IN THE SUPREME COURT OF FLORIDA

Boca Burger, Inc., Petitioner	)		
	)	Case No.:	SC01-1830
v.	)		
	)	4th DCA Case No.:	4D00-1255
Richard Forum, Respondent	)		

______________________________ /

ON PETITION FOR DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF APPEAL, FOURTH DISTRICT OF FLORIDA

BRIEF OF AMICI CURIAE THE ACADEMY OF FLORIDA TRIAL LAWYERS, INC.; FLORIDA CONSUMER ACTION NETWORK, INC.; COALITION FOR FAMILY SAFETY, INC.; FLORIDA LEAGUE OF CONSERVATION VOTERS, INC.; FLORIDA AFL-CIO; ASSOCIATION OF FLIGHT ATTENDANTS, AFL-CIO; DES ACTION, NATIONAL; FLORIDA STATE CONFERENCE OF BRANCHES OF NAACP; FLORIDA NATIONAL ORGANIZATION FOR WOMEN, INC.; CHILDREN'S ADVOCACY FOUNDATION, INC.; AL J. CONE; AND THE FLORIDA ALLIANCE FOR RETIRED AMERICANS, INC. IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF CONTENTS. i

TABLE OF AUTHORITIES. ii

I. STATEMENT OF INTEREST 1

II. SUMMARY OF ARGUMENT 8

III. ARGUMENT 9

A. Chapter 99-225 Embraces Multiple Subjects and Violates the Florida Constitution's Single Subject Requirement 9

1. Laws Containing More Than One Subject are Unconstitutional 9

2. Chapter 99-225 Contains Multiple Subjects Without Cogent Connection to One Another 13

3. "Tort Reform" is Not a Single Subject 26

B. Section 57.105, Fla. Stat., Intrudes on the Exclusive Authority of This Court 27

1. The Legislature Has Exercised Judicial Authority With Ripple Effects Throughout The Civil Rules 27

2. Legislative Rules of Discipline Interfere with the Independence of the Legal Profession and Its Role as Officers of Another Branch of Government 37

IV. Conclusion 40

V. Certificate of Service. 42

VI. Certificate of Type Face Compliance. 44

VIII. Appendix

TABLE OF AUTHORITIES

CASES

Atlantic Coast Line R.R. v. Allen, 40 So.2d 115 (Fla. 1949) 31 n.11

Barber v. Oakhills Estates Partnership, 583 So.2d 1114 (Fla. 2d DCA 1991) . 36

Bennet v. Budget Rent-A-Car Systems, Inc., No. 00-26923 CA 21 (Fla. 11th Cir. Ct. Oct. 23, 2001). 15n.5

Boyer v. Black, 154 Fla. 723, 726, 18 So.2d 886 (1944) 21

Brockway v. Town of Golfview, 675 So.2d 699 (Fla. 4th DCA 1996) 36

Bunnell v. State, 453 So.2d 808 (Fla. 1984) 13

Burch v. State, 558 So.2d 1 (Fla. 1990) 25, 26

Cadwell v. Boyd, No. 00-005569 (03)(Fla. 17th Cir. Ct. May 16, 2001) . . . 15 n.5

Caple v. Tuttle's Design-Build, Inc., 753 So.2d 49 (Fla. 2000) 18

Chenoweth v. Kemp, 396 So.2d 1122 (Fla. 1981) 26

CJC Holdings, Inc. v. Wright & Lato, Inc., 989 F.2d 791 (5th Cir. 1993). . . 35, 39

Colonial Investment Co. v. Nolan, 100 Fla. 1349, 131 So. 178 (1930) 9, 10

Connelly v. Custom Transportation Services, Inc., No. 99-0296-CA (Fla. 14th Cir. Ct. Dec. 5, 2001). 15n.5

Cooter & Gell v. Hartmarx Corp., 496 U.S. 384 (1990) 38

Dodson v. Persell, 390 So.2d 704 (Fla. 1980) 32

Evans v. Firestone, 457 So.2d 1351 (Fla. 1984) 19

FCAN v. Bush, No. 99-6689 (Fla. 2d Cir. Ct. Feb. 9, 2001). 7, 14, 25

Fine v. Firestone, 448 So.2d 984 (Fla.1984) 11

Florida Bar v. Daniel, 626 So.2d 178 (Fla. 1993) 28

Florida Bar v. Massfeller, 170 So.2d 834 (Fla. 1964) 36

Gibson v. State, 16 Fla. 291 (1877) 10

H.B.A. Management, Inc. v. Estate of Schwartz, 693 So.2d 541 (Fla. 1997) . . 32

Haven Federal Savings & Loan Ass'n v. Kirian, 579 So.2d 730 (Fla. 1991) . . 28

Heggs v. State, 759 So.2d 620 (Fla. 2000) 9, 17, 24 n.8

Hickman v. Taylor, 329 U.S. 495, 501 (1947) 31

Hoover v. Board of Franklin County Commissioners, 482 N.E.2d 575, 578 (Ohio 1985) 22

Hughes v. Enterprise Rent-A-Car Co., No. 00-2192 (Fla. 14th Cir. Ct. Oct. 30, 2001). 15n.5

In re Advisory Opinion to the Governor, 509 So.2d 292 (Fla. 1987) 12

In re Clarification of Florida Rules of Practice and Procedure, 281 So.2d 204 (Fla. 1973) 27-28

Kalway v. State, 730 So.2d 861 (Fla. 1st DCA 1999) 18

Kerr Construction, Inc. v. Peters Contracting, Inc., 767 So.2d 610 (Fla. 5th DCA 2000) 17

Martinez v. Scanlan, 582 So.2d 1167, 1172 (Fla. 1991) 24, 26

McPherson v. Flynn, 397 So.2d 665 (Fla. 1981) 29

Metropolitan Dade County v. Bridges, 402 So.2d 411 (Fla. 1981), *receded from on other grounds, Makemson v. Martin County,* 491 So.2d 1109 (Fla. 1986) 30

Meyers v. City of Jacksonville, 754 So.2d 198 (Fla. 1st DCA 2000) 31

Miami Transit Co. v. Hurns, 46 So.2d 390 (Fla. 1950) 31 n.11

Minnesota v. Cassidy, 22 Minn. 312 (1875) 12

Moakley v. Smallwood, 47 Fla. L. Weekly 5175, 2002 WL 276466 38

Muckenfuss v. Deltona Corp., 508 So.2d 340 (Fla. 1987) 35

Petition of Florida State Bar Association, 40 So.2d 902 (Fla. 1949) 28

Pim v. Nicholson, 6 Ohio St. 176 (1856) 22

Pinellas County v. Carlson, 242 So.2d 714 (Fla. 1971) 31 n.11

Rosen v. Rosen, 696 So.2d 697 (Fla. 1997) 38

Seaboard Air Line Ry. v. Timmons, 61 So.2d 426 (Fla. 1952) 31 n.11

Shell v. State Rd. Dep't, 135 So.2d 857 (Fla. 1961) 31 n.11

Smith v. Department of Insurance, 507 So.2d 1080 (1987) 9, 18, 25, 26 n.9

Smith v. Enterprise Leasing Co., No. 01-41-CA (Fla. 3d Cir. Ct. Aug. 14, 2001). 15

State ex rel. Arnold v. Revels, 109 So.2d 1 (Fla. 1959) 37

State ex rel. Crump v. Sullivan, 99 Fla. 1070, 128 So. 478 (1930) 10

State ex rel. Dix v. Celeste, 464 N.E.2d 153 (Ohio 1984) 21, 22

State ex rel. Grodin v. Barns, 119 Fla. 405, 161 So. 568 (1935) 10

State ex rel. Moodie v. Bryan, 50 Fla. 293, 39 So. 929 (1905) 10

State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 715 N.E.2d 1062 (Ohio 1999) 21, 22, 23

State v. Canova, 94 So.2d 181 (Fla. 1957) 18

State v. Johnson, 616 So.2d 1 (Fla. 1993) 9, 24 n.8

State v. Leavins, 599 So.2d 1326 (Fla. 1st DCA 1992) 23, 24 n.8

State v. Lee, 356 So.2d 276 (Fla. 1978) 26

State v. Paulus, 688 P.2d 1303 (Or. 1984) 12

State v. Smith, 260 So.2d 489 (Fla. 1972) 28

State v. Thompson, 120 Fla. 860, 163 So. 270 (1935) 13, 26

Stewart v. Bee-Dee Neon & Signs, Inc., 751 So.2d 196 (Fla. 1st DCA 2000) . . 38

Surf Drugs, Inc. v. Vermette, 236 So.2d 109 (Fla. 1970) 31 n.11

Waldron v. Armstrong, No. 2001-CA-002876-NC (Fla. 12th Cir. Ct. May 22, 2001) 15 n.5

Williams v. State, 459 So.2d 319 (Fla. 5th DCA 1984) 9, 10

CONSTITUTIONAL PROVISIONS

Art. I, § 21 30

Article II, § 3 8

Article III, § 6 7,8

Article V, § 2 . . . . 8, 27

Article V, §15 . . . . 8, 28

Article XI, § 3 20

STATUTES

Ch. 992-225 . . . . *passim*

§ 40.50, Fla. Stat. 15

§ 44.104, Fla. Stat. 16

§47.025, Fla. Stat. 17

§ 57.105, Fla. Stat. . . . . *passim*

§ 95.031, Fla. Stat. 16

§ 768.0705, Fla. Stat. 15, 16

§ 768.095, Fla. Stat. 16

§ 768.77, Fla. Stat. 16

§ 768.78, Fla. Stat. 16

§ 768.81, Fla. Stat. 15

CS/HB 775 10

RULES OF CIVIL PROCEDURE

Fla. R. Civ. P. 1.110 31

OTHER RULES

Fed. R. of Civ. Pro. 11 34-35

Fla. R. of Prof. Conduct 34, 37

Fla. Stds. Imposing Law. Sancs. 38 n.15

R. Regulating Fla. Bar 38 n.15

OTHER AUTHORITY CITED

Edward S. Corwin, The “Higher Law” Background of American Constitutional Law (1928; 1955 reprint) 12

Martha J. Dragich, *State Constitutional Restrictions on Legislative Procedure: Rethinking the Analysis of Original Purpose, Single Subject, and Clear Title Challenges,* 38 Harv. J. of Legis. 103 (2001) 14

Amasa Eaton, *Recent State Constitutions,* 6 Harv. L. Rev. 109 (1892) 11 n.2

Jeffrey Gray Knowles, *Enforcing the One-Subject Rule: The Case for a Subject Veto,* 38 Hastings L.J. 563 (1987) 10 n.1

Lewis' Sutherland, Statutory Construction, § 3 10

George N. Meros, Jr. and Chanta G. Hundley, *Florida's Tort Reform Act: Keeping Faith with the Promise of* Hoffman v. Jones, 27 Fla. St. U. L. Rev. 461, 463-64 (2000) 25

Millard H. Ruud, *No Law Shall Embrace More Than One Subject,* 42 Minn. L. Rev. 389, 389 (1958) 12

AMICI, THE ACADEMY OF FLORIDA TRIAL LAWYERS, INC. FLORIDA CONSUMER ACTION NETWORK, INC.; COALITION FOR FAMILY SAFETY, INC.; FLORIDA LEAGUE OF CONSERVATION VOTERS, INC.; FLORIDA AFL-CIO; ASSOCIATION OF FLIGHT ATTENDANTS, AFL-CIO; DES ACTION NATIONAL; FLORIDA STATE CONFERENCE OF NAACP BRANCHES; FLORIDA NATIONAL ORGANIZATION OF WOMEN, INC.; CHILDREN'S ADVOCACY FOUNDATION, INC.; AL J. CONE; AND THE FLORIDA ALLIANCE FOR RETIRED AMERICANS, INC., submit this amicus curiae brief in support of Petitioner Boca Burger, Inc. and ask this Court to declare Chapter 99-225, Laws of Florida (hereinafter cited as Chapter 99-225)(Appendix , Tab 8), unconstitutional or, in the alternative, declare Section 57.105, Florida Statutes (1999), unconstitutional.

VII. STATEMENT OF INTEREST

Amicus Academy of Florida Trial Lawyers, Inc. (AFTL) is a statewide not for profit trade association of trial lawyers who primarily represent plaintiffs in personal injury actions. AFTL has approximately 4,000 members who are directly affected by the limitations on their practice and sanctions imposed by § 57.105, Fla. Stat. (1999), and whose clients' rights are affected by that and other provisions of Chapter 99-225

and is keenly aware of the law's adverse impact on access to justice, a key undertaking of its mission.

Amicus Curiae Florida Consumer Action Network, Inc. (FCAN) is a nonprofit consumer and environmental group, founded in 1984, and comprised of more than 40,000 members throughout Florida with offices in Tampa, Tallahassee and Ft. Lauderdale. FCAN is keenly aware of Chapter 99-225 adverse effect on consumer rights, including their access to counsel and product safety, key issues of importance to FCAN.

Amicus Coalition for Family Safety, Inc. (CFS) is a not for profit organization, established in 1997 and incorporated in the State of Florida, for the promotion of social welfare and family safety. CFS's more than 10,000 individual members, from across Florida, come from all walks of life: senior citizens worried about inadequate medical and nursing home care; workers concerned about on-the-job safety; parents seeking safeguards and protection for their children; and doctors whose use of medical products can have life or death consequences. Its members are keenly aware of the adverse impact of Chapter 99-225 on these fundamental goals incorporated into CFS's mission.

Amicus Florida League of Conservation Voters, Inc. (FLCV) is an environmental organization whose purposes include the monitoring of legislative,

electoral and administrative proceedings in the State of Florida in order to record and report on those matters of public concern regarding Florida's fragile environment. FLCV is keenly aware that Chapter 99-225 adversely affects the availability of the courts for holding wrongdoers who pollute the environment accountable for their wrongful actions, in violation of its mission.

Amicus Florida AFL-CIO is comprised of 391 local labor unions, 64 labor councils, and approximately 442,000 active and retired union members throughout the State of Florida. Among its objectives, stated in its mission, is to "represent the rights and interests of working people on a wide variety of public policy issues and before various units and branches of the government of the State of Florida." Chapter 99-225 adversely affects those rights.

Amicus Association of Flight Attendants, AFL-CIO, (AFA) is the exclusive bargaining representative for more than 46,000 flight attendants at 25 airlines and serves as a voice for flight attendants at their workplace, in the industry, in the media and in the legislature. AFA is also the bargaining representative for flight attendants at 21 other national and regional airlines located throughout the United States. AFA represents more than 3,000 flight attendants who reside in Florida. AFA is keenly aware that Chapter 99-225 contains a statute of repose for commercial aircraft that adversely affects its member's jobs and workplace safety.

Amicus DES Action National (DES Action) is a national non-profit consumer group dedicated to informing the public about DES (diethylstilbestrol) and helping DES-exposed individuals find the care and redress they need. DES was prescribed to pregnant women during the years 1938-71 in the mistaken belief that it would prevent miscarriage. It did not work and, instead, damaged and continues to damage the health of not only the women who took it but also their children. Some daughters of women who took DES can find themselves, as late in life as age 48, to have been afflicted with vaginal cancer attributable to DES. Upon information and belief, there are an estimated 467,000 Floridians who have been exposed to DES. DES Action has more than 500 members who reside in Florida, with the number growing annually as more individuals discover health problems associated with exposure to DES. DES Action is keenly aware that provisions in Chapter 99-225, including §57.105 Fla. Stat. (1999), present obstacles to receiving full redress through the courts for these injuries and, consistent with its Mission, must address such deprivations.

Amicus Florida State Conference of NAACP Branches (Florida NAACP) is a not for profit organization affiliated with the National NAACP, which is headquartered in Baltimore, Maryland, and is the oldest, largest and strongest civil rights organization in the United States. The Florida NAACP consists of 112 adult branches, youth councils and college chapters located throughout the state. Its 70,000

Florida members are primarily African Americans, although its members include people of all races and most national origins. Limitations of the type imposed by Chapter 99-225, including §57.105, Fla. Stat. (1999), will have an adverse impact on the availability of the courts to vindicate these members' civil and personal rights, one of the major purposes of the organization.

Amicus Florida National Organization for Women, Inc. (Florida NOW) is a not for profit grassroots advocacy organization whose mission is to bring women into full participation in the mainstream of American society, exercising all privileges and responsibilities thereof in truly equal partnership with men, including equal rights and responsibilities in all aspects of citizenship, public service, employment, education and family life. Florida NOW has approximately 6,000 members statewide. Florida NOW is keenly aware that limitations of the type imposed by Chapter 99-225, including §57.105, Fla. Stat. (1999), will have an adverse impact on the availability of the courts to vindicate these members' civil and personal rights.

Amicus Children's Advocacy Foundation, Inc. (CAF) was formed to help children by directly and indirectly assisting them, advocating for and protecting their rights through litigation and by educating others about the needs of children in the legal system. CAF is currently involved in activities on behalf of the more than 10,000 children presently in Florida's foster care system. Historically, the abused and

neglected children taken into Florida's foster care system are at risk of being subjected to tortious injuries and damages as a result of unlawful conduct inherent in the operation of Florida's foster care system. To obtain full redress for those injuries, the children's constitutionally protected right of meaningful access to the courts is essential. CAF is keenly aware that Chapter 99-225 presents unconstitutional obstacles to such access.

Amicus Al J. Cone, who resides in Ocala, Florida is a Florida citizen and taxpayer. Mr. Cone is also a member of the Florida Bar, a practicing lawyer and the proprietor of several rental properties in Florida. His livelihood, as a lawyer and businessman, is directly affected by §57.105, Fla. Stat. (1999), specifically by deterring meritorious cases that are not sufficiently established prior to filing. He is keenly aware of Chapter 99-225's adverse impact on his interests and the interests of his clients.

Amicus Florida Alliance for Retired Americans, Inc. (FLARA), according to its Constitution, was formed "to promote a life of opportunity, of equity and of human dignity for all our citizens" and "to further our nation's progress toward the Justice, the Domestic Tranquility and the General Welfare" sought by those who adopted the Constitution. Chapter 99-225 interferes with these purposes because it diminishes the chances that seniors will be able to hold unqualified or negligent caregivers responsible

for mistreatment; makes it more likely that members will suffer harm and receive less compensation for their injuries; makes convenience businesses, where seniors are often patrons, less safe places than they would have been absent its enactment; and imposes additional financial and taxpaying burdens on them.

Amici, collectively, are plaintiff-appellees in the pending First District Court of Appeals case of *State v. Florida Consumer Action Network, et al.,* DCA Case No. 1D01-787, a declaratory judgment action challenging the constitutionality of Chapter 99-225, one of the provisions of which is § 57.105, Fla. Stat. (1999), the law at issue in the instant case. In that action, the Circuit Court declared Chapter 99-225 unconstitutional in its entirety as a violation of Art. III, § 6 of the Florida Constitution. *FCAN v. Bush,* No. 99-6689 (Fla. 2d Cir. Ct. Feb. 9, 2001)(Appendix, Tab 1). For that reason, Amici are keenly aware of the many ways in which Chapter 99-225, including § 57.105, Fla. Stat. (1999), violates the Florida Constitution. The mission of each of the Amici includes defense of the rights at issue here contained in the Florida Constitution.

II. SUMMARY OF ARGUMENT

Section 57.105, Florida Statues (1999),the statutory provision that authorized the punishment at issue in this matter, was enacted as part of Chapter 99-225, Laws of Florida, which was signed into law by Governor Jeb Bush on May 26, 1999. This multi-faceted law combined diverse subjects, such as attorney discipline, juror notetaking, venue in land improvement contract cases, immunity for rental car companies, a study on litigation, imposition of a government rules defense in products cases and changes to the law of premises liability, among other things, without cogent connection, into a single enactment in violation of the Florida Constitution's single-subject requirement. Article III, § 6, Fla. Const.

The law also invaded authority constitutionally vested exclusively in the judiciary. Section 57.105, Florida Statutes (1999), is a classic example of that unconstitutional arrogation of a co-equal branch's constitutional authority by legislating disciplinary standards and monetary sanctions that fall solely within the Constitution's assignment to this Court. *See* Article II, § 3, and Article V, § 2(a), and Article V, §15, Fla. Const.

Amici urge this Court to strike down this enactment in its entirety as a violation of the single-subject rule. Alternatively, Amici urge this Court to strike down § 57.105, Fla. Stat. (1999), as a violation of separation of powers.

III. ARGUMENT

A. Chapter 99-225 Embraces Multiple Subjects and Violates the Florida Constitution's Single Subject Requirement

1. Laws Containing More Than One Subject are Unconstitutional

The Constitution's single-subject specification, Art. III, § 6, Fla. Const., mandates that a law which embraces more than one subject be declared unconstitutional. *State v. Johnson,* 616 So.2d 1 (Fla. 1993). *See also Heggs v. State,* 759 So.2d 620, 628 (Fla. 2000)(quoting, with approval, *Colonial Investment Co. v. Nolan,* 100 Fla. 1349, 1354, 131 So. 178, 180 (1930), that where a law "embraces two or more subjects, and two or more of the same are expressed in the title, the whole act is void.").

The single-subject requirement was "designed to prevent various abuses commonly encountered in the way laws were passed by state legislatures[, most particularly,] logrolling, which resulted in hodgepodge or omnibus legislation." *Williams v. State,* 459 So.2d 319, 321 (Fla. 5th DCA 1984). *See also Smith v. Department of Insurance,* 507 So.2d 1080, 1096 (1987)(Ehrlich, J., concurring in part and dissenting in part)(citation omitted)("'object of this constitutional provision, which

in substance has been placed in practically all of the constitutions of the several states,[1] was to prevent hodge-podge, log-rolling, and omnibus legislation.'"'); *State ex rel. Grodin v. Barns,* 119 Fla. 405, 414, 161 So. 568, 571(1935)("purpose was to avoid the confusion incident to the evil which had grown out of 'omnibus' legislation."); *Colonial Investments,* 100 Fla. at 1351, 131 So. at 178 (same); *State ex rel. Crump v. Sullivan,* 99 Fla. 1070, 1075, 128 So. 478, 480 (1930)(same); *State ex rel. Moodie v. Bryan,* 50 Fla. 293, 395, 39 So. 929, 961 (1905)(same); *Gibson v. State,* 16 Fla. 291, 299 (1877)(same).

In a learned opinion about this constitutional requirement, the Fifth DCA quoted a venerable decision of this Court that traced the origins of the single-subject rule in the Florida Constitution: it was a response to the problem that "[i]t had become quite common for legislative bodies to embrace in the same bill incongruous matters having no relationship to each other. . . . And frequently such distinct subjects, affecting diverse interests, were combined in order to unite the members who favored either in support of all." *Williams*, 459 So.2d at 321 (citing *Colonial Investments,* 100 Fla. at 1351, 131 So. at 178 (1930), *in turn,* quoting Lewis' Sutherland, Statutory Construction, § 3)). In fact, the court noted that it is a "subversion" of the legislative

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[1]Single-subject provisions appear in the constitutions of 41 states. Jeffrey Gray Knowles, *Enforcing the One-Subject Rule: The Case for a Subject Veto,* 38 HASTINGS L.J. 563, 565 (1987).

process to permit enactment through logrolling of "matters which really have no majority support in the legislative body, but which were passed because legislators were voting to approve other provisions included in the bill." *Id*. (citing *Fine v. Firestone,* 448 So.2d 984 (Fla.1984)).

That danger, inherent in omnibus legislation, adversely affects as well the citizen's role in democratic government.[2] A complex and lengthy piece of legislation, such as the 53-page CS/HB 775 that spawned Chapter 99-225, is extremely difficult for the average citizen to study and understand.[3] When the legislation is truly devoted to a single subject, that task is less complex and thus more citizen-friendly, no matter how complicated the act's subject matter happens to be.

The single-subject requirement, therefore, plays a major role in the participation of the responsible citizen in the legislative process. The need to operate in the sunshine and permit citizen scrutiny of legislative proposals, which renders the process

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[2]Single-subject requirements were adopted in state constitutions during the 19th century because earlier experience had established good reasons for citizens to distrust the legislature. Amasa Eaton, *Recent State Constitutions,* 6 Harv. L. Rev. 109, 109 (1892).

[3]In the case of Ch. 99-225, it is extremely difficult for even the experienced jurist or legal practitioner to understand all of its provisions, let alone their effects when operating in unison. For example, the complex formula it establishes for the apportionment of damages when there are multiple tortfeasors is unworkable and incomprehensible.

legitimate, was recognized as long ago as ancient Rome, which boasted the first single-subject requirement in its 98 B.C. *lex Caecilia et Didia*. Edward S. Corwin, The "Higher Law" Background of American Constitutional Law 13 n.36 (1928; 1955 reprint)(citations omitted); Millard H. Ruud, *No Law Shall Embrace More Than One Subject,* 42 Minn. L. Rev. 389, 389 (1958). It has also been recognized more recently by this Court. *See In re Advisory Opinion to the Governor,* 509 So.2d 292, 313 (Fla. 1987)(citations omitted)(the one-subject rule "attempts to avoid surprise or fraud by ensuring that both the public and the legislators involved receive fair and reasonable notice of the contents of a proposed act.").

An omnibus bill, which inevitably attracts the special pleadings of those with disproportionate political clout, can serve as a shroud that prevents even the most diligent of responsible citizens from discovering legislative mischief. *See, e.g., State v. Paulus,* 688 P.2d 1303, 1309 (Or. 1984)(stating that "one-subject rule aims to enhance the likelihood that distinct policies will be judged rationally on their individual merits rather than being packaged to attract support from legislators or constituencies with special interest in one provision and no worse than indifference toward other unrelated ones"). *See also* Ruud, 42 Minn. L. Rev. at 390 (1958)(quoting *Minnesota v. Cassidy,* 22 Minn. 312, 322 (1875)(the single-subject rule exists "to secure to every

distinct measure of legislation a separate consideration and decision, dependent solely on its individual merits.”)).

2. Chapter 99-225 Contains Multiple Subjects Without Cogent Connection to One Another

A court’s task in analyzing an alleged violation of the single-subject rule is simply to determine “whether or not the provisions of the bill are designed to accomplish separate and disassociated objects of legislative effort.” *State v. Thompson,* 120 Fla. 860, 892-93, 163 So. 270, 283 (1935). That means the court must determine whether the matters within the challenged law have a “cogent relationship” or a natural or logical connection. *Bunnell v. State,* 453 So.2d 808, 809 (Fla. 1984)(striking down a bill that was “very simply a law that contains two different subjects or matters.”). Even the most cursory examination of Chapter 99-225 indicates that no such relationship exists between its miscellaneous provisions.

This chapter law has a title that details 104 different provisions. The title alone takes up nearly six pages of the original legislation. It contains 36 sections, creating or amending 33 sections of Florida Statutes, 16 of which are new. It creates or amends sections in seven different titles and eight different chapters within those titles.[4]

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[4]Title V (Judicial Branch), Chapters 40 (Jurors) and 44 (Courts); Title VI (Civil Practice and Procedure), Chapter 47 (Venue); Title VII (Evidence); Chapter 90 (Evidence Code); Title XIII (Limitations), Chapter 95 (Limitations of Actions); Title
(continued...)

As one leading scholar has advised "[i]f a bill amends multiple chapters [of the state code], the court should presume that the bill contains multiple subjects." Martha J. Dragich, *State Constitutional Restrictions on Legislative Procedure: Rethinking the Analysis of Original Purpose, Single Subject, and Clear Title Challenges,* 38 Harv. J. of Legis. 103, 142 (2001).

Chapter 99-225 reaches a wide variety of discernibly different subjects, including civil procedure, liability for criminal conduct, venue in contract disputes, product liability law, attorney discipline, employment law, court administration, land use law, evidence, negligence, damages and apportionment, intergovernmental relations, alcohol and drug laws, and a research study on litigation. Thus, rather than be limited to a single subject, there are at least 14 subjects in the new law. The Second Judicial Circuit found that there were "no fewer than 20 subjects." *FCAN v. Bush, supra.*[5] The existence of but two would be fatal to the statute.

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[4](...continued)
XXIII (Motor Vehicles), Chapter 324 (Financial Responsibility); Title XXIX (Public Health), Chapter 400 (Nursing Homes and Related Health Care Facilities); Title XLV (Torts), Chapter 768 (Negligence), Part I (General Provisions and Part II (Damages).

[5]This is not the only Circuit Court to have ruled Chapter 99-225 unconstitutional. *See* Partial Summary Judgment for Plaintiff on Defendant's Third Affirmative Defense, *Waldron v. Armstrong,* No. 2001-CA-002876-NC, at 3 (Fla.12th Cir. Ct. May 22, 2001)("Because Chapter 99-225, Laws of Florida, contains multiple diverse subjects that are not properly connected, and was not enacted in response to
(continued...)

Frankly, it is impossible to understand how so-called jury reforms (Ch. 99-225, § 1, *codified at* § 40.50, Fla. Stat.), such as permitting note taking and allowing jurors to write questions to the court and to witnesses, along with a mandate for instructions prior to oral argument, have a "cogent relationship" with the massive changes made to the doctrine of joint and several liability (Ch. 99-225, § 27, *codified at* § 768.81(3), (4), (5) & (6)). It is equally implausible that a natural and logical relationship exists between the new standards imposed to discipline attorneys for "unsupported claims or defenses" (Ch. 99-225, § 4, *codified at* § 57.105), at issue in the instant case, and the limitations created on premises liability (Ch. 99-225, § 18, *codified at* § 768.0705).

Just as inconceivable is the joinder between the requirement that the clerk of court report settlement, jury verdict, and final judgment statistics in negligence cases

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[5](...continued)
a legislatively recognized crisis, it is violative of Article III, Section 6 of the Florida Constitution.")(Appendix, Tab 4); Order Striking Certain of the Defendants' Affirmative Defenses, *Cadwell v. Boyd,* No. 00-005569 (03)(Fla.17th Cir. Ct. May 16, 2001)(Appendix, Tab 7); Order Granting "Motion for Summary Judgment," *Smith v. Enterprise Leasing Co.*, No. 01-41-CA (Fla. 3d Cir. Ct. Aug. 14, 2001)(Appendix, Tab 2); Order on the Plaintiffs' and Defendant's Motions for Summary Judgment and Summary Final Judgment for the Plaintiffs, *Bennet v. Budget Rent-A-Car Systems, Inc.*, No. 00-26923 CA 21 (Fla. 11th Cir. Ct. Oct. 23, 2001)(Appendix, Tab 3); Order on Plaintiffs' Motion for Partial Summary Judgment, *Connelly v. Custom Transportation Services, Inc.*, No. 99-0296-CA (Fla. 14th Cir. Ct. Dec. 5, 2001)(Appendix, Tab 5); Order Denying Defendants' Motion to Limit Damages Pursuant to Section 324.021 Florida Statutes, *Hughes v. Enterprise Rent-A-Car Co.*, No. 00-2192 (Fla. 14th Cir. Ct. Oct. 30, 2001)(Appendix, Tab 6) .

to the Office of the State Courts Administrator when required by the Senate President and House Speaker (Ch. 99-225, § 10)[6] and the new statute of repose creating a presumptive useful life for all products, except certain designated transportation products and those warrantied for longer, of 12 years (Ch. 99-225, § 11, *codified at* § 95.031). Plaintiffs further submit that no unity of subject can be discerned between permitting judges, rather than juries, to determine the amount of future damages (Ch. 99-225, §§ 7 and 8, *codified at* §§ 768.77 and 768.78, respectively) and the statutory presumption created that owners and operators of convenience stores are not liable for the criminal acts of third parties committed on their premises (Ch. 99-225, § 18, *codified at* § 768.0705). Where, too, is the subject that embraces the private judge provision described as a trial resolution procedure (Ch. 99-225, § 44.104) and the immunity granted employers about employee recommendations (Ch. 992-225, § 17, *codified at* 768.095).

Even putting aside the Legislature's generalized forays into this Court's exclusive authority over practice and procedure that are disbursed throughout Chapter 99-225, there is no cogent connection between the various unrelated tort-based causes of action swept within the law's ambit and Section 9's change in contract law venue.

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[6]This provision raises profound separation of powers issues in that legislative officers are commanding performance of judicial branch employees.

Section 9, codified at §47.025, Fla. Stat. (1999), declares that contract clauses establishing venue outside of Florida and involving a Florida-based contractor or subcontractor for improvements to real property are void as against public policy. That these breach of contract cases cannot be enforced in Florida unless the case is first brought in Florida has no implications whatsoever for tort law and cannot be justified by any unifying rationale with the other provisions of the law. In most instances, civil disputes arising from such an agreement will tend to be breach of contract actions. *See, e.g., Kerr Constuction, Inc. v. Peters Contracting, Inc.,* 767 So.2d 610, 611 (Fla. 5th DCA 2000)(applying Section 9 of Chapter 99-225 to a breach of contract action).

The existence of this provision alone, even without more, is sufficient to constitute a single-subject violation. *See Heggs,* 759 So.2d at 628.

Chapter 99-225 also contains a slew of unrelated changes to civil procedure. *See, e.g.,* Ch. 99-225, §§ 1 (jury instructions, notetaking and submission of written questions), 2 (court-ordered mediation), 3 (voluntary trial resolution courts), 4 (attorney discipline), 5 (taxing of costs), 6 (expedited trial procedures), 7 (itemized verdicts), and 8 (periodic payments). These miscellaneous provisions are patently unconnected to any of the other provisions in Chapter 99-225. To be so connected, this Court recently explained in the context of a separation of powers challenge, the

procedural provisions must be "intimately related to the definition of those substantive rights" established in the law under review and must be "intertwined with [those] substantive rights." *Caple v. Tuttle's Design-Build, Inc.,* 753 So.2d 49, 54 (Fla. 2000). *See also Smith,* 507 So.2d at 1092 (describing the requirement that procedural provisions be "necessary to implement substantive provisions" and "directly related to the substantive statutory scheme" to be valid) and *Kalway v. State,* 730 So.2d 861, 862 (Fla. 1st DCA 1999)(finding procedural provisions must be "minimal" and necessary to implement substantive law).

Though these holdings apply to questions of legislative intrusion into judicial rulemaking authority, single-subject jurisprudence emphasizes that the provisions must be "fairly and naturally germane to the subject of the act, or are such as are necessary incidents to or tend to make effective or promote the objects and purposes of the legislation." *State v. Canova,* 94 So.2d 181, 184 (Fla. 1957). Appellees respectfully suggest that this is, in essence, the same test. Procedural provisions must be closely related, necessary incidents, or needed additions to make the statute's substantive subject effective in order to be embraced within a single subject. Here, they do not. For example, Sections 30, 31, and 32 of Chapter 99-225 establish prerequisites to eligibility for attorney's fees in elder care cases. While such provisions may be "matter properly connected" to changes in a law regarding the liability of nursing

homes, it has no proper connection to legislation that does not otherwise address nursing homes.

In Chapter 99-225, the necessary close nexus does not exist between the various procedural provisions and the substantive ones. The procedural provisions contained in Chapter 99-225 are set out in isolation as stand-alone provisions. They are not part of any fundamental substantive scheme to implement rights or any substantive provision that was enacted in the same statute. The substantive features of Chapter 99-225, if constitutional, could be implemented without reference to the procedural requirements adopted as part of Chapter 99-225. The procedural aspects therefore do not fit within the intimately, intertwined criteria that allow them to be considered part of a single subject with the other provisions of the law or matters properly connected therewith.

Nor can it be argued in good faith that the procedural provisions, to the extent that Chapter 99-225 might be viewed as a legislative overhaul of the civil justice system, fall within the same subject matter as substantive law over which the Legislature generally has authority. In *Evans v. Firestone,* 457 So.2d 1351 (Fla. 1984), the Court authoritatively resolved this issue. There, the question was whether a proposed ballot initiative violated the Constitution's cognate ban on multiple subject

constitutional initiatives. Fla. Const, Article XI, § 3.[7] The Court, utilizing a functional analysis, found that changes to apportionment of liability and to the size of noneconomic damage awards are "essentially a legislative function." *Id*. at 1354. On the other hand, a third provision, authorizing summary judgment determinations, "is procedural and embodies a function of the judiciary." *Id*.

The Court then held that when an "initiative performs the functions of different branches of government, it clearly fails the functional test for the single-subject limitation." *Id*. Amici submit the same test should apply here. Importantly, this Court rejected an argument that substantive law cannot exist without procedural mechanisms so that there was a proper and direct connection between the summary judgment provision and the other portions of the initiative. Instead, it held that it could not be said that "the summary judgment provision is 'directly connected' to the other two

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[7] The language of the two constitutional prohibitions on multiple subject legislation is slightly different. Article III, § 6, Fla. Const., permits inclusion of "matters proper connected" with the legislation's subject, as opposed to Article XI, Section 3's limitation to "matter directly connected" with the initiative's subject. Still, the Court's analysis in *Evans* is highly relevant because the Court found no relationship whatsoever between changes to the law of joint and several liability as well as to the amount of noneconomic damages to be awarded and the changes effected in summary judgment procedure. The joinder of subjects would have failed constitutional analysis under either provision. In Chapter 99-225, the law has similarly substantive provisions about joint and several liability and other tort-based causes of action and a slew of procedural changes that have no relationship whatsoever to the substantive changes.

provisions." *Id.* Chapter 99-225's myriad procedural provisions, which clearly involve the exercise of judicial authority, have no proper connection to the law's disparate substantive provisions that are legislative in character.

The very hodge-podge nature of this vast array of items provides the clearest evidence that no single subject could embrace them all. Recently, the Ohio Supreme Court was faced with a challenge to the constitutionality of a similarly broad omnibus statute. It struck the statute down on both separation of powers and single-subject grounds. *State ex rel. Ohio Academy of Trial Lawyers v. Sheward,* 715 N.E.2d 1062 (Ohio 1999).

The decision of the Ohio Supreme Court is instructive for two reasons. First, the single-subject rule under the Ohio Constitution is not as strong as under the Florida Constitution. Second, because the Ohio court, rejected arguments that civil litigation or tort reform could serve as a legitimate topic to unite diverse provisions.

Whereas Florida takes the requirement seriously and applies it literally,*see Boyer v. Black,* 154 Fla. 723, 726, 18 So.2d 886, 887 (1944)(holding it a mandatory obligation upon the Legislature), Ohio considers its single-subject requirement "directory rather than mandatory" *State ex rel. Dix v. Celeste*, 464 N.E.2d 153, 157 (Ohio 1984), and therefore more "a matter for enforcement by [the General Assembly] and not by judicial interference." *Hoover v. Board of Franklin County*

Commissioners, 482 N.E.2d 575, 578 (Ohio 1985). Because of that weaker constitutional status, the Ohio Supreme Court will only declare a multi-subject law unconstitutional when it represents "a manifestly gross and fraudulent violation" of the single subject rule. *Dix,* 464 N.E.2d at 157 (quoting *Pim v. Nicholson* (1856), 6 Ohio St. 176, 180 (1856)).

The 1996 omnibus tort reform law passed by the Ohio General Assembly was such a gross violation. *Sheward,* 715 N.E.2d at 1100. Alhough the Legislature had declared the bill to embrace but one subject, that being "changes in the laws pertaining to tort and other civil actions," or tort reform, the statute enacted attempted to embrace such diverse subjects as "wearing of seat belts with employment discrimination claims, class actions arising from the sale of securities with limitations on agency liability in actions against a hospital, recall notification with qualified immunity for athletic coaches, actions by a roller skater with supporting affidavits in a medical claim, and so on." *Id.*, at 1101 (even more detail about the diverse subjects was supplied by the court, *see id*. at 1073 n.6).

Here, a similarly flawed argument could be imagined. However, acceptance of tort reform or "[a]n act relating to civil actions" as a single topic capable of embracing all cases, procedures and laws that might be adjudicated as a civil matter, would effectively eliminate the Constitution's single-subject requirement by permitting the

subject to be recognized at such a high level of abstraction that the single subject that could embrace *all* subjects would be "law." The Ohio Supreme Court put it this way:

> As the topics embraced in a single act become more diverse, and as their connection to each other becomes more attenuated, so the statement of subject necessary to comprehend them broadens and expands. There comes a point past which a denominated subject becomes so strained in its effort to cohere diverse matter as to lose its legitimacy as such. It becomes a ruse by which to connect blatantly unrelated topics. At the farthest end of this spectrum lies the single enactment which endeavors to legislate on all matters under the heading "law."

Sheward, 715 N.E.2d at 1101.

The Ohio decision is strikingly similar to the decision of the First District Court of Appeals in *State v. Leavins,* 599 So.2d 1326 (Fla. 1st DCA 1992). There, the court sustained a single subject challenge to "an act relating to environmental resources" and held that the title "phrase is so broad, and potentially encompasses so many topics, as to lend little support to the state's attempt to fend off a single subject challenge." *Id*. at 1334. The *Leavins* court went on to find:

> Although each individual subject addressed [in the challenged Chapter law] might be said to bear some relationship to the general topic of environmental resources, such a finding would not, and should not, satisfy the test under Article III, § 6, Fla. Const. If a purpose of the constitutional prohibition was, as observed by the court below, to insure, as nearly as possible, that a member of the legislature be able to consider the merit of each subject contained in the act independently of the political influence of the merit of each other topic, the reviewing court

> must examine each subject in light of the various other matters affected by the act, and not simply compare each isolated subject to the stated topic of the act.

Id. at 1335.

This Court reached a similar conclusion in *Heggs,* where a legislative enactment attempted to combine sentencing guidelines and domestic violence injunctions in an "act relating to the justice system." This Court ruled that a generic title of that sort cannot connect unrelated items without a "legislative statement of intent to implement comprehensive legislation to solve a crisis." *Id*. at 623.[8] *Compare Martinez v. Scanlan,* 582 So.2d 1167, 1172 (Fla. 1991)("despite the disparate subjects contained within a comprehensive act, the act did not violate the single subject requirement because the subjects were reasonably related to the crisis the legislature intended to address.")(describing the results in *Burch v. State,* 558 So.2d 1 (Fla. 1990) and *Smith v. Department of Insurance,* 507 So.2d 1080, 1096 (Fla. 1987). By the same token,

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[8]As this Court explained about earlier legislation that was upheld despite single subject challenges:

> In each of those cases, the Legislature specifically identified a broad crisis that it was attempting to address through the passage of the comprehensive chapter laws at issue.

Heggs, 759 So.2d at 627. *See also Thompson,* 750 So.2d at 648; *Johnson,* 616 So.2d at 4; *State v. Leavins,* 599 So.2d 1326, 1334 (Fla. 1st DCA 1992)(referring to the crisis exception as "a somewhat relaxed rule").

Chapter 99-225's title about "civil actions" is insufficient to satisfy the Constitution's requirements, given its wide array of provisions.

No legislatively declared or discernible crisis provides a unifying subject matter here. Chapter 99-225 contains no legislative findings of a crisis because the law was not a response to such a crisis. *See* George N. Meros, Jr. and Chanta G. Hundley, *Florida's Tort Reform Act: Keeping Faith with the Promise of* Hoffman v. Jones, 27 Fla. St. U. L. Rev. 461, 463-64 (2000). Second, the State of Florida conceded in the declaratory judgment action still pending in the First District Court of Appeal that the Legislature did not enact Chapter 99-225 in response to a crisis. "[T]here is no legislative statement of intent to implement comprehensive legislation to address a crisis. . . . The parties concede and this court finds there was no crisis that the Legislature was attempting to resolve." *Florida Consumer Action Network v. Bush,* No. 99-6689 (Fla. 2d Cir. Ct. Feb. 9, 2001)(attached as Appendix I, tab 1).

Without a justifying legislatively declared crisis as the subject to cement the disparate elements of the enactment together, Chapter 99-225 must be declared unconstitutional if it contains two or more subjects. Neither deference nor approval or disapproval of the underlying public policy reflected by the enactment enters into the single-subject equation; a legislative failure to follow the single-subject requirement

mandates a declaration of unconstitutionality. *State v. Thompson,* 750 So.2d 643, 649 (Fla. 1999). Chapter 99-225 undeniably fails that test.

3. "Tort Reform" is Not a Single Subject

Because *Smith, Chenoweth v. Kemp*, 396 So.2d 1122 (Fl. 1981) and *State v. Lee*, 356 So.2d 276 (Fla. 1978), involved laws that were in some sense "tort reform" laws, these decisions merit further comment. Despite the Court's decisions upholding these laws against single-subject challenges because of the detailed findings of crisis that the Legislature made to justify them,[9] there can be no doubt that each of them legislated across multiple subjects. This Court has acknowledged as much, flatly declaring that each of these laws encompassed a certain amount of diversity of subject matter. *Burch*, 558 So.2d at 2 (recognizing that the criminal statute under review was "not as diverse as that contained in the legislation approved in *Lee, Chenoweth,* and *Smith*."). *See also Martinez,* 582 So.2d at 1172. It is apparent that each of these laws would have stretched beyond the outer limits of constitutional permissibility absent the unrebutted and detailed findings of crisis made by the Legislature.

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[9] *See, e.g., Smith,* 507 So.2d at 1083-84, 1086-87 (twice reciting the "detailed legislative findings" of a commercial insurance liability crisis with supportive evidence).

Chapter 99-225 in fact ranges over a greater variety of multiple subjects than these previous efforts at tort reform. It clearly violates the Constitution's requirement that legislation embrace a single subject and matters properly connected thereto.

B. Section 57.105, Fla. Stat., Intrudes on the Exclusive Authority of This Court

1. The Legislature Has Exercised Judicial Authority With Ripple Effects Throughout The Civil Rules

Article III, § 6, Florida Constitution, prohibits the Legislature from exercising authority that the Constitution commits to another branch of government. Article V, § 2(a), Florida Constitution, adds depth to this mandate and provides:

> (a) The supreme court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review, the administrative supervision of all courts, the transfer to the court having jurisdiction of any proceeding when the jurisdiction of another court has been improvidently invoked, and a requirement that no cause shall be dismissed because an improper remedy has been sought. These rules may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature.

The provision denies the Legislature any authority to enact a law relating to practice and procedure. *In re Clarification of Florida Rules of Practice and Procedure,* 281 So.2d 204, 204 (Fla. 1973). When it does so, the enactment is void.

State v. Smith, 260 So.2d 489, 491 (Fla. 1972). *See also Haven Federal Savings & Loan Ass'n v. Kirian,* 579 So.2d 730, 732 (Fla. 1991).

One aspect of practice before the courts is the admission and discipline of attorneys, which the Florida Constitution further specifies is within the "exclusive jurisdiction" of this Court. Article V, § 15, Fla. Const. With respect to that provision, this Court has unambiguously held that it:

> has *exclusive jurisdiction* to discipline persons admitted to the practice of law. It follows that this Court has exclusive authority to adopt rules addressing all aspects of the disciplinary process, including the costs that can be assessed a respondent.

The Florida Bar v. Daniel, 626 So.2d 178, 183 (Fla. 1993)(emphasis added).

It has further said:

> Attorneys are not, under the law, State or County Officers, but they are officers of the Court and as such constitute an important part of the judicial system. As was said in the case of In re Integration of Nebraska State Bar Association, supra, the law practice is so intimately connected with the exercise of judicial power in the administration of justice that the right to define and regulate the practice naturally and logically belongs to the judicial department of the government.

Petition of Florida State Bar Association, 40 So.2d 902, 907 (Fla. 1949).

The provision of Chapter 99-225 directly at issue here, §57.105, Fla. Stat., creates sanctions for raising certain claims or defenses or for delay in litigation. It mandates the award of attorney's fees as a sanction against the losing party and

attorney when they "knew or should have known that a claim or defense when initially presented to the court or at any time before trial...was not supported by the material facts...or then-existing law." §57.105 (1). In doing so it arrogates to itself authority assigned to another "coordinate branch of government by the demonstrable text of the constitution." *McPherson v. Flynn,* 397 So.2d 665, 667 (Fla. 1981). Previously, this section of Florida law was only a provision that governed some aspects of attorneys' fees. The new amendments transform that provision into a depository of new standards for attorney conduct and a form of attorney discipline, while also creating ripple effects that undermine the authority of the Rules of Civil Procedure.

Specifically, the amendments make two major changes in the law that are inconsistent with judicial authority over attorney conduct. First, it creates a spoils system that has no place in the civil justice setting by subjecting only a losing party and his or her attorney to an atomistic examination of all claims or defenses asserted. If any of these assertions, at the time initially filed *or* any time up to trial, was not supported by the necessary material facts or not supported by *then-existing* law, it is deemed sanctionable.[10] Allegations subject to fine would include those made in good

[10]Such a rule would prohibit challenges to unconstitutional laws because laws enter the courtroom with a presumption of constitutionality. See *Metropolitan Dade County v. Bridges,* 402 So.2d 411, 413-14 (Fla.1981), *receded from on other grounds, Makemson v. Martin County,* 491 So.2d 1109, 1115 (Fla.1986).

faith in the complaint (and entirely accurate in its portrayal of the facts), but abandoned after no supportive evidence was obtained through discovery. On the other hand, manifestly frivolous claims or defenses advanced by the winning party would not be subject to these sanctions.

In approaching the sanction of attorney conduct in this fashion, the provision displays the Legislature's fundamental lack of understanding about the nature of litigation and the civil justice system. As to its insistence that the material facts be established and support a winning case prior to filing the complaint, the Legislature's enactment misapprehends the role and importance of discovery and the types of pleadings required under the Florida Rules of Civil Procedure. It is often only through the compulsion of court-supervised discovery that plaintiffs can unearth the "smoking gun" of liability, which can reasonably be assumed to exist but lies hidden by virtue of the defendant's improper and furtive efforts.

As written and implemented, Florida's civil procedure rules, consistent with the Constitution's access to courts guarantee (Art. I, § 21) prize the idea that the courts should be open and accessible. Process should not predominate over substance. *See, e.g.,* Fla. R. Civ. P. 1.110(a)(abolishing forms of pleading). For that reason, Florida, and all U.S. jurisdictions, have adopted notice pleading, requiring that the complaint contain only "a short and plain statement of the ultimate facts." *Id.* at

1.110(b). *See also Meyers v. City of Jacksonville,* 754 So.2d 198, 202 (Fla. 1st DCA 2000). This procedure, as the U.S. Supreme Court has explained, "restrict[s] the pleadings to the task of general notice-giving and *invest[s] the deposition-discovery process with a vital role in the preparation for trial.*" *Hickman v. Taylor,* 329 U.S. 495, 501 (1947)(emphasis added).[11] Florida, too, has recognized the critical importance of discovery in the development of material facts in a case. As this Court has explained,

> This Court, as most jurisdictions, adopted discovery as part of our procedural rules to improve our system of justice. It is a tool intended (1) to identify at early stages of a proceeding the real issues to be resolved; (2) *to provide each party with all available sources of proof as early as possible to facilitate trial preparation;* and (3) to abolish the tactical element of surprise in our adversary trial process.

Dodson v. Persell, 390 So.2d 704, 706 (Fla. 1980)(emphasis added).

By fiat, the Legislature, through the adoption of the §57.105 amendments, has effectively changed these procedural requirements by creating sanctions for failing to develop those facts prior to entering the judicial process. Without the compulsion that

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[11]The *Hickman* decision is much venerated by Florida's courts. *See Dodson v. Persell,* 390 So.2d 704, 707 n.3 (Fla. 1980)(citing *Pinellas County v. Carlson,* 242 So.2d 714 (Fla.1971); *Surf Drugs, Inc. v. Vermette,* 236 So.2d 108 (Fla.1970); *Shell v. State Rd. Dept.,* 135 So.2d 857 (Fla.1961); *Seaboard Air Line Ry. v. Timmons,* 61 So.2d 426 (Fla.1952); *McGee v. Cohen,* 57 So.2d 658 (Fla.1952); *Miami Transit Co. v. Hurns,* 46 So.2d 390 (Fla.1950); *Atlantic Coast Line R.R. v. Allen,* 40 So.2d 115 (Fla.1949)).

a lawsuit makes available, the task is often impossible. For example, in products liability actions, a typical plaintiff (and his or her expert) will not have access to essential blueprints and other schematics that the manufacturer keeps private for proprietary reasons.[12]

In addition, it must be noted that in *H.B.A. Management, Inc. v. Estate of Schwartz,* 693 So.2d 541 (Fla. 1997), this Court, interpreting R. Regulating Fla. Bar 4-4.2 (Communication with person represented by counsel), made it clear that counsel for the plaintiff is not permitted *ex parte* interviews with key witnesses if they remain employed with the prospective defendant. Thus, for example, in a construction site accident, the employee who operated the vehicle or equipment involved or the person who held management responsibility cannot be interviewed unless he or she has left the employ of the prospective defendant. Moreover, it is of course the case that a witness to an accident is not obligated to give a pre-suit interview to counsel for the plaintiff, who is without subpoena power until the lawsuit is filed. The new §57.105

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[12]Amici do not argue that there is no obligation to make a considerable inquiry into the facts before filing. Not only is such an obligation a necessary part of the office of attorney, but it especially imperative for those lawyers who charge on a contingency-fee basis and who regularly screen out non-meritorious lawsuits. Instead, Amici submit that the traditional standard of what is reasonable under the circumstances should apply.

thus renders those lawsuits requiring such interviews to establish material facts an impossibility.

Further, the new amendments require lawyers to forego the extension, modification or reversal of existing law, unless the attorney has a "reasonable expectation of success." §57.105 (2). Such a standard goes far beyond the reasonable requirements of law and regulates law practice in a manner that substantially intrudes upon the Supreme Court's exclusive authority and curtails an attorney's ethical obligation to "pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience . . . and [authorizes the attorney to take] whatever lawful and ethical measures are required to vindicate a client's cause or endeavor." R. Regulating Fla. Bar 4-1.3, *Comment.* It is not frivolous to bring even a long-shot lawsuit for which good-faith arguments can be mustered based on some reasonable belief in a shift in legal thinking.

Indeed, the Oath of Admission to The Florida Bar, which provides that a lawyer will not "maintain any suit or proceedings which shall appear to me to be unjust," also directs that the lawyer "will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed. . . ." The 1999 legislative amendments, however, are calculated to cause a lawyer to breach the oath by declining representation in what appears to be a just cause for fear of suffering a monetary fine

as a result of a purely hindsight finding. The concept of after-the-fact second-guessing of lawyerly judgment runs counter to the approach adopted by this Court in the Rules of Professional Conduct. In the Preamble the rules specifically recognize "the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation." R. Regulating Fla. Bar, *Preamble*. The analogous Federal rule, FRCP Rule 11,[13] does not require that lawyers entertain a "reasonable expectation of success." Instead, it is usually enough that "a litigant has researched the issues and found some support for its theories even in minority opinions, in law review articles, or through consultation with other attorneys." FRCP Rule 11, Advisory Comm. Notes. In fact,

> Rule 11 does not require that the legal theory espoused in a filing prevail. The essential issue is whether the [motion's] signatories . . . fulfilled their duty of reasonable inquiry into the relevant law. Indicia of reasonable inquiry into the law include the plausibility of the legal theory espoused and the complexity of the issues raised. Even if erroneous, a legal posture does not violate Rule 11 unless it is 'unreasonable from the point

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[13]FRCP 11(b) provides, in pertinent part, that the attorney represents that all filings are:

> [(2)] warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

> of view both of existing law and of its possible extension, modification, or reversal.'

CJC Holdings, Inc. v. Wright & Lato, Inc., 989 F.2d 791, 793 (5th Cir. 1993)(footnotes omitted).

The pre-Chapter 99-225 version of § 57.105 was viewed in much the same manner: The assertions in court had to be "so clearly devoid of merit both on the facts and the law has to be completely untenable." *Muckenfuss v. Deltona Corp.,* 508 So.2d 340, 341 (Fla. 1987). In making such a determination, the court examined "the entire action, not merely a portion thereof" and certainly not individual claims or defenses as current law would have the court undertake. *See Barber v. Oakhills Estates Partnership,* 583 So.2d 1114, 1115 (Fla. 2d DCA 1991).

Applying these standards, for example, the Fourth DCA reversed an award of sanctions and found the opposing parties' "claim that the indebtedness met the definition of a bond to be legally far-fetched," but nonetheless ruled that "the other claims and challenges raised issues which were not so frivolous and completely untenable that appellants' and their attorney should be punished for pursuing the action. We reiterate that an award of attorney's fees under § 57.10, Fla. Stat., is only proper where the entire action is so clearly lacking in merit and entirely devoid of even

arguable substance as to be completely untenable." *Brockway v. Town of Golfview,* 675 So.2d 699, 700 (Fla. 4th DCA 1996).

Because of its conflict with these declarations, the amended §57.105 improperly creates new sanctions for behavior that traditionally has not been the subject of discipline. In doing so, it violates the constitutional separation of powers. Article V, § 15 vests "exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted" in the Supreme Court. *See The Florida Bar v. Massfeller,* 170 So.2d 834, 838 (Fla. 1964)(construing predecessor constitutional provision and holding that the Constitution vests "exclusive jurisdiction over the admission and discipline of attorneys at law in this Court and authorizes it to exercise such jurisdiction through delegation of authority to the circuit courts and district courts of appeal, or by commissioners of members of the Bar, subject to this court's supervision and review."). By the addition of this provision to the Constitution, the Legislature was "divested of any legislative control in this field." *State ex rel. Arnold v. Revels,* 109 So.2d 1, 3 (Fla. 1959)(construing same provision in predecessor Constitution). It may not assert authority here.

2. Legislative Rules of Discipline Interfere with the Independence of the Legal Profession and Its Role as Officers of Another Branch of Government

There is no room for legislative action in this field. In fact, the idea that a political branch, such as the Legislature, could have a role in governing the legal profession threatens the profession's very independence, which is essential to its role in our democracy. This concept is made clear by the Rules of Professional Conduct, which declares lawyers to be officers of the court, responsible only to the judiciary, in order to preserve their independence from "undue government domination" at the hands of the executive and legislative branches. R. Regulating Fla. Bar, *Preamble*.[14] The Supreme Court, through its rulemaking authority has fully occupied the field,[15] which is entirely appropriate because only the courts have authority over the conduct of trial and the conduct of lawyers. In addition, it has delegated to the circuit courts

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[14]In pertinent part, the Preamble declares:

> Lawyers are officers of the court and they are responsible to the judiciary for the propriety of their professional activities. Within that context, the legal profession has been granted powers of self-government. Self-regulation helps maintain the legal profession's independence from undue government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on the executive and legislative branches of government for the right to practice. Supervision by an independent judiciary, and conformity with the rules the judiciary adopts for the profession, assures both independence and responsibility.

[15]*See*, *e.g.,* R. Regulating Fla. Bar 3-1.1 - 3-8.1; R. Regulating Fla. Bar 4-1.1 - 4-8.6 (*especially* R. Regulating Fla. Bar 4-3.1 (meritorious claims and contentions) and 4-3.2 (expediting litigation)); and Fla. Stds. Imposing Law. Sancs. 1.1 - 12.0.

significant additional authority. *See, e.g., Moakley v. Smallwood,* 47 Fla. L. Weekly S175 (Fla. Feb. 28, 2002)(finding trial courts have inherent authority to impose attorneys' fees against an attorney for bad faith conduct); *Rosen v. Rosen,* 696 So.2d 697, 701 (Fla. 1997) (holding that a trial court has the discretion to award attorney's fees where it finds an action is frivolous or spurious or was brought primarily to harass the adverse party); *Stewart v. Bee-Dee Neon & Signs, Inc.,* 751 So.2d 196, 205 (Fla. 1st DCA 2000)(recognizing the trial courts' inherent power "to control [and discipline] the conduct of all persons connected with judicial proceedings before it). *Compare Cooter & Gell v. Hartmarx Corp.,* 496 U.S. 384 (1990)(holding that whether a violation of professional conduct in a proceeding has occurred and what sanctions, if any, to impose for a violation are matters committed to the discretion of the trial court). The amendments' sanctions, including the award of attorney's fees, for actions taken by an opposing party for the primary purpose of unreasonably delaying the case similarly fall within the trial court's discretionary disciplinary authority.

Moreover, the constitutional guarantee of access to the courts (Art. I, §21) requires that the issue of infringement of judicial authority be resolved in favor of Amici's position. The previously cited ethical obligation of lawyers to pursue their client's case as long as a good-faith argument can be made clashes with the new amendments and will cause potentially meritorious cases to be turned down, which is

one of the terrible cumulative effects of Ch. 99-225 as a whole. A restrictive rule, the Fifth Circuit noted when urged to adopt a construction of FRCP 11 similar to the 1999 version of §57.105, Florida Statutes , can "chill counsel's 'enthusiasm and stifle the creativity of litigants in pursuing novel factual or legal theories,' contrary to the intent of its framers." *CJC Holdings, Inc.,* 989 F.2d at 794 (footnotes omitted). Amici submit that the courts understand this and have fashioned the rules accordingly. If the Legislature is permitted to interfere in the manner established by the new §57.105, the courts will be less available to meritorious cases, the law itself will be impoverished, and the very structure of constitutional government will be harmed.

IV. Conclusion

Chapter 99-225 is the prototype for the type of law that the Constitution's single subject rule sought to prevent. It is a multi-subject enactment containing the special pleadings of groups that could not achieve enactment of their favored statutes separately. Contained within it, § 57.105, Fla. Stat. (1999), tramples on this Court's authority by creating new standards and new sanctions to discipline attorneys. The Court has adequate authority for that task without legislative intervention. This Court should declare it unconstitutional.

For the foregoing reasons, Amici respectfully request that this Court declare Chapter 99-225 unconstitutional in its entirety. Alternatively, Amici respectfully request this Court declare § 57.105, Florida Statutes (1999), unconstitutional.

Respectfully submitted,

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I HEREBY CERTIFY that a true copy of the foregoing has been furnished by US Mail to the counsel on the attached Counsel Service List this 16th day of May 2002.

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The undersigned counsel, representing Amici Curiae, hereby certifies that their Amici Curiae Brief filed in *Boca Burger, Inc. v. Forum*, Case No. SC01-1830, complies with the font requirements of Fla. R. App. P. 9.210(a) (2).

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