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IN THE FLORIDA SUPREME COURT
STATE OF FLORIDA

Bradley Westphal

Petitioner

Case No. : **SC13-1930**
LT# 1D12-3563
DOAH: 10-019508SLR

v.

City of St. Petersburg and
State of Florida

Respondents,

Workers' Injury Law and
Advocacy Group (WILG)

Amicus Curiae.

AMENDED BRIEF OF AMICUS CURIAE WORKERS' INJURY LAW AND ADVOCACY GROUP (WILG) FILED ON BEHALF OF PETITIONER BRADLEY WESTPHAL

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INTRODUCTION, IDENTITY OF and INTEREST OF AMICUS

This brief is filed on behalf of Workers' Injury Law and Advocacy Group (WILG), *amicus curiae* for Petitioner Bradley Westphal. By Order dated December 16, 2013, this Court granted WILG's motion seeking leave to appear as *amicus curiae* aligned with the Petitioner. WILG is a national organization consisting of attorneys who practice in the field of worker's compensation and represent only injured workers. The matter before the Court has serious public policy implications regarding the adequacy of the benefits provided to injured workers by the Florida Workers' Compensation Act, ch. 440.01 *et seq*, Fla. Stat. (2003).

SUMMARY OF THE ARGUMENT

WILG believes the instant cause points out the inadequacy of the Florida workers' compensation scheme enacted as amended effective October 1, 2003. WILG believes that the 14th Amendment to the U.S. Constitution as well as various sections of the Declaration of Rights contained in the Florida Constitution (Right to Trial by Jury, Right of Access to Courts, Right to be Rewarded for Industry, Due Process of Law) effective Nov. 5, 1968 provide an ample basis

upon which to conclude that the "exclusive remedy" provision contained in §440.11 Fla. Stat. 2003 is invalid as a violation of the constitutional provisions mentioned above. WILG argues on behalf of Bradley Westphal that the benefits currently provided by, and limited by, chapter 440 are so inadequate that no reasonable person could advocate for them as an exclusive replacement remedy for tort litigation. WILG believes that since 1970 the Florida legislature has so decimated the rights of injured workers and the benefits available to injured workers and their dependents (in case of death) and made the procedures so cumbersome that the *quid pro quo* has been effectively destroyed making the exclusive remedy illusory and insignificant compared to the rights confiscated using the Police Power of the state with the enactment of workers' compensation laws. WILG believes that the artificial exclusive remedy of workers' compensation in place of common law tort rights is no longer needed and is, in fact, a dinosaur which must be eliminated from our jurisprudence just as other doctrines, such as Contributory Negligence and the Standing Train Doctrine have been eliminated by the courts. Thomas Jefferson is quoted as saying,

> "Laws and Institutions must go hand in hand with the progress of the human mind...We might as well require a man to wear the coat that fitted him as a boy, as a civilized society to remain ever under the regime of their ancestors".

ARGUMENT

POINT II

THE 104 WEEKS LIMITATION ON TEMPORARY TOTAL DISABILITY IN SECTION 440.15(2), FLA. STAT. 2003 IS UNCONSTITUTIONAL AS IT IS NOT AN ADEQUATE REMEDY IN VIOLATION OF THE ACCESS TO COURTS PROVISION OF THE FLORIDA CONSTITUTION:

A. IT IS NOT AN ADEQUATE REMEDY COMPARED TO THE 350 WEEKS AVAILABLE IN THE 1968 FLORIDA WORKERS COMPENSATION LAW WHEN THE PEOPLE VOTED FOR THE ACCESS TO COURTS PROVISION;

B. IT IS NOT AN ADEQUATE REMEDY IN TERMS OF NATURAL JUSTICE AND FUNDAMENTAL FAIRNESS–DUE PROCESS OF LAW;

C. IT IS NOT AN ADEQUATE REMEDY COMPARED TO THE DURATION OF TEMPORARY TOTAL DISABILITY IN OTHER STATES;

D. IT IS NOT AN ADEQUATE REMEDY SINCE FULL MEDICAL CARE IS NO LONGER AVAILABLE;

E. IT IS NOT AN ADEQUATE REMEDY SINCE THE FLORIDA OCCUPATIONAL SAFETY & HEALTH ACT HAS BEEN REPEALED

STANDARD OF REVIEW: **De Novo,** a challenge to the facial invalidity of a provision of state law is reviewed de novo by the court,

Florida Department of Revenue v. City of Gainesville, 918 So. 2d 250 (Fla. 2005).

The type of review of a statute that adversely affects fundamental rights is strict scrutiny, *North Florida Women's Health and Counseling Services v. State*, 866 So. 2d 612 (Fla. 2003),*De Ayala v. Florida Farm Bureau Cas. Ins. Co.* , 543 So. 2d 204,206 (Fla. 1989), *Jacobson v. Southeast Personnel Leasing, inc.*, 113 So. 3d 1042 (Fla. 1 DCA 2013).

Definition:

ad·e·quate, adjective;

1. as much or as good as necessary for some requirement or purpose; fully sufficient, suitable, or fit (often followed by to or for): This car is adequate to our needs. adequate food for fifty people.

2. barely sufficient or suitable; Being adequate is not good enough.

3. Law. reasonably sufficient for starting legal action: adequate ground

Synonyms:

1. satisfactory, competent, sufficient, enough; capable

When the government wants a citizens property for a public purpose,

the government takes that property in a process called Eminent Domain. This is an exercise of the Police Power of the state. The property owner must be paid just and *adequate* compensation. Our system of jurisprudence has developed a fair way to determine the adequacy of the payment for the property right given up; trial by jury, §73.071 Fla. Stat. Ann (2002)

Thomas Jefferson also said:

> "I consider trial by jury as the only anchor, ever yet imagined by man, by which a government can be held to the principles of its constitution", *Letter to Thomas Paine,* July 11, 1789, papers of Thomas Jefferson, 15:269 (Julian P. Boyd ed. 1958).

The Virginia Declaration of Rights contained the following statement:

> "That in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred" *Virginia Declaration of Rights (1776), Section 11,* Federal and State Constitutions 7:3812,3814 (Francis N. Thorpe ed. 1909).

When the State of Florida determined that its citizens who are hurt at work should lose their fundamental and inviolate right to trial by jury to redress the wrong, the legislature enacted a workers' compensation law and deemed the resulting benefits of the act to be the exclusive remedy for the loss suffered. An administrative process was set up to replace trial by jury.

The Executive chooses the administrative judges. The Police power of the state is the basis for the taking. The adequacy of the replacement remedy has not been challenged, until now.

Former Chief Justice Charles Evans Hughes said,

> "The power of administrative bodies to make findings of fact which may be treated as conclusive, if there is evidence both ways, is a power of enormous consequence. An unscrupulous administrator might be tempted to say 'let me find for the people of my country, and I care little who lays down the general principles'", *Important Work of Uncle Sam's Lawyers*, 17 American Bar Association Journal 237, 238 (1931).

In a society where a significant portion of the population is dependent upon social welfare, decisions about eligibility for benefits are among the most important that a government can make. By one set of values the condemnation of property for public purposes might seem of more far reaching significance. But in a society that considers the individual as its basic unit, a decision affecting the life of a person or a family should not be made by a means that would be considered unfair for a property owner. Indeed, full adjudicatory procedures are far more appropriate in welfare cases than in most of the areas of administrative procedure.

Workers' compensation acts have a 100+ year history in the United

States. Initially business interests challenged the constitutionality of laws that made business pay for injury without proof of fault. The New York Act, ruled unconstitutional due to a defect in the New York Constitution was re-enacted after the New York Constitution was amended and then again reviewed by our highest court. The Supreme Court was asked by the New York Central Rail Road to determine if the due process, 14th Amendment rights of the employer were being violated by requiring the employer to provide benefits for injury to an employee without fault.

The court reviewed the procedural aspects of the act and concluded that there were sufficient due process safeguards in place in the adjudicatory process and that making the employer pay for the injury caused by industry because the injured worker was providing a service from which the employer financially benefitted, did not violate our legal system. The police power of the state was being used to protect the taxpayers from paying for the cost of injury caused by industry. In addition, the court found that lack of adequate compensation for injury may very well lead to criminal activity.

In that same case the court specifically warned that the court was not reviewing the adequacy of the benefits in the New York Act:

> " This, of course, is not to say that any scale of compensation, however insignificant, on the one hand, or onerous, on the other, would be supportable. In this case no criticism is made on the ground that the compensation prescribed by the statute in question is unreasonable in amount, either in general or in the particular case. ***Any question of that kind may be met when it arises"***, *New York Central Rail Road v. White*, 37 S. Ct. 247, 243 U.S. 188, 61 L. Ed. 667 (1917)(emphasis added).

That was 1917. Now, 97 years later, in a case of first impression nationwide, this court is asked to determine whether or not the Florida workers' compensation act provides adequate, reasonable and significant benefits. If it the act fails to provide adequate benefits, it fails as an exclusive replacement remedy for tort. If it fails as an exclusive replacement remedy, §440.11 Fla. Stat.(2003) is unconstitutional.

While this appeal tests the validity of ch. 440's exclusive remedy provision, WILG asserts that the court need not invalidate any of the existing benefit or procedural provisions of the act. This court has fashioned a similar remedy in the past and created a bright line for determining the constitutionality of the exclusive remedy;

> "Although ch. 90-201 undoubtedly reduces benefits to eligible workers, the workers' compensation law remains a reasonable alternative to tort litigation. It continues to provide injured workers with ***full medical care and wage-loss payments for total or partial disability*** regardless of fault and without the delay and uncertainty of

> tort litigation. Furthermore, while there are situations where an employee would be eligible for benefits under the pre- 1990 workers' compensation law and now, as a result of chapter 90-201, is no longer eligible, **that employee is not without a remedy. There still may remain the viable alternative of tort litigation in these instances**".*Martinez v. Scanlan*, 582 So. 2d 1167,1171 (Fla. 1991)(emphasis added).

Amicus suggests that the right to the tort remedy be an option for all injured workers now that their benefits under chapter 440 have become so decimated as to be illusory, *Staffmark v. Merrell*, 43 So. 3d 792, 797 (Fla. 1 DCA 2010)(Webster, J. Concurring). Full medical care is no longer available, see: §440.13(14)©, Fla. Stat. (1994) and §440.15(b) Fla. Stat. (2003) (a $10.00 co-pay after MMI and the apportionment of medical care).There is no compensation in the act for permanent partial disability (wage-loss for partial disability), §440.15 Fla. Stat. (2003).

Amicus seeks for the court to leave chapter 440 intact, except for §440.11 which must be held unconstitutional. Injured workers would be given the option of seeking an administrative or a judicial recovery. The exclusive remedy in the Florida Workers' Compensation act of 2003 is a dinosaur, no different than Contributory Negligence or the Standing Train Doctrine which this court abolished in, *Florida Power Corp. v. Webster*, 760

So. 2d 120 (Fla. 2000).See:.Richard B. Scherrer, *The Standing Train Doctrine-An Outmoded Standard of Care*, 36 Mo. L. Rev. 586, 589 (1971).

Every employer with a workers' compensation insurance plan also has existing coverage for adverse judgments for damages in a suit by an employee for an on the job injury. This is called Part II coverage under the standard *Workers' Compensation and Employer Liability* policy of insurance. Part II serves a useful current purpose because more and more employees are able to avoid the exclusive remedy defense to a tort suit on a case by case basis when the employer takes advantage of amendments limiting coverage under the act, *Martinez*, id, fn. 4, *Byerley v. Citrus Publications*, 725 So. 2d 1230 (Fla. 5 DCA 1999), *Coastal Masonry, inc v. Gutierrez*, 30 So. 3d 545 (Fla. 3 DCA 2010), *Francoeur v. Pipers*, 560 So. 2d 244 (Fla. 3 DCA1990), *Quality Shell v. Roley* 186 So. 2d 837 (Fla. 1 DCA 1966), *Rush v. Bellsouth Telecommunications*, 773 F. Supp. 2d 1261 (Fla. ND 2011), *Picon v. Gallagher Bassett Services, inc.* Case # 13-12829, U.S. District Court of Appeals for the 11th Circuit, November 19, 2013.

When the citizens of Florida ratified and adopted their last constitution (to include the Declaration of Rights) in November 1968, that document set a

bright line for what is constitutional thereafter. This court explained the meaning of those words in *Kluger v. White, 281 So. 2d 1 (Fla. 1973)*. In the simplest terms imaginable; the legislature could change existing rights but could not eliminate existing rights without providing a reasonable replacement. It is therefore necessary that amicus must take the position that the workers' compensation act in effect in 1968 was constitutionally adequate as a replacement remedy. It probably wasn't. Notably, a decision of this court found one class of benefits provided in the 1968 act, temporary total disability for up to 350 weeks, to be inadequate, *Thompson v. Florida Industrial Commission*, 224 So. 2d 286 (Fla. 1968)(This statute is clear and unambiguous in its language. The carrier was justified in ceasing to pay additional temporary total disability benefits. The Florida Workmen's Compensation Act is inadequate in failing to provide for a situation such as this (Claimant was still TTD after exhausting 350 weeks of benefits). However, the remedy lies with the Legislature and not with the Florida Industrial Commission or the Court). WILG believes the remedy for inadequate benefits lies with the court as a violation of the Declaration of Rights and 14th Amendment to the U.S. Constitution, *New York Central Rail*

Road, id.

Within 2 years after the adoption of the Declaration of Rights the legislature began to erode the rights granted to injured workers in the 1935 Act and written in stone by the 1968 Constitution. The 1970 legislature, effective September 1, 1970, quietly repealed the right of an employee to "opt out" of coverage under the act by giving timely and proper notice (Appendix A).Those employees who opted out prior to September 1, 1970 could sue their employer for negligence for an on the job injury. The employer retained its common law defenses to said suit. In 1970 those absolute defenses made it difficult, if not impossible, for an employee to pursue a successful tort action because the employee would lose the suit if the employer, in defense, could show that the injured employee was even 1% negligent in causing his or her own injury (contributory negligence), or if the injury was occasioned, even in small part, by the negligence of a fellow servant. The employer also prevailed if the employee assumed the risk of a hazardous employment. There are no reported statistics, but it is safe to assume very few employees "opted out". In a trade for the right to sue at

common law and with the employer having such significant defenses, almost any level of benefits might be adequate.

The 1970 repeal of the right to "opt out" went largely unnoticed. Nothing was put in it's place, *Kluger*, id. Also unnoticed was the connection between the right to opt out and the decision of this court in *Hoffman v. Jones,* 280 So. 2d 431 (Fla.1973). With the 1973 advent of comparative negligence, a legal theory that encompassed all three of the employers absolute common law defenses, workers' compensation benefits should have increased and improved exponentially. The value of the trade had changed. Benefits didn't change in 1973.

A test of the adequacy of state workers' compensation benefits was already underway by the Federal Government. The 1970 OSHA, a product of the Nixon administration, required the selection of a National Commission to study the adequacy of state laws creating workers' compensation programs and setting benefit levels.

The National Commission was required to report to the president and congress in 2 years. The report was on time and **unanimous** finding the state workers compensation laws in existence in 1970 were **inadequate**, *Report of*

the National Commission on State Workmens' (sic Workers')Compensation Laws, http://www.workerscompresources.com/National Commission Report/national commission-report.htmcitation/link. .

The effects of the opt out repeal are clear, *Mullarkey v. Florida Feed Mills,* 268 So. 2d 363 (Fla. 1972) (The non-dependent parent and personal representative of a deceased minor employee sought to bring against the employer a cause of action under the Survival Statute and the Wrongful Death Statute. The court held that the deceased minor employee, having brought himself within the benefits of the Workmen's Compensation Act (by NOT opting out!), bound himself as well as his representative and survivors to the employer's exclusive liability provision of the Act. In reaching that decision, the court quoted from its earlier decision, *Howze v. Lykes Bros., Inc.*, 64 So.2d 277 (Fla.1953), as follows:

> "Appellant contends that it was not the purpose of the Workmen's Compensation Act to exclude the father from recovering damages for mental pain and suffering in a case like this, but we think Section 440.11, F.S.A. (the exclusiveness of liability section) is a complete answer to this contention. The philosophy of workman's compensation is that when employer and employee accept the terms of the act their relations become contractual and other statutes authorizing recovery for negligent death become ineffective".

Repeal of the 'opt out' was the real end of free choice and the beginning of the exclusive remedy. Since repeal came about after the adoption of the 1968 constitution, the right to opt out, as valuable as it was according to Mullarkey, id. needed a replacement for the act to remain constitutional, *Kluger, id.* There was no replacement. Then *Hoffman, id.* put the icing on the cake as far as the value of the right to opt out was concerned.

The length of time that Temporary Benefits that could be collected in 1968 was 13 years. 350 weeks of TTD (7 years), followed by 5 years of TPD, then up to 1 year for vocational rehabilitation TTD, §440.15 Fla. Stat. (1967). Westphal collected a **total** of 104 weeks (2 years) of temporary benefits, which then ended. Then, said the First DCA, *en banc,* Westphal, while continuing with his physical recovery and with no income, has to be ready to engage in the litigation needed to get his employer to accept the fact that he may be temporarily permanently totally disabled. TPTD (a non-existing class of benefits) after 104 weeks and up to Westphal's physical MMI which occurred some 9 months later. The claim for 9 months of benefits is still being litigated and the benefits remain unpaid.

Definition:

INVIOLATE; adjective,

not violated or profaned, pure

Both before and after the adoption of the Declaration of Rights in the 1968 Florida Constitution the word "inviolate" was part of the right to trial by jury. The 1885 Constitution, Section 3 provided:

> "The right to trial by jury shall be secured to all, and remain inviolate forever".

Nevertheless the legislature, without a vote of the electorate, suspended the right to trial by jury for those citizens injured on the job by enactment of Chapter 440 in 1935. The police power was used to justify this legislative action without the need to amend the constitution. But there was one escape clause, the right to 'opt out' was granted to employees and employers alike in §440.04, 05, 06, 07 08 Fla. Stat. 1935 (Appendix A). In effect, the inviolate right to trial by jury was preserved for those who desired to keep it. The right to 'opt out' remained in the act through the adoption of the Constitution of 1968, which contained similar language deeming the right to trial by jury "inviolate", Art I §22 Fla. Const. 1968. The right to 'opt out' was quietly repealed by the 1970 legislature eff. September 1, 1970 (Laws of 1970)

(Appendix A). There is no legislative history. This is another 'take-away'.

Petitioners initial brief lists numerous other 'take-aways'. Petitioner omitted this one:

1967	§440.11 Laws of Florida, "Exclusiveness of Liability". No provision granting immunity to insurance companies.
Current Law	§440.11(4)(previously (3)) Grants immunity to compensation carriers from suits under §624.155 (the insurance code, bad faith) §3, ch. 83-305 Laws of Florida, 1983.

The attorney fee provision in §440.34 had always provided for a reasonable attorney fee for an injured workers attorney if legal services were necessary to obtain benefits. The immunity granted carriers was, in effect, an exchange of reasonable fees in compensation cases for reasonable fees in bad faith actions. Workers' compensation carriers in Florida are the only insurance carriers that need not treat their policyholders or beneficiaries in good faith. The penalty now is a fee approximating 10% of the benefits obtained. Fees awarded under §624.155 are not scheduled and, unlike workers' compensation fees, may be subject to a 'multiplier'.

The legislature tried to limit carrier paid workers' compensation attorney fees to the draconian mandatory fee schedule in the 2003

amendments. This court interpreted the statute to provide reasonable fees, *Murray v. Mariner Health*, 994 So. 2d 1051 (Fla. 2008).

In the following year the legislature again amended §440.34 to repeal the word 'reasonable' and again institute an un-rebuttable presumption that the fee schedule is a reasonable fee, regardless of whether the fee is inadequate or unreasonably low. In other words, confiscatory of the attorney's time and a violation of the right to be rewarded for industry pursuant to Art. I, §2 Florida Constitution. The First District Court of Appeal has certified a Question of Great Public Importance which this court has been asked to accept, identifying the statutory fee in question as 'inadequate', *Castellanos v. Next Door Company* , 124 So. 3d 392 (Fla. 1 DCA 2013), Rev. Pending *Castellanos v. Next Door Company,* Case # SC13-2082.

But a mandatory fee schedule restricts the availability of qualified lawyers to assist individuals who have been described by the courts as "Helpless as a turtle on its back", *Davis v. Keeto, 463 So. 2d 368 (Fla. 1 DCA 1985, Neylon v. Ford Motor Co.,* 27 N.J. Super. 511, 99 A. 2d 665 (1953). The schedule also creates a situation where the fee could be wildly excessive. It also violates the Separation of Powers clause because the legislature has

invaded the province of the courts to supervise the legal profession, Art 5, §15. Under the current law, no judge, trial or appellate and no justice or court has the power or the jurisdiction to raise or lower the statutory fee 'awarded' by the Judge of Compensation claims, a member of the Executive Branch of state government! *Castellanos*, id.

Justice Richard W. Ervin spoke to a meeting of Workers' Compensation Deputy Commissioners (now called Judges of Compensation Claims) on April 7, 1986 (Appendix B with handwritten notes by Justice Ervin). Justice Ervin commented on the fairness of the scheme:

> "The greater question is whether workers' compensation is realistically fair to all concerned. Does the fact that it only provides the worker a percentage of his wage loss plus medical treatment and some supplementation in certain instances provide a sufficient "trade off" for civil law compensatory damages? Sure there is "no fault" comp liability but does this warrant lesser compensation than something closer to civil law damages. Sadowski and the 1979 Legislature think it does and argue that history and reason support only recompense for wage-loss, and that "wage loss" is all that an employer logically owes a disabled employee. Others would contend that industrial accidents justify a public policy which measures workers' compensation a "trade off" within a reasonable range of recognized civil compensatory damages". Since 2003 the loss of the inviolate right to trial by jury has been in exchange for a scheme that provides no recompense at all for permanent partial inability to earn the same or similar wages that the injured worker earned at the time of the injury".

And:

> "The courts, particularly the Appellate Courts at highest level lately have been unable to muster the constitutional courage to repel all these legislative intrusions upon the traditional rights of the average citizen "to enjoy and defend life and liberty". Often forgotten is the old axiom, "no wrong without a remedy".

The closing remarks of Justice Ervin:

> "It is axiomatic that in human affairs and institutions that if there is no progress toward betterment, they stagnate, grow corrupt and die, even the state or nation itself, and especially so where there is a callous denigration of justice, fairness, equality. Toynbee, the great English social historian points out that nineteen of the world's greatest nations passed into the dust bin of history because they were unable to cope with the challenges to human decency".(Appendix B).

> "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection, *Marbury v. Madison,* 1 Cranch 137, 163, 5 U.S. 137 (1803).

Injured workers have lost the protection of the laws.

CONCLUSION

Florida's use of the Police Power of the state to violate the inviolate right to trial by jury in exchange for the benefits of a workers' compensation scheme which has already been deemed inadequate by the Federal Government, inadequate by this court and which plainly violates the 14th Amendment to the U.S. Constitution, is egregious. WILG urges the court to find the exclusive remedy in §440.11 to be invalid.

AMICUS CERTIFICATION

Amicus Curiae states that no counsel for a party has authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity, other than the amicus curiae, its members, or its counsel, has made a monetary contribution to this brief's preparation or submission.

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that the font requirements of Rule 9.210(a) Rules of Appellate Procedure have been complied with in this Amicus Brief on this 21st day of Jan, 2014.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by e-mail this 21st day of January, 2014, to: Jason Fox, Esq., (JayfoxEsq@aol.com), Law Offices of Carlson and Meissner, co-counsel for petitioner, 250 N.Belcher Rd., Suite 102, Clearwater, FL 33765; Kimberly D. Proano, Esq. (kimberly.proano@stpete.org), Office of the City Attorney, counsel for respondent, City of St. Petersburg, P. O. Box 2842, St. Petersburg, FL 33731; Allen C. Winsor, Chief Deputy Solicitor General (allen.winsor@myfloridalegal.com) and Rachel E. Nordby, Esq., (rachel.nordby@myfloridalegal.com), co-counsel for the respondent State of Florida, Office of the Attorney General, The Capitol, PL-01, Tallahassee, FL 32399-1050; William H. Rogner, Esq., (wrogner@hrmcw.com), Hurley, Rogner, Miller, Cox, Waranch & Westcott, P.A., 1560 Orange Avenue., Suite 500, Winter Park, FL 32789; Richard W. Ervin, III, Esq., (richardervin@flappeal.com), Fox & Loquasto, P.A., 1201 Hays Street, Suite 100, Tallahassee, FL 32301; Andre M. Mura, Esq., (andre.mura@cclfirm.com), Center for Constitutional Litigation, P.C., 777 6th Street, N.W., Suite 520, Washington, DC 20001; Bill McCabe, Esq.,

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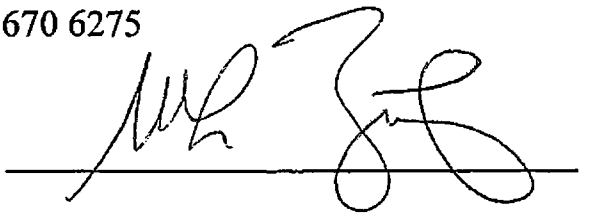
By: 

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