IN THE SUPREME COURT OF FLORIDA

DANIEL STAHL,	)	Case No.: SC15-725
	)	
Petitioner,	)	Lower Tribunal: 1D14-3077
	)	
v.	)	OJCC No.: 04-022489-GCC
	)	
HIALEAH HOSPITAL and SEDGWICK CLAIMS MANAGEMENT SERVICES,	)	
	)	
Respondents.	)	

JOINT BRIEF OF FLORIDA INSURANCE COUNCIL; AMERICAN INSURANCE ASSOCIATION; NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES; and PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA AS AMICI CURIAE IN SUPPORT OF THE RESPONDENTS

Rayford H. Taylor
Florida Bar No. 184768
GILSON ATHANS P.C.
980 Hammond Drive
Suite 800
Atlanta, GA 30328
Telephone: (770) 512-0300
rtaylor@gilsonathans.com
Counsel for Amici Curiae

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INTEREST OF THE AMICI

The Amici represent a broad spectrum of insurance companies whose interests will be directly and materially affected by the outcome of the instant matter. The industries and businesses Amici insure are involved in contested or litigated workers' compensation claims, as well as legislative and regulatory issues surrounding the operation of the workers' compensation system in Florida. The Amici have been permitted to appear as amicus curiae in numerous appeals filed in Florida and have participated in critical matters before the Florida Legislature, the executive branch, regulatory agencies and courts in Florida.

The Amici have a significant interest in the issues before this Court. The ruling in this case will have a significant impact on potentially thousands of pending and future cases. The Amici are insurance companies which can and do provide workers compensation insurance coverage and handle claims in Florida. They have an interest in cases interpreting Chapter 440, Florida Statutes, such that the system does not promote unnecessary and protracted litigation, and its members' due process rights are protected.

PRELIMINARY STATEMENT

Daniel Stahl will be referred to as "Petitioner" or "Claimant." Hialeah Hospital and Sedgwick Claims Management Services will be referred to as "Respondents" or "Employer/Carrier." The various entities supporting the Petitioner will be referred to as "Amici."

SUMMARY OF ARGUMENT

Any constitutional challenge or analysis of Chapter 440, Florida Statutes, must be conducted pursuant to the "rational basis" standard. Under such a standard, a statute must be held constitutional if there is any rational reason, theoretical or otherwise, for the Florida Legislature's adoption or amendment of the statute.

The Florida Legislature in 2003 concluded Florida's workers' compensation system was in a crisis and needed significant reform. The 2003 reforms were comprehensive, addressed nearly every aspect of the system and affected nearly every participant in the system. Since adoption of the 2003 reforms, Florida's workers' compensation system has remained relatively stable and resulted in a steady decrease in premiums and improvement in its overall health.

Petitioner's request that this Court effectively "legislate" a new statute is not supported by any evidence. The argument the current statute is no longer needed because the "alleged crisis" is over is not supported by the record or this Court's prior decisions addressing constitutional challenges to statutory reform.

Florida's current workers' compensation statute is a comprehensive and reasonable alternative to the tort system, and does not violate the Petitioner's Equal Protection, Due Process or Access to Court's rights. As such, the Petitioner's challenge should be rejected and the current statute upheld.

ISSUE I

CHAPTER 440 FLA. STAT. (2003) IS CONSTITUTIONAL AND DOES NOT VIOLATE EQUAL PROTECTION, DUE PROCESS OR ACCESS TO COURTS.

a. Preface

Amicus Curiae will not seek to reargue points of law and arguments asserted by the Respondents. Both the Petitioner and Amici supporting the Petitioner present a wide variety of assertions about how Chapter 440 is defective, inadequate or unconstitutional. However, Amici respectfully assert the real issue is whether the statutory scheme constitutes a reasonable substitute for the tort system.

b. Standard of Review

The standard of review is de novo since the appeal concerns various constitutional challenges to the statute. See, Dixon v. City of Jacksonville, 774 So. 2d 763 (Fla. 1st DCA 2000).

"[I]n the absence of an impingement upon constitutional rights. . . an act of the legislature is presumed to be constitutional. The burden is on the challenger to demonstrate that the law does not bear a reasonable relationship to a proper state objective." State v. Bussey, 463 So.2d 1141, 1144 (Fla. 1985). See also Capital City Country Club, Inc. v. Tucker, 613 So.2d 448, 452 (Fla. 1993).

c. Level of Scrutiny

Contrary to Petitioner's assertions, the level of scrutiny to be applied in determining the validity of any workers' compensation statute is the "rational basis" test. Sasso v. Ram Property Management, 452 So.2d 932 (Fla. 1984) and Harrell v. Florida Construction Specialists, 834 So.2d 352 (Fla. 1st DCA 2003).

Petitioner and Amici ask this Court to apply a strict scrutiny test because they contend he is a member of a Suspect Class because he is a workers' compensation claimant. This Court has rejected such an assertion. See Acton v. Ft. Lauderdale Hospital, 440 So.2d 1282 (Fla. 1983).

No court has held an injured employee is automatically a member of a suspect class, so the request for strict scrutiny review should be rejected. Lucas v. Englewood Community Hospital, 963 So.2d 894, 895 (Fla. 1st DCA 2007) (disparate treatment between represented and unrepresented claimants does not involve a suspect class); Winn Dixie v. Resnikoff, 659 So. 2d 1297, 1299 (Fla. 1st DCA 1995) (injured workers are not a suspect class, so heightened scrutiny not required); Sasso v. Ram Property Mgmt., 431 So.2d 204, 221 (Fla. 1st DCA 1983) (an employee's age did not create a suspect class for purposes of equal protection under Florida's Constitution Equal Protection Class); Khoury v. Carvel Homes South, Inc., 403 So.2d 1043, 1045 (Fla. 1st DCA 1981) (requirement that attorney get judge's approval to disburse an attorney's fee does not implicate suspect class).

Petitioner's argument the statute should be reviewed under a strict scrutiny test in reliance upon North Fla. Women's Health & Counseling Svcs. v. State, 866 So.2d 612 (Fla. 2003) was rejected by the First District Court of Appeal in Berman v. Dillard's, 91 So.3d 875 (Fla. 1st DCA 2012), reh. denied, rev. denied, 108 So.3d 654 (Fla. 2012). The First District noted Women's Health involved the right of privacy, and did not require application of strict scrutiny to all individual rights, and relied upon a long line of decisions which held the workers' compensation statute was to be reviewed pursuant to a rational basis standard. Id. at 877 & 878.

d. Due Process

A due process claim is analyzed under a "rational basis" standard. See Lite v. State, 617 So.2d 1058, 1059 (Fla. 1993). "The test for determining whether a statute ... violates substantive due process is whether it bears a reasonable relationship to a permissible legislative objective and is not discriminatory, arbitrary, or oppressive." Ilkanic v. City of Ft. Lauderdale, 705 So.2d 1371, 1372 (Fla. 1998). Under a rational basis review, the challenged law must be sustained if the party challenging the law does not meet the burden of showing "there is no conceivable factual predicate which would rationally support the classification under attack." Fla. High Sch. Activities Assn., Inc. v. Thomas, 434 So.2d 306, 308 (Fla. 1983).

e. Equal Protection

To show a violation of Florida's Equal Protection provision under the rational basis standard, a plaintiff must show: (1) the plaintiff was treated differently under the law from similarly situated persons; (2) the statute intentionally discriminates against the plaintiff; and (3) there was no rational basis for the discrimination. This burden is a heavy one with any doubts being resolved in favor of the statute's constitutionality. The statute must be upheld if there is any conceivable set of facts or plausible reason to justify it, regardless of whether the Florida Legislature actually relied on such facts or reason. Samples v. Fla. Birth-Related Neurological, 40 So.3d 18, 23 (Fla. 5th DCA 2010) approved sub nom. Samples v. Fla. Birth-Related Neurological Injury Comp. Assn., 114 So.3d 912 (Fla. 2013).

Because neither a suspect class nor a fundamental right is implicated here, this Court should review the equal protection claim under the rational basis test. To be entitled to relief under the rational basis test, a challenger must show the statutory provision does not "bear some rational relationship to legitimate state purposes." See, Westerheide v. State, 813 So.2d 93, 110 (Fla. 2002).

It is not the Court's task to determine whether the legislation achieves its intended goal in the best manner possible, but only whether the goal is legitimate and the means to achieve it are rationally related to that goal. Loxahatchee River

Environmental Control Dist. v. School Board of Palm Beach County, 496 So.2d 930, 938 (Fla. 4th DCA 1986).

The Florida Legislature has the final word on declarations of public policy, and the courts are bound to give great weight to legislative determinations of fact. Such legislative determinations of public purpose and facts are presumed correct and entitled to deference, unless proven to be clearly erroneous. Univ. of Miami v. Echarte, 618 So.2d 189, 196 (Fla. 1993).

The Petitioner and Amici have asserted that altering the indemnity scheme in 2003 was not necessary because they allege there were other alternatives to that. However, this Court stated in Echarte that when determining whether no alternative means exist to meet the public necessity, the plan as a whole, rather than one specific part of the plan, must be considered. Id. at 197. This Court concluded the Legislature's adoption of the comprehensive reforms combined to strengthen regulation of the medical profession were appropriate, and the various provisions challenged in that case were upheld. Id.

Based upon this Court's prior rulings, any review of Chapter 440, Fla. Stat. (2003) is to be conducted utilizing a rational basis standard. Under that standard, the revision to the prior statute must be considered in the context of what the Florida Legislature viewed as a comprehensive approach to addressing the systemic deficiencies which it found to have existed in the prior statute.

Chapter 440 Fla. Stat (2003) does not violate the Petitioner's Due Process, Equal Protection or Access to Courts rights and should be upheld on that basis alone. The statute, when considered as a whole, meets the alternative means test and the legislative findings are entitled to great deference.

Based upon this Court's prior decisions and for the reasons discussed in Point II of this brief, Chapter 440 Fla. Stat. (2003), as a whole, constitutes a valid alternative to the tort system. This Court should uphold the current statute.

ISSUE II

CHAPTER 440 FLA. STAT. (2003) IS A COMPREHENSIVE ALTERNATIVE TO THE TORT SYSTEM, AND SHOULD BE HELD CONSTITUTIONAL.

Since its adoption in 1935, Florida's Workers' Compensation Act has been a self-executing no-fault system whereby injured employees receive disability and medical benefits without regard to their personal fault or negligence. It has always been a comprehensive alternative to Florida's tort system so that employees do not have to sue their employers for benefits and be personally responsible for medical bills and expenses until the conclusion of litigation. Florida's workers' compensation system is fully funded by employers and insurance carriers through workers' compensation insurance premiums and assessments. Florida's employees are not assessed or required to contribute to the system, in order to be eligible for benefits following a compensable injury.

Section 440.015 Fla. Stat. (2003) sets forth the Florida Legislature's intent to have a worker's compensation system which provides efficient delivery of medical and indemnity benefits to injured workers and return them to gainful employment at a reasonable cost to employers.

The Florida Legislature, in 2003, was faced with the fact the then current law was not meeting the goal of providing benefits in an affordable system. The reforms adopted in 1990 and 1993 were not working as anticipated, and were

driving up costs and premiums. In 2000, Florida had the highest premiums in the country, and in 2002, Florida was ranked second behind California. See Oregon Workers' Compensation Premium Policy Calendar Year 2002, p. 3. (Report itself is available at library.state.or.us/repository/2011/201101241210061/2002.pdf) Following the 2003 reforms, Florida was 29th in 2012 and 28th in 2014. See Oregon Workers' Compensation Premium Rate Ranking Calendar Year 2014, p. 4. (www.cbs.state.or.us/external/dir/wc_cost/files/report_summary.pdf)

The Florida Legislature had evidence in 2003 that insurance carriers were not issuing new policies, were not renewing policies, and were tightening their underwriting requirements in response to a down turn in the economy and uncertainties in the marketplace. Insurers were reported to be restricting the types of coverage they would write and increased rates were adversely affecting the entire system. See Fla. S.B. 50A Staff Analysis, pp. 9, 18 and 19 (May 2003) ("Senate Staff Analysis"). (Report itself is available at http://archive.flsenate.gov/data/session/2003A/Senate/bills/analysis/pdf/2003s0050A.bi.pdf.)

There was evidence Florida was experiencing permanent total disability claims at a rate five times higher than the national average, medical costs for permanent partial disability claims were nearly two times higher than the national average, and medical costs for temporary total medical disability claims were 80%

higher than the national average. See Senate Staff Analysis, p. 7. Faced with these factors, the Florida Legislature engaged in a comprehensive reform of the statute.

The changes adopted by the Florida Legislature were designed to accelerate the claims process, streamline proceedings, address medical fee schedules, adopt changes to indemnity and medical benefits, reduce the various cost drivers in the system, and increase the potential for additional workers' compensation insurance (both availability and price) for Florida employers and employees. See, Senate Staff Analysis, pp. 14-25.

Petitioner and various amici supporting him have focused their attention on the changes in the indemnity structure for employees as well as other statutory changes since 1976. However, the Florida Legislature also imposed burdens and increased oversight on employers and insurers over the years, including the 2003 law. Those additional burdens on employers and carriers were designed to improve the system for the benefit of employees.

Petitioner has asked this Court essentially to "roll back" the law to that in existence in 1990. By 2003, the evidence was clear the 1990 and 1993 reforms had resulted in a significant increase in rates, litigation, increased costs and unavailability of insurance in Florida. There is not sufficient space in this brief to discuss in detail all the medical, indemnity and other benefits available to claimants in the workers' compensation system. However, the 2003 legislation

resulted in significant improvements to meet the legislative intent as articulated in Section 440.015 Fla. Stat. (2003).

Those legislative changes were designed to promote the prompt delivery of benefits and accelerate the resolution of disputes. To meet those goals, the following provisions were adopted:

> (a) Section 440.1025 Fla. Stat. was amended to provide for an employer to receive a premium discount pursuant to Section 627.0915 Fla. Stat. for maintaining a workplace safety program. The statute also required the Division of Workers' Compensation to publicize the availability of free safety consultations and resources to employers.
>
> (b) Section 440.107 Fla. Stat. was amended to give the Department of Financial Services increased authority to investigate and punish any employer not properly securing insurance coverage, along with increased fines and punishment for failure to comply with the statute.
>
> (c) Section 440.13 Fla. Stat. was revised. to clarify medical treatment should follow established parameters and protocols. A provision was added to allow the parties to agree upon a physician to conduct a "consensus independent medical examination" without altering the employee's or the employer's right to obtain their own independent medical evaluations.
>
> (d) Section 440.16 Fla. Stat. was amended to increase the maximum funeral expenses and death benefits payable on behalf of an employee who dies as a result of a compensable accident.
>
> (e) Section 440.185 Fla. Stat. was amended to increase fines on employers or carriers that fail to comply with the statutory requirements for filing certain forms or reports.

(f) Section 440.20 Fla. Stat. was amended to increase fines on employers or carriers that fail to timely pay medical bills and indemnity benefits.

(g) Section 440.25 Fla. Stat. was amended to clarify that mediation conferences are to be held no later than 130 days after the filing of a Petition for Benefits.

(h) Section 440.38(7) Fla. Stat. was created to require all employers performing services in Florida to have a workers' compensation policies which complied with Florida law and utilized Florida rates, rather than allowing employers to utilize policies issued in other states.

(i) Section 440.525 Fla. Stat. was amended to significantly increase fines on carriers found to have a pattern and practice of not complying with Florida law. Those fines could reach up to $100,000.

The Office of the Judge of Compensation Claims in the Division of Administrative Hearings ("OJCC") prepares an Annual Report on Florida's Workers' Compensation System pursuant to Section 440.45(5) Fla. Stat. ("OJCC Annual Report"). Portions of the 2014-2015 Annual Report are attached as Appendix A to this brief. (The complete report is available at http://www.jcc.state.fl.us/jcc/files/reports/2015AnnualReport/Index.html)

The number of Petitions for Benefits ("PFB") has steadily declined since adoption of the 2003 revisions. PFB filings in 2002-2003 FY were the highest ever at 151,021 (A-12). The PFBs filed in that year reflected a thirty percent (30.2%) increase over the prior year. PFB filings increased over sixty-three percent

(63.47%) between 1998-1999 FY and 2002-2003 FY. The PFBs filed in 2002-2003 FY reflected a 221.75% over filings in 1992-1993 FY (A-13). The decrease in PFB filings reflects a return to levels that existed prior to the 2002-2003 FY. Even with the decrease, the number of PFB filings for 2014-2015 FY still exceeded the 1995-1996 FY filings (A-13). In short, injured employees are filing claims following their accidents and pursuing their rights at essentially the rate they did some seven years prior to adoption of the 2003 reforms.

It has been asserted the 2003 legislation created a system that is both inadequate and difficult for injured employees to obtain counsel because of the complexity of the system and the limited benefits. That being the case, there should have been an increase in the number of PFBs filed by employees without counsel. Instead, the number of "pro se" cases as a percentage of PFBs filed since 2002-2003 reflect a steady and consistent decrease. In fact, the percentage of PFBs filed as "pro se" claims was lower in 2014-2015 than in 2002-2003, prior to the 2003 reforms becoming effective. In fact, it was less than half of what was filed in 2002-2003 (A-16 & 17).

Not only is the entire cost of the administration of Chapter 440 funded by employer and carrier assessments, the system cost of adjudicating claims is below that which would be charged if an injury were litigated as a tort case in Florida's civil court system. The OJCC budget, when viewed in the context of PFBs,

equaled a per claim cost of $281. That is less than the filing fees Florida plaintiffs are charged in civil cases (A-2).

Almost all PFBs are required to proceed to mediation prior to going to a hearing. Section 440.25(1) Fla. Stat. requires a mediation be conducted within 130 days of the filing of a PFB. The OJCC report notes mediators complied with that deadline 100% of the time between 2008-2009 and 2014-2015. Furthermore, the average number of days to mediation was 84 days (A-41). That is in comparison to 2005-2006, when the statewide average was 212 days.

Mediations resulted in the resolution of "some issues" approximately 64.9% of the time in 2014-2015. In addition, 29.97% of 2014-2015 mediations resulted in a complete settlement (A-26). That means slightly less than two thirds of all claims are resolved to some extent and thirty percent of all claims resulted in a complete settlement in less than 130 days of the filing of a PFB.

Section 440.25(4)(b)&(d) Fla. Stat. mandates cases proceed to trial within 90 days after a mediation, but no more than 210 days of the filing of a PFB. The statewide average time for proceeding to trial following the filing of a PFB was 121 days in 2014-2015 (A-42). The average number of days from trial to entry of a final order was 11 days (A-43).

The workers' compensation system provides timely resolution of claims by injured workers through a system which does not cost employees any funds to

operate and without regard to their fault in causing the accident. While Petitioner and Amici contend the system since 2003 is no longer the "grand bargain," the truth is that claims are proceeding efficiently and disputes are being resolved more promptly than ever.

The OJCC's report identifies "new cases" as those in which a PFB has been filed for the first time. The report states "new cases" are more indicative of the rate injured employees are litigating their injuries rather than the raw number of PFBs being filed in any given year, because multiple petitions can be filed on behalf of an employee (A-14).

While the number of "new cases" has decreased since 2003, the number of "new cases" filed has consistently been a larger percentage of the PFBs filed in a specific year. In short, while the overall volume of claims has decreased, the percentage of those claims that are "new" is an increasingly larger percentage of the total cases (A-15). It appears litigation involving new claims remains reasonably consistent, and new or initial claims are continuing to be filed on behalf of injured employees. The percentage of all PFBs filed which are "new cases" has continued to increase each year since 2001-2002. In FY 2001-2002 "new cases" were approximately twenty-nine percent (29.4%) of all PFBs filed. That percentage was slightly less than fifty percent (49.8%) in 2014-2015 FY (A-15).

The fact the number of overall claims has been in a decreasing pattern is not surprising when viewed in the context of the rest of the country. The National Council on Compensation Insurance ("NCCI") made a presentation at an Advisory Forum on October 3, 2013. Portions of that presentation are attached as Appendix B. The data compiled by NCCI reflects countrywide lost-time injury frequency had decreased by a cumulative fifty-five percent (55.4%) between 1991 and 2011 (B-2). Florida's lost-time frequency decreased thirty-eight percent (38.0%) between 1997 and 2011 (B-3). Even with the decline in frequency, Florida's claim frequency per 100,000 workers was higher than Alabama, Georgia, North Carolina and South Carolina (B-4).

The Petitioner and Amici supporting his position essentially base their assertions the current law is inadequate utilizing as their major focus what they claim are reduced indemnity benefits. There are multiple suggestions to this Court to return the law to some earlier date. To do that, this Court would have to reject its holding in Thompson v. Florida Industrial Commission, 224 So.2d 286, 287 (Fla. 1969), in which it recognized that establishment or alteration of indemnity benefits available to employees must be addressed by the Florida Legislature, and not this Court.

The Petitioner and Amici supporting his petition do not address the potential effects of reversion back to some prior version of Chapter 440. To do so would

essentially result in the judicial repeal of the statute adopted in 2003, contained in a 111-page bill which constituted a comprehensive reform of almost every aspect of the system. See, laws.flrules.org/2003/412.

The 2003 legislation did address indemnity benefits, but it also significantly altered the application of insurance in the construction industry to increase coverage for individuals working in that industry; increased enforcement of stop-work orders; increased penalties on employers and carriers for failure to comply with the statute; granted the Department of Financial Services increased powers related to both enforcement and compliance; provided for increased penalties for late payment of benefits; and expanded requirements for insurance coverage in Florida.

If any particular statute being advocated by the Petitioner or the Amici were adopted by this Court, the adverse effects would be significant. This Court's decision in Murray v. Mariner Health, 994 So.2d 1051 (Fla. 2008) resulted in NCCI estimating an increase of 18.6% in premiums over the following two years solely as a result of that decision. NCCI submitted a rate filing for an 8.9% increase for the first year following the Murray decision. That proposed rate increase is attached as Appendix C. A rate increase of 6.4% was ultimately approved by the Office of Insurance Regulation ("OIR"). See Appendix D. The Florida Legislature amended Section 440.34 Fla. Stat. in 2009. The OIR

subsequently approved the next rate filing to reflect a 6% rate reduction following the legislators' clarification of the statute. See Appendix D. The effects of returning to some prior version of Florida law cannot be known for certain, but it would be logical any future rate filing to be such as to return Florida to where it was prior to the 2003 reforms.

Petitioner and Amici ask this Court to revert back to a prior version of the statute, which they contend was better than the 2003 statute. That request focuses on provisions they want back in the law and completely ignores the 2003 reforms were designed to work as a comprehensive and interlocking solution to the high premium, low availability of workers' compensation coverage in Florida, and the other issues identified by the Florida Legislature in 2003. Such a request also ignores the fact employers and carriers were required to make changes in the way they operated within the system as well as their increased responsibilities within the system.

The Petitioner asks this Court to overturn the 2003 statute because the "alleged crisis" is over. His reliance upon Estate of McCall v. United States, 134 So.3d 894 (Fla. 2014) is misplaced. This Court applied the rational basis test and noted the statute limiting non-economic damages arose in the context of a traditional fault based system. The Court specifically stated its decision and

analysis did not apply to statutorily-created no-fault systems because they are completely separate approaches and systems. Id.

The Petitioner here has not presented any evidence in support of his contention the statute was or has become "arbitrary or irrational legislation." He did not present any such data or proof to the JCC below or as part of this appeal. The fact insurance premiums are less now than prior to the 2003 statutory changes do not mandate the challenged statutes be stricken. It is the Petitioner's burden to prove the statute fails the "rational basis" test by establishing the law does not bear a reasonable relationship to its objectives. Mere allegations are not sufficient to meet that burden.

The decision in McCall does not mandate this Court decide the 2003 amendments are no longer relevant or needed, and discard them en mass. McCall resulted in the removal of a single statutory provision held to be unconstitutional. That is a far cry from the requests by Petitioner and Amici the 2003 amendments be stricken based on its assertion all of those changes are no longer necessary. Petitioner's request that this Court "legislate" a return to a prior statute should be rejected and the 2003 statute be affirmed as constitutional.

CONCLUSION

Based upon the foregoing citation of authorities and arguments, Amicus respectfully requests this Court reject the various arguments advanced by the Petitioner and Amici to essentially rewrite and amend the express statutory language and provisions of Chapter Section 440 Fla. Stat. (2003) to create a statute which they contend will return Florida's workers' compensation law to a "grand bargain."

To adopt such a result, this Court would have to declare the statute to be unconstitutional and then essentially legislate some altered version of the statute in lieu of the Florida Legislature's adoption of the various revisions to Chapter 440 in 2003. This Court has historically rejected such requests and Petitioner has not provided any constitutional basis or empirical evidence that such a drastic result is required here.

Respectfully submitted,

Rayford H. Taylor
Florida Bar No. 184768
GILSON ATHANS P.C.
980 Hammond Drive
Suite 800
Atlanta, GA 30328
Telephone: (770) 512-0300

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of January, 2016, a copy was submitted by electronic filing to the Florida Supreme Court, Clerk's Office, 500 South Duval Street, Tallahassee, FL, 32399 and a true and correct of the foregoing Amicus Brief has been served by U.S. Mail to:

Mark L. Zientz, Esq. Mark L. Zientz, P.A. Suite 1619, Two Datran Center 930 South Dadeland Miami, FL 33156 (mark.zientz@mzlaw.com) ***Counsel for Petitioner***	Kenneth B. Bell, Esq. Gunster, Yoakley & Stewart, P.A. 215 S. Monroe Street, Suite 601 Tallahassee, FL 32301 (kbell@gunster.com) ***Counsel for Respondents***
Michael J. Winer, Esq. Law Office of Michael J. Winer, P.A. 110 North 11th Street, 2nd Floor Tampa, FL 33602 (mike@mikewinerlaw.com) ***Counsel for Florida Justice Association***	Kimberly J. Fernandes, Esq. Kelley Kronenberg Gilmartin Suite 5, 201 S. Monroe Street Tallahassee, FL 32301-1855 (kfernandes@kelleykronenberg.com) ***Counsel for Respondents***
Geoffrey Bichler, Esq. Bichler, Kelley, Oliver & Longo, PLLC 541 S. Orlando Avenue, Suite 310 Maitland, FL 32751 (geoff@bichlerlaw.com) ***Counsel for Fraternal Order of Police, Police Benevolent Association, and International Union of Police Associations and Florida Association of State Troopers***	Gerald A. Rosenthal, Esq. Rosenthal, Levy, Simon & Ryles Sixth Floor, 1401 Forum Way West Palm Beach, FL 33401 (grosenthal@rosenthallevy.com) ***Counsel for Workers' Insurance Law & Advocacy Group***

Richard B. Sicking, Esq. Touby, Chait & Sicking, P.L. 2030 South Douglas Road Suite 217 Coral Gables, FL 33134 (ejcc3@fortheworkers.com) ***Counsel for Florida Professional Firefighters, Inc.***	Bill McCabe, Esq. 1250 S. Highway 17/92, Suite 210 Longwood, FL 32750 (billjmccabe@earthlink.net) ***Counsel for Florida Workers Advocates***
Louis B. Pfeffer, Esq. Suite 205 250 South Central Boulevard Jupiter, FL 33458 (lpfeffer@pfefferlaw.com) ***Counsel for National Employment Lawyers Association, Florida Chapter***	Kimberly A. Hill, Esq. Kimberly A. Hill, PC 821 S.E. 7th Street Fort Lauderdale, FL 33301 (kimberlyhillappellatelaw@gmail.com) ***Counsel for VOICES, Inc.***
William W. Large, Esq. Florida Justice Reform Institute 210 S. Monroe Street Tallahassee, FL 32301 (william@fljustice.org) ***Counsel for Florida Justice Reform Institute***	William H. Rogner, Esq. 1560 Orange Avenue, Suite 500 Winter Park, FL 32789 (wrogner@hrmcw.com) ***Counsel for Florida Association of Insurance Agents and American Association of Independent Claims Professionals***
Maria E. Abate, Esq. Colodny, Fass, Talenfeld, Karlinsky, Abate & Webb, P.A. Floor 23, 100 SE 3rd Avenue Ft. Lauderdale, FL 33394-0002 (mabate@cftlaw.com) ***Counsel for Property Casualty Insurers Association of America***	James N. McConnaughhay, Esq. McConnaughhay, Coonrod, Pope, Weaver, Stern & Thomas, P.A. Suite 200, 1709 Hermitage Boulevard Tallahassee, FL 32308 (jnmcconnaughhay@mcconnaughhay.com) ***Counsel for Associated Industries of Florida, et al.***
Katherine E. Giddings, Esq. Akerman LLP Suite 1200, 106 E. College Avenue Tallahassee, FL 32301 (katherine.giddings@akerman.com) ***Counsel for Florida Chamber of Commerce***	Roy C. Young, Esq. Young van Assenderp, P.A. 216 S. Monroe Street Tallahassee, FL 32301 (ryoung@yvlaw.com) ***Counsel for Florida Chamber of Commerce***

CERTIFICATE OF TYPE FACE COMPLIANCE

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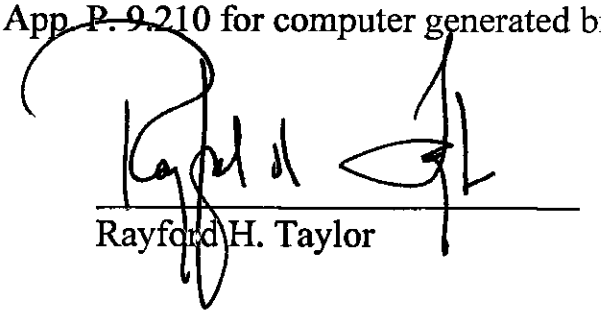

Rayford H. Taylor

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