect to its Commerce Clause power in the case of the two acts cited.**

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a duty to entertain jurisdiction which is mandatory under the United States Constitution, it is necessary to turn -- as has the United States Supreme Court in every one of its decisions touching on the subject of concurrent and mandatory jurisdiction -- to the case of *Claflin v. **Houseman,*** supra. At issue in *Claflin* was whether certain aspects of litigation under the then existing Bankruptcy Act could only be litigated in Federal Court, or whether State courts could also entertain jurisdiction. The Court held that where Congress or the Constitution did not expressly make jurisdiction exclusive in the Federal Courts, or where the overall scheme of legislation implied such exclusive jurisdiction, a state could entertain such a claim *if* its jurisdiction was competent to **do** so:

...

> Other analogous cases have occurred, and the same result has been reached: the general principle being that, where jurisdiction may be conferred on the United States Courts, it may be made exclusive where not so by the Constitution itself; but, **if** exclusive jurisdiction be neither express nor implied, the State Courts have concurrent jurisdiction ***whenever, by their own Constitution, they are competent to take it.***
>
> id. at 135
> (emphasis added)

...

> Not that Congress could confer jurisdiction upon the State Courts, but that these Courts ***might*** exercise jurisdiction on cases authorized by the laws of the State, and not prohibited by the exclusive jurisdiction of the Federal Courts.
>
> ... id. at 142

> Without discussing the subject further, it is sufficient to say that we hold that the assignee in bankruptcy, under the Bankrupt Act of 1867, 14 Stat. at L. 517, as it stood before the revision, had authority to bring a suit in the State Courts, ***wherever those courts were invested with appropriate jurisdiction,*** suited to the nature of the case.
>
> id. at 143
> (emphasis added)

As the Court noted, state courts could -- and, ordinarily, should -- entertain Federally based causes of action when two criteria were met: 1) that the Federal cause of action not be one emplaced exclusively in the jurisdiction of the Federal Courts, and 2) that the state courts have subject matter jurisdiction or competency under their own organic grant of power sufficient to entertain the action.

An examination of *Claflin's* progeny illustrates this doctrine. In *Mondou v. **New York, N.H. & H.R. Co.,*** supra, the Supreme Court found that the courts of Connecticut had, under

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their own law, sufficient subject matter jurisdiction to entertain an action brought under the F.E.L.A.; it also found that Congress had expressly made jurisdiction under the Act concurrent in both State and Federal Courts. Under these circumstances it found that Connecticut Courts should not have declined to entertain a claim brought under the Act simply because the policy of that act was not in accord with the state court's view of what the law should be. In *McNett v. St. Louis & S.F. Ry.* Co., 54 S.Ct. 690 (1934), the Supreme Court held that where the Alabama Courts had jurisdiction to entertain claims arising out of accidents occurring in other states, where the defendant did business in Alabama, the Courts of that state could not refuse to consider an F.E.L.A. claim arising in Tennessee and involving a railroad doing business in Alabama. The state court could not discriminate between the F.E.L.A. action solely because it was Federally based. In ***Testa v. Katt,*** supra, the Supreme Court held that the Courts of Rhode Island could not refuse to entertain a claim for treble damages under the Emergency Price Control Act on the grounds that the act was penal in nature and it chose not to enforce foreign penal statutes. In each of these cases, there was no issue of whether the State court had, under its own laws, adequate subject matter jurisdiction to hear the claims. Where state courts are lacking in subject matter jurisdiction, however, the United States Supreme Court has consistently held that they were not required to entertain actions arising under these same acts. In ***Herb v. Pitcairn, 65*** S.Ct. 459 (1945), the Court held that where the State of Illinois did not extend to its municipal courts sufficient jurisdiction to consider F.E.L.A. based actions, the Courts **of** that state could proper decline to consider them. In ***Douglas v. New York, N.H. & H.R. Co.,*** supra, the Supreme Court held that New York Courts were not compelled to entertain F.E.L.A. actions which arose in other states when the New York jurisdictional statutes would not permit them to adjudicate other cases arising in similar situations and derived from other sources than Federal Law.. Finally, in ***State of Missouri v. Mayfield,*** supra, the United States Supreme Court reversed and remanded an action to state court where it appeared that the state court had apparently declined to apply its *forum non conveniens* doctrine under the mistaken assumption that it was required to entertain an F.E.L.A. action under Federal law

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despite the dictates of its *forum non conveniens* rule.

The thread that runs through these cases is that where a state court operates under a grant of subject matter jurisdiction sufficient to adjudicate a cause arising under a Federally based right, it may not discriminate against the cause solely because it is based on Federal law. However, where the state court, under its own constitution, lacks subject matter jurisdiction sufficient to encompass a cause arising under a Federal act or where a policy which, if applied evenly, would result in the court declining to consider both State-based and Federally-based claims of a particular nature, the rule is clear that the State Court may decline to entertain the cause.

Turning to the present matter in issue, it is clear that the Florida Courts do not have subject matter jurisdiction to entertain the type of claims which arise out of 42 U.S.C. 61983 against the State and its agencies, including municipalities. Nor does this omission in jurisdiction discriminate against such claims because they are Federally-based. As noted above, the Florida Courts' jurisdiction in these cases is limited to causes arising in tort' and, then, only to those causes predicated upon vicarious liability. An action not founded in tort, or, if founded in tort, not predicated on vicarious liability -- whether arising under Federal law, Florida law or the law of another jurisdiction -- cannot be maintained against the State of Florida or its agencies in the State Courts of Florida. Under such circumstances, the rule in *Claflin* and the cases following *Claflin* would not impose mandatory or obligatory jurisdiction upon the Courts of this state to accept such claims as that found herein.

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8 **Although there are certain other immunity waivers that apply to particular agencies in respect to certain other claims besides those founded in tort, none extend to either the entity nor the type of claim hereinvolved.**

CONCLUSION

For the reasons set forth herein, the *Amicus Curiae* , CITY OF **LAKE** WORTH, submits that the Trial Court correctly determined that it lacked subject matter jurisdiction over the present cause. In the absence of any superceding Federal rule requiring mandatory assumption of jurisdiction, this ***Amicus*** *Curiae* would urge that the decision of the District Court of Appeal below be quashed and the order of the Trial Court be reinstated.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to ISIDRO M. GARCIA, ESQUIRE, Joseph A. Vassallo, P.A., 3501 South Congress Avenue, Lake Worth, FL 33461, BERNARD HEEKE, ESQUIRE, Post Office Box 2244, Palm Beach, FL 33480; FRED GELSTON, ESQUIRE, Post Office Box 4507, West Palm Beach, FL 33402; KENNETH P. CARMAN, ESQUIRE, 600 West Hillsboro Blvd., Suite 210, Deerfield Beach, FL 33441 and RHEA P. GROSSMAN, P.A., 2710 Douglas Road, Miami, FL 33133-2728 by U. S. Mail, this 5th day of June, 1990.

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