

**IN THE SUPREME COURT OF FLORIDA  
CASE NO. SC23-126**

Anthony Rojas,

*Petitioner,*

v.

University of Florida Board of Trustees,

*Respondent*

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**AMICUS CURIAE BRIEF OF NATIONAL ASSOCIATION  
OF CONSUMER ADVOCATES IN SUPPORT OF  
PETITIONER ANTHONY ROJAS**

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Dated: November 13, 2023

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## **I. IDENTITY AND INTEREST OF *AMICUS CURIAE***

*Amicus* National Association of Consumer Advocates (“NACA”) submits this brief in support of Petitioner. NACA is a nonprofit association of more than 1,600 attorneys and consumer advocates committed to representing consumers’ interests. NACA’s members are private and public sector attorneys, legal services attorneys, law professors, and law students whose primary focus is the protection and representation of consumers. They have represented hundreds of thousands of consumers in breach of contract actions in particular, to ensure that consumers are not taken advantage of and that they receive the full benefit of their bargains. As a national organization fully committed to promoting justice for consumers, with an emphasis on those of modest means or those who are otherwise particularly vulnerable, NACA’s members have also long advocated to protect the rights of undergraduate and graduate students.

NACA has an interest in this case because the consequences of an adverse decision for students are dire. Should the Court find that public schools and universities can use sovereign immunity to avoid liability for breaching their own self-acknowledged “contracts,”

students will be left with no recourse in what is, for many of them, the most significant financial obligation they will ever undertake. Students will be left in the untenable position of having paid for specifically promised services while lacking any recourse when those promises are unfulfilled. That result, which will have its heaviest impact on already disadvantaged students, is untenable.

Specifically, this case will help determine whether (1) an individualized invoice and tuition and fees schedule issued by a public university, detailing the specific fees a student must pay to support certain on-campus amenities and benefits, and (2) a financial liability agreement that a public university requires all students to sign and which states that if the student signing the agreement does not pay “the costs of tuition, fees and other charges . . . when those charges become due,” the student is required “to pay [UF’s] costs of collecting unpaid charges, including a percentage based third party collection fee up to 30%, reasonable attorney’s fees, and court costs” together constitute an express contract that waives sovereign immunity.

NACA is invested in the resolution of this issue, as it will help clarify the rights of student-consumers in Florida’s public

institutions of higher education, and potentially the rights of many of their peers at public colleges and universities across the country.

For the reasons set forth below, *amicus* NACA respectfully requests that the Court reverse the First DCA’s opinion reversing the portion of the trial court’s order that denied the University’s motion to dismiss the breach of contract claim.

## **II. SUMMARY OF ARGUMENT**

Due to the high costs that students pay for their postsecondary education—and, in many cases, the ongoing debt and risks that they assume in order to do so—it is both a legal and moral imperative that the contracts into which they enter with their colleges and universities are enforced. Fundamentally, University of Florida students like Petitioner should get the benefits for which they contracted, were invoiced, and paid. Applying contract law upholds the value of private agreements when a public university is doing something that the government cannot – making arbitrary decisions without justification.

Many University of Florida students made substantial financial sacrifices to pay their invoices for the Spring and/or Summer 2020

terms. Students who took out loans will effectively continue to pay these invoices for years to come.

Although this case raises a narrow legal question, its resolution will have far-reaching, real-world consequences for millions of American students each year. If the Court finds that sovereign immunity deprives students of the right to services for which they contracted, were invoiced and paid, then the Court will have provided public colleges and universities with a green light to charge any fees they choose, with no obligation to provide students with *anything* in return. Neither the law nor basic fairness countenances such a result. The Court should reverse the First DCA's opinion reversing the portion of the trial court's order that denied the University's motion to dismiss the breach of contract claim.

### **III. ARGUMENT**

#### **A. Particularly in light of the rising costs of higher education, and the risks associated therewith, student-consumers should receive the campus resources for which they contract.**

For American students, higher education is often the ticket to a more prosperous future. Compared to those with only high school

diplomas, individuals with bachelor's degrees make more money<sup>1</sup> and are also more likely to be employed.<sup>2</sup> A postsecondary degree also comes with many non-financial benefits.<sup>3</sup> For many postsecondary students, however, higher education offers more than just a diploma and the promise of a better life upon graduation. Indeed, research shows that students also go to college for the specific on-campus experience they will receive *while* they pursue their degrees. For example, a 2015 survey found that, when deciding which college to attend, 81 percent of students consider the school's

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<sup>1</sup> Jennifer Ma, et al., *Education Pays 2019: The Benefits of Higher Education for Individuals and Society* (2019), <https://research.collegeboard.org/pdf/education-pays-2019-full-report.pdf> (In 2018, bachelor's degree holders with no advanced degree and working full-time made median annual earnings \$24,900 higher than their peers with only high school diplomas.).

<sup>2</sup> Jennifer Ma, et al., *Education Pays 2019: The Benefits of Higher Education for Individuals and Society* (2019), <https://research.collegeboard.org/pdf/education-pays-2019-full-report.pdf> ("The unemployment rate for individuals age 25 and older with at least a bachelor's degree has consistently been about half of the unemployment rate for high school graduates.").

<sup>3</sup> See <https://www.aplu.org/our-work/4-policy-and-advocacy/publicvalues/employment-earnings/#:~:text=Consider%20health%20and%20safety%2C%20prerequisites,for%20those%20who%20attend%20college>. (For instance, bachelor's degree holders are 47 percent more likely to have health insurance provided through their employers and can expect to live seven years longer than those with no postsecondary education).

location, 35 percent consider the student clubs, groups, and organizations available, and 23 percent consider the school's athletics or sports teams.<sup>4</sup> Students also value "college consumption amenities," including attractive living and recreational facilities.<sup>5</sup> For this reason, colleges and universities have engaged in a so-called "amenities arms race" by "spending billions of dollars building and equipping facilities meant to lure students to their campuses."<sup>6</sup>

That so many students deferred attending college altogether following COVID-19-related campus closures further supports the conclusion that students pursue higher education not only to obtain a degree, but also to receive an on-campus experience, complete with appurtenant opportunities, resources, and amenities.<sup>7</sup> Due to the

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<sup>4</sup> Rachel Fishman, *2015 College Decisions Survey: Part I: Deciding to Go to College* (2015), <https://www.luminafoundation.org/files/resources/deciding-to-go-to-college.pdf>.

<sup>5</sup> Brian Jacob, et al., *College as Country Club: Do Colleges Cater to Students' Preferences for Consumption?* (2013), [https://www.nber.org/system/files/working\\_papers/w18745/w18745.pdf](https://www.nber.org/system/files/working_papers/w18745/w18745.pdf).

<sup>6</sup> Michael T. Nietzel, *Students Begin To Top The Brakes On The Campus Amenities Arms Race*, *Forbes* (Nov. 5, 2018), <https://www.forbes.com/sites/michaelt Nietzel/2018/11/05/students-begin-to-tap-the-brakes-on-the-campus-amenities-arms-race/>.

<sup>7</sup> Scott Jaschik, *Nervous Freshmen, Nervous Colleges*, *Inside Higher Ed* (Aug. 10, 2020) <https://www.insidehighered.com/admissions/article/2020/08/1>

many benefits of higher education—both on-campus and lifelong—American students pursue advanced degrees in droves, with roughly 19.7 million students attending colleges and universities in fall 2020.<sup>8</sup> And, they do so despite sharply rising costs:

During the 1978–1979 school year, it cost the modern equivalent of \$17,680 per year to attend a private college and \$8,250 per year to attend a public college. By the 2008 - 2009 school year those costs had grown to \$38,720 at private colleges and \$16,460 at public colleges. [In 2019], those costs are closer to \$48,510 and \$21,370, respectively. That means costs increased by roughly 25.3% at private colleges and about 29.8% at public colleges.<sup>9</sup>

Not only have annual increases to the cost of higher education outpaced inflation<sup>10</sup> but, overall, in the last twenty years, “published

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0/survey-40-percent-freshmen-may-not-enroll-any-four-year-college (explaining that 40 percent of surveyed incoming freshmen who aspired to attend a four-year residential college said that they are likely or highly likely to not attend any four-year college in fall 2020).

<sup>8</sup>See

[https://nces.ed.gov/fastfacts/display.asp?id=372#College\\_enrollment](https://nces.ed.gov/fastfacts/display.asp?id=372#College_enrollment).

<sup>9</sup> Abigail Johnson Hess, *The cost of college increased by more than 25% in the last 10 years—here’s why*, CNBC (Dec. 13, 2019)

<https://www.cnbc.com/2019/12/13/cost-of-college-increased-by-more-than-25percent-in-the-last-10-years.html>.

<sup>10</sup> Tom Lindsay, *New Study: Despite Nonstop Talk Of ‘Making College More Affordable,’ Tuition Continues To Outpace Inflation*, Forbes (Jan. 29, 2020),

<https://www.forbes.com/sites/tomlindsay/2020/01/29/new-study-despite-nonstop-talk-of-making-college-more-affordable-->

college tuition has increased in price more than any other good or service besides hospital care.”<sup>11</sup> During the 2019-2020 academic year, costs continued to rise: The average cost of tuition, fees, room and board was, at public universities, \$21,950 for in-state students and \$38,330 for out-of-state students, and \$49,870 at private universities.<sup>12</sup>

Because public colleges and universities rely heavily on state and local tax revenue, and saw significant budget cuts following the Great Recession, these schools have raised their prices even more than their private counterparts.<sup>13</sup> According to the College Board, between the late 1980s to 2018, the cost of an undergraduate degree

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tuition-continues- to-outpace-inflation/.

<sup>11</sup> Preston Cooper, *A New Study Investigates Why College Tuition Is So Expensive*, *Forbes* (Aug. 31, 2020),

<https://www.forbes.com/sites/prestoncooper2/2020/08/31/a-new-study-investigates-why-college-tuition-is-so-expensive/>.

<sup>12</sup> Abigail Johnson Hess, *How student debt became a \$1.6 trillion crisis*, *CNBC* (June 12, 2020),

<https://www.cnbc.com/2020/06/12/how-student-debt-became-a-1point6-trillion-crisis.html>.

<sup>13</sup> Michael Mitchell, et al., *State Higher Education Funding Cuts Have Pushed Costs to Students, Worsened Inequality* (2019),

<https://www.cbpp.org/sites/default/files/atoms/files/10-24-19sfp.pdf> (“While states have been reinvesting in higher education for the past few years, resources remain well below 2008 levels — 13 percent lower per student— even as state revenues are now well above pre-recession levels.”).

rose by 213% at public schools, compared to only 129% at private schools, adjusting for inflation.<sup>14</sup> Students attending Florida's public institutions have been hit especially hard: Since the 2008 school year alone, Florida public colleges and universities have increased their published tuition by more than 60%, well above the national average of 37%.<sup>15</sup> All told, since the turn of the century, the net price of attendance<sup>16</sup> at an American public four-year college has more than doubled.<sup>17</sup>

As a result, the cost of postsecondary education, especially at public colleges and universities, has progressively shifted to students and their families.<sup>18</sup> By 2017, the average net price of a

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<sup>14</sup> Hillary Hoffower, *College is more expensive than it's ever been (2019)*, <https://www.businessinsider.com/why-is-college-so-expensive-2018-4>

<sup>15</sup> Michael Mitchell, et al., *State Higher Education Funding Cuts Have Pushed Costs to Students, Worsened Inequality (2019)*, <https://www.cbpp.org/sites/default/files/atoms/files/10-24-19sfp.pdf>.

<sup>16</sup> Net price means the published tuition and fees, room and board, and books and supplies, minus the average financial aid package.

<sup>17</sup> Preston Cooper, *A New Study Investigates Why College Tuition Is So Expensive*, *Forbes* (Aug. 31, 2020), <https://www.forbes.com/sites/prestoncooper2/2020/08/31/a-new-study-investigates-why-college-tuition-is-so-expensive/>.

<sup>18</sup> Michael Mitchell, et al., *State Higher Education Funding Cuts Have Pushed Costs to Students, Worsened Inequality (2019)*, <https://www.cbpp.org/sites/default/files/atoms/files/10-24->

public four-year institution accounted for 23% of a family’s median household income.<sup>19</sup> As the cost of higher education becomes a greater burden on individual households, students are increasingly turning to loans, and more of them. Today, approximately 70% of college students graduate with debt, with an average balance of around \$30,000—up from \$10,000 in the early 1990s.<sup>20</sup> In Florida, the average balance is even higher, at \$35,496.<sup>21</sup> Overall, approximately 44 million Americans collectively hold more than \$1.6 trillion in student debt.<sup>22</sup>

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19sfp.pdf.

<sup>19</sup> Michael Mitchell, et al., *State Higher Education Funding Cuts Have Pushed Costs to Students, Worsened Inequality* (2019), <https://www.cbpp.org/sites/default/files/atoms/files/10-24-19sfp.pdf>.

<sup>20</sup> Annie Nova, *Less than 11% of people with federal student debt are repaying their loans during Covid*, CNBC (Oct. 7, 2020), <https://www.cnbc.com/2020/10/07/less-than-11percent-of-people-with-federal-student-loans-are-paying-during-covid-19-.html>.the average balance is even higher, at \$35,496.

<sup>21</sup> Kelsey Sunderland, *Floridians have some of the highest student debt in the country*, WFLA (Dec. 17, 2020), <https://www.wfla.com/news/education/floridians-have-some-of-the-highest-student-debt-in-the-country/>.

<sup>22</sup> Abigail Johnson Hess, *How student debt became a \$1.6 trillion crisis*, CNBC (June 12, 2020), <https://www.cnbc.com/2020/06/12/how-student-debt-became-a-1point6-trillion-crisis.html>.

People refer to this situation as a student debt “crisis” for good reason, as the impacts of student debt are far-reaching, both on individual borrowers and society more broadly. For example, student debt makes it more difficult to buy a home,<sup>23</sup> start a business,<sup>24</sup> or save for retirement.<sup>25</sup> In addition, one survey found that over one-fifth of student borrowers have delayed getting married and more than one-quarter have pushed back having children.<sup>26</sup> In sum, “[o]nerous debt burdens make it more difficult

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<sup>23</sup> Annie Nova, *Here’s why millions of millennials are not homeowners*, CNBC (Jul. 11, 2018), <https://www.cnbc.com/2018/07/09/these-are-the-reasons-why-millions-of-millennials-cant-buy-houses.html> (“The researchers at the Urban Institute found that if a person’s education debt went from \$50,000 to \$100,000, their chance of homeownership will decline by 15 percentage points.”).

<sup>24</sup> Annie Nova, *How student debt came to define people’s lives*, CNBC (Dec. 28, 2019), <https://www.cnbc.com/2019/12/28/how-student-debt-came-to-define-peoples-lives-in-the-2010s.html> (“A person with \$30,000 in student debt is more than 10% less likely to start a business than a person who graduated debt-free.”).

<sup>25</sup> Annie Nova, *How student debt came to define people’s lives*, CNBC (Dec. 28, 2019), <https://www.cnbc.com/2019/12/28/how-student-debt-came-to-define-peoples-lives-in-the-2010s.html> (“By the time college graduates turn 30, those without education debt are predicted to have double the amount saved for retirement as those with the debt, according to the Center for Retirement Research at Boston College.”).

<sup>26</sup> Abigail Johnson Hess, *How student debt became a \$1.6 trillion crisis*, CNBC (June 12, 2020), <https://www.cnbc.com/2020/06/12/how-student-debt-became-a-1point6-trillion-crisis.html>.

for students to reach economic stability, costing resources that could instead go towards paying rent, saving for emergencies, or investing in the future.”<sup>27</sup>

Moreover, student debt comes with the very real risk of default. Indeed, more than 30% of student loan borrowers are currently in default, are late on their payments, or have stopped making payments altogether.<sup>28</sup> Default impacts an individual’s credit rating, which in turn makes it more difficult to secure future loans, housing, or even employment.<sup>29</sup> Finally, student loans can lead borrowers to bankruptcy: “A recent study conclude[d] that 32% of Americans filing for bankruptcy have student loan debt, and of that group, student loan debt comprised 49% of their total debt on average.”<sup>30</sup>

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<sup>27</sup> Michael Mitchell, et al., *State Higher Education Funding Cuts Have Pushed Costs to Students, Worsened Inequality* (2019), <https://www.cbpp.org/sites/default/files/atoms/files/10-24-19sfp.pdf>.

<sup>28</sup> Abigail Johnson Hess, *How student debt became a \$1.6 trillion crisis*, CNBC (June 12, 2020), <https://www.cnbc.com/2020/06/12/how-student-debt-became-a-1point6-trillion-crisis.html>.

<sup>29</sup> Michael Mitchell, et al., *State Higher Education Funding Cuts Have Pushed Costs to Students, Worsened Inequality* (2019), <https://www.cbpp.org/sites/default/files/atoms/files/10-24-19sfp.pdf>.

<sup>30</sup> Hillary Hoffower, *An astounding number of bankruptcies are being driven by student loan debt*, Business Insider (June 13,

It is against this backdrop that, during the Spring and/or Summer 2020 terms, millions of students across the nation's public colleges and universities paid their invoices for tuition and fees. University of Florida students were no exception. Petitioner and other University of Florida students paid their invoices for the Spring and/or Summer 2020 terms, which included line items for specific student fees that were, by statute<sup>31</sup>, required to access to transportation, health, and athletics services. However, UF failed to provide the contracted-for resources. Especially in light of the fact that many University of Florida students took out life-altering loans or otherwise experienced financial hardship to pay their fees, and the reality that many of these students will never receive degrees for their sacrifices, it is only lawful, and only fair, that UF's contracts with its students be enforced.

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2019), <https://www.businessinsider.com/people-filing-for-personal-bankruptcy-carry-student-loan-debt-2019-6>.

<sup>31</sup> See § 1009.24, Fla. Stat.

**B. UF’s refusal to honor its contracts for campus benefits and amenities could have especially devastating impacts on already disadvantaged students of color.**

The rising costs of higher education, the surge in student loans, and the negative consequences of such debt all have a disproportionate impact on communities of color. First, the average net price of in-state tuition and fees is a greater hit to many students of color, particularly Black and Latino students. In Florida, for example, in 2017, the average net price of attendance at a public four-year university comprised 18% of a white family’s median household income, compared to 26% for Black households and 22% for Latino households.<sup>32</sup> Second, students of color are more likely to take out loans than white students. For instance, in 2016, “85 percent of Black graduates across all institution types graduated with debt compared to just under 70 percent of their white peers.”<sup>33</sup>

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<sup>32</sup> Michael Mitchell, et al., *State Higher Education Funding Cuts Have Pushed Costs to Students, Worsened Inequality* (2019), <https://www.cbpp.org/sites/default/files/atoms/files/10-24-19sfp.pdf>.

<sup>33</sup> Michael Mitchell, et al., *State Higher Education Funding Cuts Have Pushed Costs to Students, Worsened Inequality* (2019), <https://www.cbpp.org/sites/default/files/atoms/files/10-24-19sfp.pdf>.

In addition, students of color generally take out more debt *and* have a harder time paying it down.<sup>34</sup> Lastly, students of color—particularly Black and Latino students—are more likely than white students to default on their student loans:

High debt burdens have been especially damaging for Black and Latino communities. One study that followed first-time college entrants starting in 2004 found that over 37 percent of all Black first-time college students across public, private nonprofit, and for-profit institutions had defaulted on their student loans within 12 years. For Hispanic students, the default rate over the same period was 20 percent. For their white counterparts, the rate was just 12 percent. The same study projected default rates into the future and predicted that as many as 70 percent of Black borrowers in the 2004 cohort would default on their loans by 2024.<sup>35</sup>

By failing to provide the benefits for which it contracted with students and then refusing to issue refunds, UF has essentially placed the entire burden of COVID-19 on the backs of already

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<sup>34</sup> Annie Nova, *How student debt came to define people's lives*, CNBC (Dec. 28, 2019), <https://www.cnbc.com/2019/12/28/how-student-debt-came-to-define-peoples-lives-in-the-2010s.html>.

<sup>35</sup> Michael Mitchell, et al., *State Higher Education Funding Cuts Have Pushed Costs to Students, Worsened Inequality* (2019), <https://www.cbpp.org/sites/default/files/atoms/files/10-24-19sfp.pdf> (“[W]hile the average white student loan borrower owes around \$30,000, the average black borrower owes closer to \$34,000. White borrowers pay down their education debt at a rate of 10% a year, compared with 4% for black borrowers.”).

disadvantaged Black and Latino students. It is bad enough that students of color pay more, and pay longer, in order to access higher education and the resources and amenities that are to go along with it. But to force these students to pay such steep prices, even *without* receiving the specific, on-campus benefits for which they contracted, is unconscionable.

**C. If an invoice for specific, campus-based fees does not constitute an express contract, students at many public institutions will be vulnerable to exploitation.**

Finally, the implications of this case cannot be overstated. In essence, this appeal asks whether a public college or university can issue invoices to students, and then pocket students' money while failing to provide the amenities and services for which that money was intended to pay. If the answer to this question is "yes," students enrolled in many of American public institutions of higher education—who, this year alone, number nearly 15 million<sup>36</sup>—might find themselves without recourse for one of the most expensive and important investments of their lives. That is, many public colleges

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<sup>36</sup> See

[https://nces.ed.gov/fastfacts/display.asp?id=372#College\\_enrollment](https://nces.ed.gov/fastfacts/display.asp?id=372#College_enrollment).

and universities might be emboldened to further increase their mandatory fees, knowing that, subject to their own states' sovereign immunity rules, they cannot be liable should they fail to provide students with anything in return. Such schools—where, overall, tuition and fees have already risen most sharply—could essentially become untouchable and unaccountable, forcing students to pay more and more for their educations, while providing them with less and less. Of course, if the answer to the above question is “yes,” there is also a great risk that other public institutions, beyond colleges and universities, will similarly take advantage of consumers, all under the guise of sovereign immunity.

In the area of fees, courts have long viewed the contract between the student and the university as a commercial relationship, in which specific prices are agreed upon and paid. This approach coincides with the intentions of the parties. Both the student and the university desire certainty in their financial obligations and are likely to view the published statement of fees as binding. When a disagreement over meaning occurs, the student has no reason to expect that his interpretation will be given any less credence than that of the institution.

Applying contract law upholds the value of private agreements, what has been called the very possibility of doing something different than government can do, of creating an institution free to make choices government cannot--even seemingly arbitrary ones--without having to provide a justification that will be examined in a court of law.<sup>37</sup>

### **CONCLUSION**

The Court's decision in this matter could have sweeping consequences for millions of postsecondary students in Florida and beyond. Many of these students are already bearing the brunt of the nation's student debt crisis. For University of Florida's diverse student population in particular, the stakes of this litigation are especially high. Even more broadly, the Court has an opportunity to either uphold and clarify, or forever foreclose, the rights of consumers who contract with public entities for specific goods or services. For the reasons described herein, *amicus* NACA respectfully requests that the Court reverse the First DCA's opinion reversing the portion

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<sup>37</sup> H. Friendly, *The Dartmouth College Case and the Public-Private Penumbra* 30 (1969).

of the trial court's order that denied the University's motion to dismiss the breach of contract claim.

Dated: November 13, 2023

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**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was served via the Florida Court's e-Filing Portal this 13<sup>th</sup> day of November, 2023 upon the following:

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**CERTIFICATE OF COMPLIANCE**

**I HEREBY CERTIFY** that the foregoing Amicus Curiae Brief of the National Association of Consumer Advocates in Support of Petitioner Anthony Rojas complies with the requirements of Florida Rule of Appellate Procedure 9.045 and 9.210(a)(2)(B), as it has been prepared in 14-point Bookman Old Style font and contains 3,454 words, inclusive of the portions of the brief that the rules permit to be excluded.

By: /s/ Janet R. Varnell  
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