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IN THE SUPREME COURT OF FLORIDA
CASE NO.: SC13-1549

J.R.,

Appellant,

v.

BARBARA PALMER, in her official capacity as Director of the Agency for Persons with Disabilities,

Appellee.

On a Certified Question from the United States Court of Appeals for the Eleventh Circuit, Case No. 12-14212

APPELLEE'S ANSWER BRIEF

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STATEMENT OF THE CASE AND FACTS

This case comes before the Court on three certified questions from the Eleventh Circuit Court of Appeals. All three questions focus on the same issue: whether Chapter 393, Florida Statutes, as written, provides meaningful periodic review for involuntary admissions to Florida's non-secure residential services system for developmentally disabled persons.[1]

A. The Statute

Chapter 393, Florida Statutes, addresses the provision of state services to Floridians with developmental disabilities. A developmental disability is a "disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely." § 393.063(9), Fla. Stat.[2] An "intellectual disability" is further defined as "significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which manifests before the

[1] Although Appellee does not wholly agree with Appellant's presentation of the facts, the facts are impertinent here because this matter relates solely to statutory construction.

[2] Persons with Down Syndrome are treated analogously to persons with developmental disabilities for purposes of receiving home and community based services under Chapter 393. *See* §§ 393.0661(3); and 393.0662(1). Thus, for purposes of this brief, the term "developmental disability" encompasses Down Syndrome as defined in section 393.063(13), Florida Statutes.

age of 18 and can reasonably be expected to continue indefinitely." *Id.* § 393.063(21).

A person with a developmental disability may voluntarily seek admission to the residential services provided by the Agency for Persons with Disabilities ("APD") or may involuntarily become placed in APD's care through a court order. *Id.* § 393.11. Involuntary admission to non-secure residential services—the only type of placement at issue here—requires that the court find that the placement "is the least restrictive and most appropriate alternative to meet the person's needs," and that "[b]ecause of the person's degree of intellectual disability or autism," the failure to provide the "supervision and habilitation" of a residential setting would threaten either the person's well-being or cause the person to continue to present a danger to others. *Id.* § 393.11(8)(b).

A person who receives care, habilitation, and treatment for a developmental disability under Chapter 393 becomes a client of APD. *Id.* § 393.063(5). Once an APD client, the Agency—through support planning teams—develops a client-specific support plan to guide that particular client's habilitation and treatment. *Id.* § 393.0651. This plan is reviewed and revised annually. *Id.* § 393.0651(7). For an involuntarily admitted client, however, discharge from all APD services requires a court order. *Id.* § 393.11(11). The procedures and due process protections afforded to the initial determination of placement into residential

services are not challenged. (Op. at 3 n.2). At issue in this case is the adequacy of the continuing review process for the involuntary admissions.

B. Procedural History

Appellant (hereinafter "Plaintiff") brought his case in federal district court, alleging, on facial grounds, that section 393.11, Florida Statutes, fails to comport with procedural due process requirements because it does not expressly provide for on ongoing judicial review of the propriety of involuntary admissions of APD's developmentally disabled clients to non-secure residential facilities.[3] (Doc. 1). The district court rejected Plaintiff's argument and granted summary judgment for the Agency. (Doc. 66.)

Judge Stafford concluded that although involuntarily admitting a person to residential services is a deprivation of liberty (*id.* at 14), Florida's statutory scheme in Chapter 393, Florida Statutes, satisfies due process. Based on Eleventh Circuit and United States Supreme Court precedent, the court concluded that although due process requires ongoing periodic reviews of involuntary admissions to ensure they are appropriate and of continuing necessity, the review need not be adversarial or conducted by a court. (*Id*. at 15-19.) Additionally, the court concluded that

[3] The propriety of Plaintiff's continued admission is not in dispute; Plaintiff acknowledges he is not ready to be released. (Op. 20 at n.8). Additionally, Plaintiff has never sought habeas relief from his admission to residential services.

Chapter 393 implicitly required APD to transfer persons placed into the Agency's services to less restrictive facilities as appropriate and "petition the court for release from an order of involuntary admission when the conditions for release are indicated." (*Id.* at 25.)

On appeal, the Eleventh Circuit agreed with the district court that some form of periodic review is required but that it need not be adversarial. (Op. at 17.) The appellate court likewise agreed whoever conducts the review must be able to effect changes to the commitment when necessary, including release when warranted. (*Id.* at 17-18.) Without input from this Court, however, the Eleventh Circuit was "not comfortable" identifying implicit requirements within Chapter 393. (*Id*. at 28.) If this Court agrees with Judge Stafford's construction, the Eleventh Circuit has recognized that the statutory scheme may be constitutional. (*Id.*) The Eleventh Circuit therefore certified three questions:

> (1) Does "support plan" review under Fla. Stat. §393.0651 require the Agency for Persons with Disabilities to consider the propriety of a continued involuntary admission to residential services order entered under Fla. Stat. 393.11?
>
> (2) Is the Agency for Persons with Disabilities required, pursuant to Fla. Stat. 393.0651 and/or Fla. Stat. 393.11, to petition the circuit court for the release from involuntary admission order in cases where APD determines the circumstances that led to the initial admission order have changed?
>
> (3) Does Fla. Stat. 393.062 et seq. provide a statutory mandate to meaningfully periodically review involuntary admissions to non-secure residential services consistent with the commitment schemes discussed in

Parham v. J.R., 442 U.S. 584 (1979) and *Williams v. Wallis*, 734 F.2d 1434 (11th Cir. 1984)?

SUMMARY OF ARGUMENT

Plaintiff initiated this action seeking periodic review of his commitment. The district court specifically found that Chapter 393 provides him that periodic review. Plaintiff nonetheless appealed the order, requesting the Eleventh Circuit invalidate section 393.11. If Plaintiff were to prevail, he would presumably seek a *different* order requiring that same periodic review. This Court is now being asked to determine whether the ongoing review that Plaintiff is entitled to receive is already present within Chapter 393—as Judge Stafford found—or whether Florida's scheme for involuntarily admitting persons with development disabilities to APD services must be stricken and revised. Whether the statute is upheld or falls, the result for Plaintiff will be the same—an entitlement to periodic review.

As is apparent below, there is no need for the Eleventh Circuit to invalidate the statute to fashion the relief of a periodic ongoing review because such a review currently exists in the statutory scheme. The provisions in section 393.0651, Florida Statutes, require that an individualized—and annually revised—support plan regularly assess the propriety of a continued residential placement. The support plan obligations confirm that a constitutional and meaningful ongoing review of an involuntary residential placement should already occur. Because a

support plan must reflect the habilitation objectives for each particular client, the plan for an involuntarily admitted client would inherently and logically have to reconsider each year the guidelines for continuing an involuntary commitment.

That these requirements are not explicitly stated is of no moment. Even when a statute is not ambiguous, it may be construed to contain implicit requirements when a plain reading of the statutory text and logic so dictate. Once it is recognized that a statute may indeed contain implicit obligations, it becomes clear that all of the Eleventh Circuit's statutory interpretation questions should be answered affirmatively. Properly interpreted, section 393.0651 provides adequate due process protections.

ARGUMENT

Contrary to Plaintiff's arguments, and consistent with the federal district court's decision, Florida's tenets of statutory construction allow statutes to contain implicit requirements when logic and legislative intent so dictate. The Eleventh Circuit's three questions all stem from the singular concern of whether a statute may have "implied obligations not explicit on the face of the statute." (Op. at 28.) For the reasons below, a statute may contain implicit obligations, and the Eleventh Circuit's three certified questions should be answered affirmatively.

I. Statutes Can Contain Implicit Requirements.

When construing a state statute, the "guiding purpose" of this Court is "to

give effect to the Legislature's intent." *Goble v. Frohman*, 901 So. 2d 830, 832 (Fla. 2005); *accord Kasischke v. State*, 991 So. 2d 803, 807 (Fla. 2008) ("When construing a statute, we strive to effectuate the Legislature's intent."). The first place that the Court must look to discern the Legislature's intent is the plain language of the statute. *Kasischke*, 991 So. 2d at 807. If a statute is clear and unambiguous, the Court has "no occasion to resort to rules of construction" unless failure to do so "leads to an unreasonable result or a result clearly contrary to legislative intent." *Daniels v. Fla. Dep't of Health*, 898 So. 2d 61, 64-65 (Fla. 2005).

The plain language rule does not mean that the Court is "required to abandon either [its] common sense or principles of logic." *Sch. Bd. of Palm Beach Cnty. v. Survivors Charter Sch., Inc.*, 3 So. 3d 1220, 1235 (Fla. 2009). Rather, because it can be presumed that the Legislature intends to serve the best interests of the people, the Court has an "obligation to construe provisions of legislative acts consistent with the basic tenets of fairness and due process." *Id.*; *Abood v. City of Jacksonville*, 80 So. 2d 444, 445 (Fla. 1955) ("We are entitled to, and should, ascribe to the acts of the members of the lawmaking body a purpose to serve the best interest of the people and the general welfare of the State."). Therefore, it is a basic tenet of statutory construction that courts are "constrained to avoid a construction that would result in unreasonable, harsh, or absurd consequences."

Thompson v. State, 695 So. 2d 691, 693 (Fla. 1997).

In accordance with these tenets of statutory interpretation, it is well-established by this Court that statutory language, however plain it may appear, should not be examined in isolation. Rather, the contested provision must be read in its entirety and in the greater context of the statutory chapter in which it has been placed. *Fla. Dep't of Envtl. Prot. v. ContractPoint Fla. Parks, LLC*, 986 So. 2d 1260, 1265-66 (Fla. 2008); *see also Trinidad v. Fla. Peninsula Ins. Co.*, 121 So. 3d 433, 440 (Fla. 2013) ("It is generally accepted that courts are required to 'give full effect to all statutory provisions and construe related statutory provisions in harmony with one another.'") (quoting *Heart of Adoptions, Inc. v. J.A.*, 963 So. 2d 189, 199 (Fla. 2007)); *State ex rel. Pittman v. Stanjeski*, 562 So. 2d 673, 678 (Fla. 1990) ("emphasiz[ing]," in its statutory construction, that the statute at issue was "just one part of the overall scheme for the collection of [child] support.").

When a statutory provision is examined in context, it may become apparent that although not expressly stated in that particular provision, certain requirements are implicitly present. This is true even if the plain language appears unambiguous. For example, in *Thompson v. State*, 695 So. 2d 691 (Fla. 1997), this Court held that a statutory subsection "implicitly required a factual finding that the defendant [charged with attempted murder of a law enforcement officer] had knowledge of the victim's status." *Id.* at 693. Although no knowledge

requirement was specified by the challenged provision and the express language was plain, the Court held that the requirement was nonetheless present because: (1) knowledge was expressly required to be charged with an assault or battery of a law enforcement officer and it would be "illogical and unreasonable" not to require the same for attempted murder; (2) attempted crimes implicate a knowledge requirement, and (3) "the prosecution could not show that the motivation for the attempt was related to the officer's lawful duties unless the prosecution could also show the defendant knew the victim was an officer who has lawful duties." *Id.* at 692-93. It has long been the position of this Court that "[t]he implications and intendments of a statute are as effective as are the express provisions." *Cassady v. Sholtz*, 169 So. 487, 490 (Fla. 1936); *see also Jones v. Rath Packing*, 430 U.S. 519, 525 (1977) (explaining that legislative intent may be "explicitly stated in the statute's language or implicitly contained in its structure and purpose.").

The ability of a Court to imply certain requirements as inherent in a statute based on its greater context comports with the Court's "obligation to give a statute a constitutional construction where such construction is possible." *Tyne v. Time Warner Entmt. Co.*, 901 So. 2d 802, 809 (Fla. 2005) (citing multiple cases). When multiple interpretations are possible, and a strict, literal construction would deprive an individual of a basic due process right (e.g., right to a hearing prior to entry of a judgment), this Court has opted for a broader reading. *See, e.g.*, *Stanjeski*, 562 So.

2d at 678-79 (construing the ability of a child support obligor to file a "response" to a notice of delinquent payment before the court enters "a final judgment by operation of law," to "necessarily include an opportunity for a hearing" although no such opportunity is expressly set forth in the statute).

Thus, consistent with the federal district court's decision, the burdens for ongoing review of involuntary admissions to residential services under section 393.11, Florida Statutes, may be implicit. Indeed, as discussed below, such obligations are implicitly contained within the statutory scheme. In particular, they are contained within section 393.0651, Florida Statutes, which outlines the nature and creation of the individual "support plans" that guide the services—both residential and vocational—that are provided to APD's clients with developmental disabilities.

II. The Eleventh Circuit's Three Questions Should All Be Returned with Affirmative Answers.

A. Support Plan Review under § 393.0651, Florida Statutes, Requires Annual Evaluation of a Non-Secure Involuntary Admission.

The Eleventh Circuit's first question asks whether the "support plan" review provided in section 393.0651 "require[s APD] to consider the propriety of a continued involuntary admission to residential services order entered under Fla. Stat. 393.11." The statutory support plan review and revision requirements of that section, combined with the Chapter's legislative intent, reveal that the Eleventh

Circuit's question should be answered affirmatively.

The Legislature's intent with regard to the provision of state services to persons with developmental disabilities is plain. The goal of the statutory scheme is to prevent and reduce the severity of such disabilities so that these individuals can live "a dignified life in the least restrictive setting, be that in the home or in the community." § 393.0651, Fla. Stat. The Legislature intended APD to assist individuals only to the extent the individuals need assistance and only so long as they require assistance. As set forth in its "legislative findings and declaration of intent":

> [T]he greatest priority shall be given to the development and implementation of community-based services that will enable individuals with developmental disabilities *to achieve their greatest potential for independent and productive living,* enable them to live in their own homes or in residences located in their own communities, and permit them to be diverted or removed from unnecessary institutional placements.

Id. § 393.062.[4] Once a person is admitted to residential services—whether voluntarily or involuntarily— the statutorily required support plan ensures that the Legislature's intent is fulfilled.

To involuntarily admit a person to APD's residential services, a circuit court must make three findings. First, the court must find that the person "is intellectually disabled or autistic." *Id.* § 393.11(8)(b)(1). Second, the court must

[4] All emphasis is added unless otherwise noted.

find that "placement in a residential setting is the least restrictive and most appropriate alternative to meet the person's needs." *Id.* § 393.11(8)(b)(2). And third, the court must find that the person either "lacks sufficient capacity to give express and informed consent to a voluntary application for services . . . and lacks basic survival and self-care skills to such a degree that close supervision and habilitation in a residential setting is necessary and, if not provided, would result in a real and present threat of substantial harm to the person's well-being" or "is likely to physically injure others if allowed to remain at liberty." *Id.* § 393.11(8)(b)(3). Without the presence of these three factors, involuntary admission is inappropriate. *Id.* § 393.11(8)(c).

Within 45 days of a court's order of involuntary admission, APD must develop the client's support plan. *Id.* § 393.11(8)(e). Consistent with Chapter 393's objective, the purpose of the support plan is to "provide the most appropriate level of care" "within the specification of needs and services for each client." *Id.* § 393.0651. Section 393.0651 mandates that a client's support planning team "identify measurable objectives for client progress" and "specify a time period expected for achievement of each objective." *Id.* § 393.0651(6). The support planning team includes mental health professionals, such as the residential facility's administrator and the client's certified behavior analyst ("CBA"), as well

as the client's individual support coordinator.[5] *Id.* § 393.0651(5)-(7); *see also* Doc. 46-3, ¶¶ 17-18 (CBA provides recommendations to the support coordinator concerning the propriety of a client's ongoing residential placement). Critically for the question certified to this Court, the support plan ***must*** be reviewed and revised annually. *Id.* § 393.0651(7) (the support planning team "shall review progress in achieving the [plan's] objectives . . . and shall revise the plan annually").

The annual support plan review ensures that an involuntary admission to residential services is periodically reviewed so that it only continues in a constitutionally permissible manner. *Cf. O'Connor v. Donaldson*, 422 U.S. 563, 574-75 (1975) ("even if [the plaintiff's] involuntary confinement was initially permissible, it could not constitutionally continue after that basis no longer existed."). Each prong of the involuntary commitment standard is addressed each year, as it would logically and obviously have to be in a progress plan designed specifically to address that particular client's objectives during admission.

[5] A support coordinator is a person "designated by [APD] to assist individuals and families in identifying their capacities, needs, and resources, as well as finding and gaining access to necessary supports and services; coordinating the delivery of supports and services; advocating on behalf of the individual and family; maintaining relevant records; and monitoring and evaluating the delivery of supports and services to determine the extent to which they meet the needs and expectations identified by the individual, family, and others who participated in the development of the support plan." § 393.063(37), Fla. Stat.

With regard to the first factor for continuing an involuntary admission, that the person be intellectually disabled or autistic, this factor is unlikely to change if found to be present. § 393.063, Fla. Stat. (developmental and intellectual disabilities can "reasonably be expected to continue indefinitely"); *see also* Fla. Admin. Code r. 65G-4.014 (defining various developmental disabilities as having a continuous presence and indefinite duration). Nonetheless, if the client's intellectual disability improved, the client's support planning team would have to account for this in determining the continuing propriety of a residential placement. Indeed, consistent with the second prong of the circuit court's findings, the support plan "**must include** the most appropriate, least restrictive, and most cost-beneficial environment for accomplishment of the objectives for client progress and a specification of all services authorized." § 393.0651, Fla. Stat.[6]

Similarly, with regard to the third prong, as a client becomes more proficient at self-care and less likely to injure himself or others, the client would move to less restrictive facilities. Indeed, because the support plan is individually tailored to the "accomplishment of the objectives for client progress," support plans for an involuntarily committed client would necessarily reflect the objective that the

[6] The statute lists six types of residential facilities in which placement is possible, and requires that they be considered in reverse order of restrictiveness. § 393.0651(5), Fla. Stat. The least restrictive, and thus the goal, is the "client's own home or the home of a family member or direct service provider." *Id.*

client no longer poses a harm to himself or to others. Progress, naturally, is made in incremental steps, consistent with graduating to incrementally less restrictive facilities. Just because a client is able to relocate to a less restrictive facility does not mean that the client no longer poses a danger to himself or society. (*See, e.g.*, Doc. 41-5, p. 40 (finding this to be the case for Plaintiff).) Indeed, Plaintiff recently moved to a less restrictive facility but acknowledges he is not ready to end his involuntary commitment. (Op. 20 n.8.)

The effect of the mandatory annual support plan review and revision is obvious. Each year, the support planning team—through the advice of the mental health professionals working with the client—determines whether an involuntarily admitted client still requires APD services, and if so, whether that client remains in the least restrictive facility that is appropriate. If an involuntarily admitted client still required APD services for his well-being or the safety of others, but did not require the extent of restriction he initially needed, then it is statutorily incumbent upon APD and, by extension, its support planning teams, to move the client to a less restrictive residence. Since the support plans are personalized to each client, the annual evaluation of an involuntarily admitted client would necessarily reflect the three criteria of an involuntary admission.

As for the nuance of the Eleventh Circuit's question: whether the support plan review requires *APD* to annually reconsider the propriety of an involuntary

residential admission, the answer is still yes. The burden is on APD to ensure that a support plan is created, and once created is reviewed and revised each year. APD has an obligation to ensure that each client has a support coordinator who will advocate on a client's behalf and ensure that the client is receiving proper treatment and living in the least restrictive facility that would be appropriate. Thus, although the statute does not expressly specify that APD must review a client's involuntary placement every year, the statute clearly intends that APD—acting through its designated support coordinators and their support planning teams—will ensure each year that every non-secure residential facilities client is still properly placed within APD's services.

For the foregoing reasons, the Court should return the first question to the Eleventh Circuit with an affirmative answer.

B. Chapter 393 Requires APD to Petition the Court to Discharge an Involuntary Admission Order if the Client No Longer Requires Any Services.

Although no circuit court order is required to relocate an APD client to a less restrictive facility, a client cannot be released from an involuntary admission order except by the court. § 393.11(11), Fla. Stat. The Eleventh Circuit's second question, whether it is incumbent upon APD to petition the court for release from an involuntary admission order "in cases where the APD determines that the circumstances that led to the initial admission order have changed," again finds an

affirmative answer in the support plan obligations of section 393.0651, Florida Statutes.

As a preliminary matter, because of the nature of non-secure residential service placements, the circuit court that ordered the involuntary admission to residential services need not become involved to transfer an APD client to a less restrictive facility. As Judge Stafford found, a client could be initially placed in a non-secure developmental disabilities center, upon making progress be transferred to a group home facility, and upon making further progress be moved back to his own home while still receiving services, if that were appropriate. (Doc. 66 at 20.) Because these placements all qualify as non-secure residential services placements, no court action is needed. They instead can all be accomplished through the support planning team's obligatory annual review. The circuit court only needs to become involved in a full discharge from all residential services.

As discussed above, section 393.0651 implicitly requires that a goal of every support plan for an involuntarily admitted client is that the client progress to a point that the client's support team determines that APD's services are no longer proper because the three factors required for involuntary commitment have ceased to exist. If this goal is ever reached, then it is equally implicit under the statutory scheme that APD must petition the court to discharge the client from the programs.

The implicit requirement is present for at least two reasons. First, the circuit

court's order burdens APD because the Agency must continue to provide services to a client until there is a release from the court. As correctly explained by the district court, "[i]f APD were to determine that a client had reached the point of no longer meeting the involuntary admission requirements, the agency could not on its own authority cease to provide those services." (Doc. 66 at 23.) Moreover, because APD wants to serve those who need their services, and because there is a tremendous waiting list of people who need help, every client who is receiving unnecessary services is taking the place of someone who needs help. (Op. at 4 ("[C]urrently there are about 20,000 voluntary applicants on the waiting list to receive HCBS Medicaid services, including the services that J.R. receives.").)

Second, because the goal of the statute is to "enable the client to live a dignified life in the least restrictive setting," and because the absolute least restrictive setting is one of complete liberty, APD would implicitly have to seek to discharge those clients who have no need for any of their services and its concomitant liberty restrictions to comport with legislative intent. The unequivocal legislative intent here is to protect Floridians' due process rights. § 393.13, Fla. Stat. ("It is the clear, unequivocal intent of this act to guarantee individual dignity, liberty, pursuit of happiness, and protections of the civil and legal rights of persons with developmental disabilities."); *see also Sch. Bd. of Palm*

Beach Cnty., 3 So. 3d at 1235 (legislative acts must be construed "consistent with the basic tenets of fairness and due process").

The Plaintiff makes much of the express statutory provision for periodic judicial review of other involuntary placements. (Init. Br. at 22-23, 32.) However, those placements, in contrast to the type of placement governed by Chapter 393, are secure placements. *See, e.g.*, § 916.303(3), Fla. Stat. (secure commitments of developmentally disabled persons require annual judicial review); § 394.467, Fla. Stat. (involuntary commitments of persons with mental illnesses to secure treatment facilities for periods beyond six months); § 394.917(2), Fla. Stat. (sexual violent predators are placed in secure facilities). Involuntary placements into secure facilities, unlike the non-secure residential placements of Chapter 393, do not permit the client to relocate to a less restrictive facility absent court involvement.

The absence of an express requirement for periodic judicial review of *non-secure* involuntary commitments does not negate the possibility that the statute implicitly requires a non-adversarial periodic review and petitioning the court when necessary. As aptly explained by the district court:

> [G]iven Florida's carefully-devised scheme for involuntarily admitting developmentally disabled persons to a flexible array of residential placements and services, the added requirement of state-initiated periodic judicial review of every client's case—with lawyers involved—would likely add a cumbersome and costly step rather than

> aid the state's goal of getting each client into the most appropriate and least restrictive environment in a timely manner.

(Doc. 66 at 21.) As the Eleventh Circuit found, judicial review is not necessary. (Op. at 17.) The Legislature's decision to have judicial review for some commitment schemes but not others is simply evidence that the Legislature prefers informal, non-adversarial reviews in certain circumstances.

Furthermore, developmental disabilities are statutorily distinct from mental illnesses. A mental illness may respond to "short-term" treatment. § 394.453, Fla. Stat. By contrast, the Legislature has defined a developmental disability to always be of lifelong duration. *Id.* § 393.063. The inherent difference in the types of ailments being addressed can further explain the Legislature's decisions as to how periodic reviews should be conducted. Contrary to Plaintiff's position (Init. Br. at 22-23, 32), the Legislature knew how to draft a constitutional involuntary commitment statute and chose here to draft one that required a permissible non-judicial, non-adversarial form of review.

For the foregoing reasons, it is apparent that there is an implicit burden upon APD to petition the circuit court to discharge an involuntary admission order to non-secure facilities when the client's CBA and support coordinator advise APD that the criteria for involuntary admission are no longer present. As such, this Court should return this matter to the Eleventh Circuit with an affirmative answer

for the second question.

C. The Support Plan Review and Revision Requirements Adhere to Federal Case Law Requirements.

Finally, the Eleventh Circuit's third question, whether Chapter 393, Florida Statutes "provide[s] a statutory mandate to meaningfully periodically review involuntary admissions to non-secure residential services consistent with the commitment schemes discussed in *Parham v. J.R.*, 442 U.S. 584 (1979) and *Williams v. Wallis*, 734 F.2d 1434 (11th Cir. 1984)," also deserves an affirmative response. Like the Eleventh Circuit's previous two questions, this one is also answered from the implicit obligations within section 393.0651, Florida Statutes.

Parham addresses whether children placed in mental institutions in Georgia were receiving adequate due process protections when determining the propriety of an initial admission and continuation of the admission. *Williams* involved a similar challenge to Alabama's periodic review procedures for patients committed to the state's mental health facilities after being adjudicated not guilty by reason of insanity. Both cases found the non-adversarial, non-judicial procedures afforded in those instances to be constitutional. Because all of the criteria that informed the holdings in *Parham* and *Williams* are present here, this Court should respond to the Eleventh Circuit's question affirmatively.

After analyzing *Parham* and *Williams* at length, the Eleventh Circuit

concluded the cases yield four "guiding principles." (Op. at 13-16.) First, all involuntary civil commitments must be subject to some form of periodic review to protect against erroneous deprivations of liberty. (*Id.* at 16-17.) Second, although adversarial judicial review is not required, if medical or mental health professionals conduct the periodic review, they must be "well positioned and mandated to consider the propriety of ongoing commitment." (*Id.* at 17.) In addition to having to consider the commitment's continuing propriety, third, these professionals must be "well positioned and mandated to act when an ongoing commitment is no longer proper." (*Id.* at 18.) Finally, fourth, habeas proceedings can serve only as "a backup plan to protect against erroneous deprivations of liberty." (*Id.* at 18-19.)

As discussed in Subsection A, *supra*, all involuntary admissions to Florida's residential services for persons with developmental disabilities are subject to periodic review through the annual review and revision of clients' individualized support plans. Moreover, as discussed above, this mandatory annual reevaluation of a client's support plan, which includes the appropriate residential placement, is conducted by a team that includes mental health professionals such as a CBA and facility administrator. (*See also* Doc. 66 at 22 ("J.R.'s support coordinator is required to revise J.R.'s support plan annually, after review and consultation with J.R. and other support plan participants, including J.R.'s CBA.").) A client's

mental health professionals and designated support coordinator are in close contact with the client and are therefore well-positioned to conduct the mandatory reassessment of the client's residential placement.

As discussed in Subsection B, *supra*, the express statutory goal of Chapter 393 is to allow persons with developmental disabilities to live independent, productive lives in the least restrictive setting possible. §§ 393.062 and 393.0651, Fla. Stat. Consistent with the statutory directive, the support planning team must therefore implicitly consider whether an ongoing commitment continues to be appropriate. If it is not, these professionals have an obligation to inform APD so that APD can seek to discharge both the client and the Agency from the burdens of the involuntary admissions order.

For a mental health professional to be "well positioned" to consider the propriety of a continued admission, the professional must not have a bias toward continuing the involuntary commitments any longer than necessary. *Parham*, 442 U.S. at 616. Just as the *Parham* Court concluded that bias did not present a problem in that case, it does not present a problem here. The support coordinators, CBAs, and facility administrators have no reason to wish to keep a particular client in a more restrictive facility—or receiving any APD services—longer than necessary. The lengthy wait list for APD services confirms that a residential placement would not be continued longer than necessary. (*See* Op. at 4. (20,000

voluntary applicants on waiting list).) APD's goal is to assist as many persons with developmental disabilities as possible. It has no interest in filling its facilities with individuals who no longer require its services.

The first three principles from *Parham* and *Williams* for a constitutional non-adversarial review of ongoing commitments are therefore met. Because the support plan statute requires that APD and a client's support planning team reevaluate a client's residential placement each year, the ability to seek habeas relief under section 393.11, while always available, becomes merely a back-up plan. This then satisfies the fourth and final principle.

As Judge Stafford explained after his careful analysis of Chapter 393's statutory scheme:

> Here, the Florida Legislature has fashioned what, in essence, is a nonadversarial scheme that (1) allows section 393.11 clients and their family members or advocates to provide input into the development and annual revision of support plans that detail "the most appropriate, least restrictive, and most cost-beneficial environment for accomplishment of the objectives for client progress and a specification of all services authorized," § 393.0651; (2) authorizes APD—through the advice of specialists and without court involvement—to decide what is the "the most appropriate, least restrictive, and most cost-beneficial environment" suitable for a client's individual needs and behaviors; (3) authorizes APD—with client input and without court approval—to move a client to progressively less restrictive environments as the client's needs and behaviors change; and (4) places an implicit burden on APD, rather than the client, to petition the court for release from an order of involuntary admission when the conditions for release are indicated.

(Doc. 66 at 25.)

Because the review scheme provided by Chapter 393 is consistent with *Parham* and *Williams*, this Court should adhere to Judge Stafford's well-reasoned conclusions and return the third question to the Eleventh Circuit with an affirmative answer.

CONCLUSION

The federal case is about whether the Florida legislative scheme affords constitutionally adequate provisions. Judge Stafford interpreted the legislation to find that it does. Plaintiff asked the Eleventh Circuit to reject Judge Stafford's conclusions and declare section 393.11, Florida Statutes, facially unconstitutional. Because this is a matter of statutory construction, the Eleventh Circuit has now turned to this Court for its input.

This Court has always interpreted statutes consistent with legislative intent and presumed that the Legislature intends to protect due process rights. The Legislature made its intent explicit in Chapter 393. The Legislature also made explicit that all residential placements—including involuntary placements—are reassessed annually and governed by individualized criteria. Given these explicit statutory items, it is implicit that the statutory scheme contemplates discharge of involuntary placements when appropriate. As this Court has found, even unambiguous statutes can contain implicit requirements.

Whenever possible, this Court should uphold the constitutionality of the Florida's legislation. The Court should do so here, agreeing with Judge Stafford that the statutory scheme places implicit burdens on APD. Because section 393.11, in conjunction with section 393.0651, Florida Statutes, passes constitutional muster, this Court should return the case to the Eleventh Circuit with affirmative answers for all three of the certified questions.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by email this 18th day of November, 2013 to:

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