IN THE SUPREME COURT OF FLORIDA

Case No. SC11-1913

(Third DCA Case No. 3D10-856)

JOSE LAZARO RODRIGUEZ,

Petitioner,

vs.

MIAMI-DADE COUNTY,

Respondent.

PETITIONER'S REPLY BRIEF ON THE MERITS

On Discretionary Review from a Decision
of the Third District Court of Appeal

Barbara A. Silverman
Florida Bar Number 221384
Curtis B. Miner
Florida Bar Number 885681
Ervin A. Gonzalez
Florida Bar Number 500720
COLSON HICKS EIDSON
255 Alhambra Circle, Penthouse
Coral Gables, FL 33134
Telephone: (305) 476-7400

TABLE OF CONTENTS

Page

Table of Authorities iii

Argument..1

I. THE DISTRICT COURT DID NOT HAVE CERTIORARI JURSDICTION TO REVIEW THE TRIAL COURT'S DENIAL OF THE COUNTY'S MOTION FOR SUMMARY JUDGMENT ON GROUNDS OF SOVEREIGN IMMUNITY...1

II. THE DISTRICT COURT ERRED IN HOLDING THAT JOSE RODRIGUEZ'S NEGLIGENCE CLAIM AGAINST THE COUNTY WAS BARRED BY SOVEREIGN IMMUNITY AS A MATTER OF LAW...............................11

Certificate of Service 16

Certificate of Compliance 19

TABLE OF AUTHORITIES

Cases Page

Abbey v. Patrick,
16 So.3d 1051 (Fla. 1st DCA 2009) 11

American Home Assur. Co. v. Nat'l Railroad Passenger Corp.,
908 So.2d 459 (Fla. 2005) 3

Bd. of Regents v. Snyder,
826 So.2d 382 (Fla. 2d DCA 2002) 11

Byrd v. Southern Prestressed Concrete, Inc.,
928 So.2d 455 (Fla. 1st DCA 2006) 11

City of Pinellas Park v. Brown,
604 So.2d 1222 (Fla. 1992) 14

Combs v. State,
436 So.2d 93 (Fla. 1983) 11

Commercial Carrier Corp. v. Indian River County,
371 So.2d 1010 (Fla. 1979) 4, 5

Dade County School Board v. Radio Station WQBA,
731 So.2d 638 (Fla.1999) 13

Department of Education v. Roe,
679 So.2d 756 (Fla. 1996) .... *passim*

Elder v. Holloway,
510 U.S. 510 (1994) 8

Hutchins v. Mills,
363 So.2d 818 (Fla. 1st DCA 1978) 3

Jaye v. Royal Saxon, Inc.,
720 So.2d 214 (Fla. 1998). 1

Kaisner v. Kolb,
543 So.2d 732 (Fla. 1989) 14

Klonis v. Dep't of Revenue,
766 So.2d 1186 (Fla. 1st DCA 2000) 3

Lewis v. City of St. Petersburg,
260 F.3d 1260 (11th Cir. 2001) 13

Martin-Johnson, Inc. v. Savage,
509 So.2d 1097 (Fla. 1987) 2

Miami-Dade County v. Rodriguez,
67 So.3d 1213 (Fla. 3d DCA 2011)...1, 7

Stephens v. Geoghegan,
702 So.2d 517 (Fla. 2d DCA 1997)..11, 12

Trianon Park Cond. Ass'n v. City of Hialeah,
468 So.2d 912 (Fla. 1985) 14

Tucker v. Resha,
648 So.2d 1187 (Fla. 1994) 2, 7, 8

Wallace v. Dean,
3 So.3d 1035 (Fla. 2009) 3, 4, 5, 6, 10

Other Authorities

Art. X, § 13, Fla. Const. 3

Fla. Stat. § 768.28 ....3, 4, 5, 6, 9

Fla.R.App.P. 9.130...2, 10

42 U.S.C. § 1983 12

ARGUMENT

I. THE DISTRICT COURT DID NOT HAVE CERTIORARI JURISDICTION TO REVIEW THE TRIAL COURT'S DENIAL OF THE COUNTY'S MOTION FOR SUMMARY JUDGMENT ON GROUNDS OF SOVEREIGN IMMUNITY

Respondent Miami-Dade County's ("the County") argument that this Court's decision in *Department of Education v. Roe,* 679 So.2d 756 (Fla. 1996), has no relevance here because it merely decided that a non-final order denying a claim of sovereign immunity is not a reviewable interlocutory order, and did not expressly hold that such an order is also not subject to certiorari review, misses the point. As a condition precedent to invoking the district court's certiorari jurisdiction, the County had the burden to establish that it suffered an irreparable harm that cannot be remedied on direct appeal. *See Jaye v. Royal Saxon, Inc.,* 720 So.2d 214, 215 (Fla. 1998). As the County acknowledges at 13, the irreparable harm requirement is jurisdictional and must be evaluated at the outset. *Id.*

The Third District held that it had certiorari jurisdiction here based upon its conclusion that if the County is entitled to sovereign immunity, the trial itself constitutes irreparable harm. *Miami-Dade County v. Rodriguez,* 67 So.3d 1213, 1220 & n.4 (Fla. 3d DCA 2011). However, in *Roe* this Court expressly found that forcing the state to wait until a final judgment before appealing the issue of sovereign immunity will not deprive the state of the benefit of sovereign immunity.

Roe, 679 So.2d at 759. Since having to wait for review until after final judgment will not deprive the County of the benefit of sovereign immunity, the County will not suffer a material injury that cannot be corrected on postjudgment appeal. Therefore, the jurisdictional prerequisite of irreparable harm has not been met and the Third District erred in exercising certiorari jurisdiction. In addition, in light of this Court's clear pronouncement in *Roe* that a nonfinal order denying a claim of sovereign immunity as a defense to a state law cause of action is not subject to interlocutory review, and expressly declining to extend the holding in *Tucker v. Resha,* 648 So.2d 1187 (Fla. 1995), expanding Fla. R. App. P. 9.130(a)(3) to include orders denying qualified immunity, to encompass sovereign immunity as well, the granting of certiorari here violates the well-established principle that certiorari should not be used to circumvent the interlocutory appeal rule. *See Martin-Johnson, Inc. v. Savage,* 509 So.2d 1097, 1098 (Fla. 1987).

The County's lengthy dissertation on the history of sovereign immunity does not resolve the issue of whether the County will suffer irreparable harm if it is required to wait until after final judgment to appeal a *potential* determination that it is not entitled to sovereign immunity in this case a determination *which has not yet been made* by the trial court, which simply denied the County's motion for summary judgment based upon the existence of material issues of fact and did *not* hold that the County was not entitled to sovereign immunity as a matter of law.

The County argues that sovereign immunity has historically been viewed as immunity from suit and that deprivation of immunity from suit is irreparable harm. As this Court has explained, the doctrine of sovereign immunity which provides that the sovereign cannot be sued without its permission, historically derives from the premise that the sovereign can do no wrong. *American Home Assur. Co. v. Nat'l Railroad Passenger Corp.*, 908 So.2d 459, 471 (Fla. 2005). Thus, "at one time suits such as this would have been dismissed for lack of subject matter jurisdiction without regard to the merits of the underlying claim." *Roe*, 679 So.2d at 758. However, by enacting Fla. Stat. § 768.28, pursuant to the constitutional authority granted by Art. X, § 13, Fla. Const., the Legislature provided a waiver of sovereign immunity for tort actions and the courts now have subject matter jurisdiction to consider suits which fall within the parameters of that statute. *See Wallace v. Dean,* 3 So.3d at 1044 n. 14, 1046; *Roe,* 679 So.2d at 758; *Klonis v. Dep't of Revenue,* 766 So.2d 1186, 1189 (Fla. 1st DCA 2000); *Hutchins v. Mills,* 363 So.2d 818, 821 (Fla. 1st DCA 1978).

As a result, while sovereign immunity historically protected the state from suit, by virtue of § 768.28, Florida has agreed to be sued in its own courts for tort actions and such claims may now proceed in the trial court. *See Roe,* 679 So.2d at 758, 759. By enacting the waiver, the state has voluntarily given up its immunity from suit for tort claims such as this and agreed to allow itself to be sued and held

liable up to the amount permitted in the statute. It has thereby voluntarily subjected itself to the "harm" of defending such suits at trial.

Although § 768.28 does not itself contain an express exception, in *Commercial Carrier Corp. v. Indian River County,* 371 So.2d 1010 (Fla. 1979), this Court recognized that, apart from the historical doctrine of immunity from *suit* as an aspect of sovereignty and despite the broad statutory waiver of immunity, certain governmental functions remain sovereignly immune from *liability* based on the concept of separation of powers: "In *Commercial Carrier*, . . . [d]espite the absence of an express discretionary-function exception within the statute itself, we held that the separation-of-powers provision present in article II, section 3 of the Florida Constitution requires that 'certain [quasi-legislative] policy making, planning or judgmental governmental functions cannot be the subject of traditional tort *liability*.'" *Wallace*, 3 So.2d at 1053.[1] Thus, this Court has distinguished between those actions for which the state may be held liable under the waiver of sovereign immunity and those for which the state will not be subject to liability based upon whether the acts in question are operational level functions or discretionary policy making or planning level functions. Consequently, while governmental entities are no longer immune from *suit* on tort claims such as those raised here, they remain

[1] Emphasis is supplied by counsel throughout unless otherwise indicated. Petitioner has noticed that in converting the initial brief to Word, this notation was inadvertently dropped from footnote 1 and sincerely apologizes for the omission.

immune from *liability* where the actions at issue fall within the discretionary function exception.

To aid the courts in applying this judicially created exception to the statutory waiver, this Court adopted a four part test to be applied on a "case-by-case" basis. *Id.* at 1053-54; *Commercial Carrier*, 371 So.2d at 1019, 1022. Application of that test on a case-by-case basis is a factually intensive inquiry. The trial courts must necessarily have subject matter jurisdiction to apply that test and make those factual determinations in the first instance, including subjecting the governmental entity to trial where necessary to resolve the sovereign immunity issue. As this Court recognized in *Roe*, "[o]ftentimes, the applicability of the sovereign immunity waiver is inextricably tied to the underlying facts, requiring a trial on the merits." 679 So.2d at 758. Having been permitted by the Legislature to be sued in tort, it cannot be said that a governmental entity, such as the County here, is irreparably harmed by the necessity of going to trial to obtain a determination of whether the claims brought against it fall within the statutory waiver, or remain immune under a judicially-created exception, subject to postjudgment review.

In arguing that sovereign immunity is immunity from *suit*, the County relies almost entirely on cases which predate the 1973 enactment of § 768.28, Fla. Stat., waiving sovereign immunity. The only case subsequent to *Roe* cited by the County specifically characterizing the immunity in those terms is this Court's decision in

Wallace v. Dean, 3 So.3d at 1044. However, as discussed in Petitioner's initial brief at 22 - 23, in that opinion the Court also frequently referred to the sovereign immunity issue in alternative terms of whether a governmental entity is *insulated from tort liability*. *See e.g. Wallace,* 3 So.3d at 1040, 1045, 1053. And, in contrast to *Roe, Wallace* did not directly address the question presented here of whether the benefits of sovereign immunity will be lost if the governmental entity is required to wait until after judgment to obtain appellate review. Nothing in *Wallace* purports to overrule or recede from *Roe* or its reasoning on that point.

Contrary to Respondent's mischaracterizations, Petitioner does not contend that § 768.28, Fla. Stat. "eradicates" the concept of sovereign immunity, nor does Petitioner "overlook" the fact that, as a result of exceptions to the waiver there are many instances in which sovereign immunity will still apply to bar a claim. Semantics aside, the central question here is whether, in the event the County is ultimately found to be sovereignly immune despite the statutory waiver, it will have been irreparably harmed by being subjected to trial and awaiting postjudgment review in order to obtain resolution of that issue. *Roe* counsels that the answer to that question is no.

The County's argument and the Third District's decision in this case suffer from circular reasoning. The County and district court assert that certiorari jurisdiction exists where the statutory tort waiver does not apply and the sovereign

remains immune from suit. *See Rodriguez*, 67 So.3d at 1219; Resp. Ans. Brief at 5. Under the district court's approach, in order to determine whether it has certiorari jurisdiction the appellate court must first determine the merits regarding whether the acts at issue are operational or discretionary/planning in nature. But that determination is inextricably tied to the underlying facts; it is not a threshold issue that can be determined without resolving issues of fact and is for the trial court to make in the first instance. Here, the trial court denied summary judgment based on its finding that there were disputed issues of fact.

Respondent's attempt at 26 -31 to equate the asserted irreparable harm to the County of a potential trial in this sovereign immunity case to the factors supporting interlocutory review of qualified immunity in *Tucker* completely ignores this Court's opinion in *Roe* distinguishing the two cases and the significant difference between a suit against a public official, individually, and a suit against a governmental entity. Moreover, the cases cited by the County in support of this argument are inapposite. All of the cases cited involved claims of qualified immunity and none involved tort claims against a governmental entity based upon the waiver of sovereign immunity.

The County's statement at 28 that "*Tucker's* discussion regarding the serious implications of an erroneously deprived immunity defense apply with equal force here" flies in the face of *Roe.* Like the County here, the DOE in *Roe* argued that

"the reasoning in *Tucker* applies equally to an order rejecting a defense of sovereign immunity" and that "the public policy that animates sovereign immunity is similar to the public policy that animates qualified immunity." *Roe,* 679 So.2d at 758. This Court rejected that argument.

As recognized in *Tucker*, qualified immunity has been viewed as an immunity from suit, encompassing a right not to stand trial, in order to effectuate its purpose: "The central purpose of affording public officials qualified immunity from suit is to protect them 'from undue interference with their duties and from potentially disabling threats of liability.'" *Tucker,* 648 So.2d at 1189 (quoting *Elder v. Holloway,* 510 U.S. 510, 514 (1994))(internal quotation marks omitted). In contrast, in *Roe* the Court stated: "*Tucker* is . . . distinguishable from cases involving sovereign immunity because qualified immunity is rooted in the need to protect public officials from undue interference, whereas sovereign immunity is not." *Roe,* 679 So.2d at 758-59. As the Court explained:

> ***[F]orcing the state to wait until a final judgment before appealing the issue of sovereign immunity does not present the same concerns that exist in the area of qualified immunity***. For example, public officials who defend tort suits against the state are not sued in their personal capacities. As a result, defending these suits is not likely to have a chilling effect on the exercise of public officials' discretion in the discharge of their official duties.

Roe, 679 So.2d at 759. Thus, in order to effectuate the intended protection of qualified immunity of individuals it is necessary to construe the immunity broadly to

encompass protection from suit; however, the same is not true of state entities.

The County's effort to equate the harm to public employees of defending a suit involving qualified immunity with the harm to governmental entities in a sovereign immunity case also ignores the protection afforded public officials in cases brought under the sovereign immunity waiver by § 768.28(9)(a), Fla. Stat., which expressly precludes state employees from being held personally liable or named as a defendant, absent bad faith, malicious purpose, or wanton and willful disregard. *See Willingham v. City of Orlando,* 929 So.2d 43, 47-48 (Fla. 5th DCA 2006). Additionally, while the County will have to bear the expense of continuing litigation, the same is true of any suit brought under the statutory waiver; its concern for "profligate encroachments on the public treasury" are protected by the statutory damage caps; and *Roe* found that factor insufficient to support interlocutory review.

The County's concern with the "chilling effect" that subjecting the County to suit might have on law enforcement officers in vigorously performing their duties was addressed by this Court in *Wallace*:

> ***Such abstract notions of sound public policy are not proper judicial considerations when conducting the duty and sovereign-immunity analyses***. Through their elected officials, the voters of this state have already made the policy decisions to waive sovereign immunity subject to certain limitations, *see* section 768.28, Florida Statutes (2004). The courts have no authority to usurp this decision-making process based upon speculative, countervailing judicial notions of appropriate public policy.

3 So.3d at 1041 n.9.

Respondent also dismisses the concern expressed by this Court in *Roe* that permitting interlocutory review in sovereign immunity cases would add substantially to the caseloads of the district courts of appeal, *see Roe,* 679 So.2d at 758, on the grounds that the standards for granting certiorari are limited and district courts are free to deny the petition. However, the limited success rate of petitions for certiorari is immaterial. The fact that a party can only prevail by meeting the strict certiorari requirements and the petition may ultimately be denied in no way lessens the additional burden on the caseloads of the district courts resulting from the filing of such petitions (or, in the alternative, as suggested by amicus the Attorney General by amending Rule 9.130 to permit interlocutory review),[2] nor does it negate the unnecessary delay and waste of judicial resources involved in permitting appellate review prior to final judgment.

In sum, contrary to the district court's decision, the County will not be irreparably harmed by having to await postjudgment review of its defense of sovereign immunity and, therefore, the Third District Court of Appeal lacked

---

[2] Unlike the Attorney General's amicus brief, Respondent does not suggest that this Court should reconsider *Roe* and amend Rule 9.130 to permit review of denials of sovereign immunity. Presumably, the County recognizes that, in that event, review would not be available in this case since the trial court did not hold, as a matter of law, that the County was not entitled to sovereign immunity.

certiorari jurisdiction.

II. THE DISTRICT COURT ERRED IN HOLDING THAT PLAINTIFF'S NEGLIGENCE CLAIM AGAINST THE COUNTY WAS BARRED BY SOVEREIGN IMMUNITY AS A MATTER OF LAW

In addition to lack of the requisite irreparable harm, and contrary to the County's argument, the Third District improperly granted the petition for certiorari in this case because the trial court's order denying summary judgment was not a departure from the essential requirements of law and, therefore, failed to satisfy the additional prerequisite for review by certiorari. A "departure from the essential requirements of law" is more than the mere existence of legal error; it is defined as "'a violation of a clearly established principle of law resulting in a miscarriage of justice.'" *Abbey v. Patrick,* 16 So.3d 1051, 1053 (Fla. 1st DCA 2009) (quoting *Byrd v. Southern Prestressed Concrete, Inc.,* 928 So.2d 455, 457 (Fla. 1st DCA 2006), applying the definition in *Combs v. State,* 436 So.2d 93, 96 (Fla. 1983)). The trial court's denial of summary judgment here did not meet that standard. The trial court simply declined to enter summary judgment based on the existence of disputed factual issues with respect to the County's defense of sovereign immunity; it did not hold that the County was not entitled to sovereign immunity as a matter of law.

Respondent's reliance on *Bd. of Regents v. Snyder*, 826 So.2d 382 (Fla. 2d DCA 2002) and *Stephens v. Geoghegan*, 702 So.2d 517 (Fla. 2d DCA 1997), to support its assertion that the trial court's denial of summary judgment was a

departure from the essential requirements of the law is misplaced. In contrast to the state tort claims here, both of those cases involved claims under 42 U.S.C. § 1983 and issues of absolute and qualified immunity. Moreover, the quotation from *Stephens* is taken out of context. There the court was addressing the immunity afforded to public officials, not the sovereign immunity of governmental entities: "We hold that when a *public official* moves for summary judgment on the ground that he or she enjoys immunity from suit and the record conclusively demonstrates that the *public official* is entitled to immunity, it is a departure from the essential requirements of law to deny it." *Stephens,* 702 S.2d at 525. *See also id.* at 525 n.5 (noting that "our holding is applicable only to cases where the public official is seeking immunity from *suit*. Our holding is not applicable to an official seeking immunity from *liability*. *Cf. Roe*, 679 So.2d at 759 (sovereign immunity is an immunity from liability and its benefits will not be lost simply because review must wait until after judgment).") (emphasis by court). The court further stated, "***when a court denies summary judgment in the face of disputed issues of material fact, it commits no legal error, let alone a departure from the essential requirements of law. In those instances, the denial of immunity prior to trial is unavoidable and irremediable.***" *Id.* at 525 n.4

The fact that there is a videotape which shows some aspects of the encounter does not negate the principle that on summary judgment the court is required to view

the facts in the light most favorable to the non-moving party. Here the trial court did just that. Contrary to the County's assertion at 32, the sequence of gunshots is a highly disputed issue in this case. As discussed in Petitioner's initial brief at 27-31 and as found by the trial court in denying summary judgment after reviewing the video, the videotape is inconclusive and it is impossible to tell from the video, which has no audio, when the officer's shots were fired. *See* App.Ans.Br. Ex.I at 61. And, again contrary to the County's assertion, the fact that Mr. Rodriguez was shot from behind four times, including in the left buttock, was clearly alleged in paragraph 12 of the second amended complaint. App.Ans.Br. Ex.A at Resp.at ¶ 12.

Respondent's attempt to set up a straw man and knock it down by arguing that Petitioner has somehow failed to preserve for review a cause of action for negligent use of excessive force, a claim which Petitioner has not alleged, stands the principles of appellate review on their head. Resp. Br. at 35-36. It is Respondent, as the party in the district court seeking reversal of the trial court's denial of its motion for summary judgment, who was precluded from raising in the appellate court issues which it had not presented to the trial court. In contrast, a trial court's order may be affirmed if it is right for any reason. *See Dade County School Bd. v. Radio Station WQBA,* 731 So.2d 638, 645 (Fla. 1999). Moreover, as explained in *Lewis v. City of St. Petersburg,* 260 F.3d 1260, 1263-64 (11th Cir. 2001) (collecting cases), Florida law recognizes a cause of action for the negligent handling of a firearm and the

negligent decision to use a firearm separate and distinct from an excessive force claim. *See also Kaisner v. Kolb,*543 So.2d 732, 737 n.2 (Fla. 1989)("some activities of police officers in carrying out their duties, such as the way motor vehicles or firearms are used, may be actionable.") (citing *Trianon Park Condo. Ass'n v. City of Hialeah,* 468 So.2d 912, 920 (Fla. 1985)).

The County argues that the district court was correct in holding that this suit was barred by sovereign immunity based on the exception for police actions in emergency situations recognized in *Kaisner*, and is not governed by the *Commercial Carrier* test. However, the emergency exception does not negate the operational/discretionary dichotomy of *Commercial Carrier*, rather it establishes that under an appropriate factual scenario the actions of police in responding to an emergency may involve a level of such urgency as to be considered discretionary. *See City of Pinellas Park v. Brown*, 604 So.2d 1222, 1226-27 (Fla. 1992). Moreover, not every police response to a crime in progress falls within the emergency exception. Whether the situation presented in a particular case is of sufficient urgency as to fall within that exception remains a factual issue which is properly determined by the trial court. *See id.* at 1226 n.7 ("The truth of these assertions would be gauged by the fact-finder at trial.") The trial court below repeatedly questioned whether this was an emergency, *see* App. Ans. Br. Ex.I at 11, 12, 19, 26, 41, and suggested it was appropriate for resolution by the jury. *Id.* at 47.

In holding that there was an emergency here as a matter of law, the district court usurped the role of the trial court and the jury. The trial court's denial of summary judgment based on the existence of material issues of fact was not a departure from the essential requirements of law. Therefore, the Third District improperly granted the petition for writ of certiorari and its decision should be quashed.

Respectfully submitted,

COLSON HICKS EIDSON
255 Alhambra Circle, Penthouse
Coral Gables, FL 33134
Telephone: (305) 476-7400
Facsimile: (305) 476-7444

By: ______________________________
BARBARA A. SILVERMAN
Florida Bar No. 221384
Bas@colson.com
CURTIS B. MINER
Florida Bar No. 885681
Curt@colson.com
ERVIN A. GONZALEZ
Florida Bar No. 500720
Ervin@colson.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served upon on all counsel of record as listed on the attached service list by U.S. Mail, on this 30th day of April, 2012.

By: ____________________________
Barbara A. Silverman

SERVICE LIST

Erica S. Zaron, Esq.
Robert A. Cuevas, Jr., Esq.
Albert D. Lichy, Esq.
Miami-Dade County Attorney
111 N.W. 1st Street, Suite 2810
Miami, FL 33128
Counsel for Respondent Miami Dade County

Pamela Jo Bondi, Esq.
Louis F. Hubener, Esq.
Diane G. De Wolf, Esq.
Office of Attorney General
The Capitol – PL 01
Tallahassee, FL 32399-1050
Counsel for Amicus Curiae, State of Florida

Thomas W. Poulton, Esq.
DeBevoise & Poulton, P.A.
Lakeview Office Park, Suite 1010
1035 S. Semoran Boulevard
Winter Park, FL 32792
Counsel for Amici Curiae,
Florida Sheriffs Association,
Florida Association of Police Attorneys,
Miami-Dade County Association of Chiefs of Police, Florida Police Chiefs Association, Florida League of Cities, Inc., and Florida Association of County Attorneys, Inc.

Harry Morrison, Jr., Esq.
Florida League of Cities, Inc.
301 S. Bronough St., Ste. 300
Tallahassee, FL 32301
General Counsel to Florida League of Cities, Inc.

Robert Wayne Evans, Esq.
Allen, Norton & Blue, P.A.
906 N. Monroe St.
Tallahassee, Florida 32303
General Counsel to Florida Sheriffs Association

James P. Brunet, Esq.
Jacksonville Sheriff's Office
501 East Bay Street
Jacksonville, FL 32202
Counsel for the Florida Association of Police Attorneys

Craig E. Leen, Esq.
City of Coral Gables
405 Biltmore Way
Coral Gables, Fla. 33134
Counsel for the Miami-Dade County Association of Chiefs of Police

Leonard Dietzen, Esq.
Rumberger, Kirk & Caldwell
215 South Monroe Street, Ste. 702
Tallahassee, Fla. 32301
General Counsel to Florida Police Chiefs Association

Sean B. Granat, Esq.
Office of the General Counsel
117 West Duval Street, Suite 480
Jacksonville, FL 32202
Counsel for the Florida Association of County Attorneys, Inc.

David W. Wagner, Esq.
Florida Association of County
Attorneys, Inc.
P.O. Box 5547
Gainesville, FL 32627
*Counsel for Amicus Curiae, Florida
Association of County Attorneys, Inc.*

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the type size and style used in this brief is Times New Roman 14-point font, in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

COLSON HICKS EIDSON
255 Alhambra Circle, Penthouse
Coral Gables, FL 33134
Telephone: (305) 476-7400
Facsimile: (305) 476-7444

By: ___________________________
BARBARA A. SILVERMAN
Florida Bar No. 221384
Bas@colson.com