IN THE SUPREME COURT OF FLORIDA

Daniel Stahl,

Petitioner,

vs.

Hialeah Hospital and Sedgwick Claims Management Services,

Respondents
_____/

DOCKET NO: SC15-725

LOWER TRIBUNAL NO: 1D14-3077

OJCC NO: 04-022489

D/A: 12/8/2003

***AMICUS CURIAE* BRIEF FOR THE FLORIDA ASSOCIATION OF INSURANCE AGENTS AND AMERICAN ASSOCIATION OF INDEPENDENT CLAIMS PROFESSIONALS**

William H. Rogner, Esquire
1560 Orange Avenue
Suite 500
Winter Park, FL 32789
Counsel for *Amici*
Florida Bar Number: 0857629

TABLE OF CONTENTS

Page

TABLE OF CITATIONS

STATUTES

SUPREME COURT OF FLORIDA

FIRST DISTRICT COURT OF APPEAL

PRELIMINARY STATEMENT

Petitioner, Daniel Stahl, is referred to as “Petitioner.” Respondents, Hialeah Hospital and Sedgwick Claims Management Services, are referred to as “Respondents.” The Judge of Compensation Claims is abbreviated "JCC."

Average weekly wage is abbreviated "AWW." Maximum medical improvement is abbreviated "MMI." Impairment benefits are abbreviated “IB’s.”

The letters “IB” followed by the applicable page number refer to Petitioner’s Initial Brief.

CONCISE STATEMENT OF THE IDENTITY OF THE *AMICI CURIAE* AND THEIR INTEREST IN THE CASE

The Florida Association of Insurance Agents (FAIA) is a non-profit state trade association of insurance agencies throughout Florida affiliated with the Independent Insurance Agents and Brokers of America, Inc. FAIA serves as a central source of information for more than two thousand member agencies and over twenty thousand insurance agents.

The American Association of Independent Claims Professionals (AAICP) is the leading national Association representing the interests of independent claims professionals. The AAICP’s Mission is to foster a legal and regulatory environment that enables third-party administrators and independent adjustors to

meet their responsibilities to claimants, claim funders, and the claims community.

This case affects the tripartite relationship between an insured, an insurance agent, and a workers' compensation carrier. The resolution of this case will have important ramifications for Florida insurance agencies who are the constituents of FAIA. Moreover, the case presents a crucial issue involving the navigation and adjusting of claims that are central to the work performed by AAICP's Member organizations. The resolution of this case will significantly impact claims adjusters and other claims professionals in the state of Florida who are members of AAICP.

SUMMARY OF ARGUMENT

Petitioner's facial challenge fails because he has not (and cannot) establish that no set of circumstances exists under which the statute is valid. The core of his argument is his assertion that impairment benefits ("IB's") are an inadequate replacement for wage-loss benefits. While Petitioner may have received diminished compensation (the record is unclear), many other injured workers receive enhanced compensation.

Petitioner also asserts that strict scrutiny applies. He is mistaken. The case involves a workers' compensation statute, which is reviewed using the rational basis test. Only with a suspect class or a fundamental right do courts apply strict scrutiny. As neither is implicated here, the rational basis test applies.

Petitioner has no standing to challenge the $10.00 copay, which was not litigated below or adjudicated in the Order appealed. Moreover, he relies on a patently insufficient record to support his broad challenge to the whole of Chapter 440. He not only lacks standing, but also failed to preserve alleged error.

Petitioner's argument that the 1970 elimination of opt-out renders the statute unconstitutional is specious. Such elimination represented an expansion of coverage under the Act, something the Legislature has done many times both before and after 1968. The Act evolves over time as Florida grows and changes,

and the Legislature is permitted to expand or contract the scope of coverage under the Act.

Petitioner's true goal is to invalidate the most important aspect of the workers' compensation law (at least for employers), which is immunity from suit. Petitioner envisions an Act that is mandatory for employers (thus providing guaranteed recovery at great cost to the employer even where the employer's negligence did not cause the injury), but optional for employees (allowing them to sue their employers when it suits them).

Petitioner suggests that Part II of the workers compensation policy would protect employers, thereby making the evisceration of immunity more palatable. Notwithstanding the fact that Part II usually has modest limits, and ignoring that the tort system is unwieldy and expensive instead of self-executing and cost-effective, Part II *excludes* coverage for injuries otherwise covered by Act. Petitioner, if successful, would imperil the entirety of the workers' compensation act, clog the courts with costly lawsuits, and weaken Florida's economy. His efforts should be rebuked.

ISSUE PRESENTED

WHETHER THE FLORIDA WORKERS' COMPENSATION LAW, CHAPTER 440.01 ET. SEQ. IS FACIALLY UNCONSTITUTIONAL BECAUSE IT DENIES SUBSTANTIVE DUE PROCESS IN VIOLATION OF THE 14TH AMENDMENT TO THE U.S. CONSTITUTION AND DENIES ACCESS TO COURTS IN VIOLATION OF ART. I, SECTION 21 OF THE FLORIDA CONSTITUTION AND VIOLATES THE INVIOLATE RIGHT TO TRIAL BY JURY GUARANTEED BY ART. I, SECTION 22 OF THE FLORIDA CONSTITUTION.

AMICI'S ARGUMENT

THE FLORIDA WORKERS COMPENSATION ACT, WHICH REMAINS A SELF-EXECUTING SYSTEM THAT COMPENSATES INJURED WORKERS IRRESPECTIVE OF FAULT WHILE PROVIDING EMPLOYERS WITH IMMUNITY FROM SUIT, REMAINS A COMPREHENSIVE AND CONSTITUTIONALLY SOUND ALTERNATIVE TO TORT LITIGATION.

A. Petitioner's facial challenge fails because he has not (and cannot) establish that no set of circumstances exists under which the statute would be valid.

Petitioner's issue statement is plain. He alleges that the entirety of the workers' compensation law (the "Act") is facially unconstitutional. Therefore, his burden is high. "[F]acially unconstitutional means that no set of circumstances exists under which the statute would be valid. See *State v. Bales*, 343 So.2d 9, 11 (Fla. 1977); *Cashatt v. State*, 873 So.2d 430, 434 (Fla. 1st DCA 2004)." *Fla. Dep't of Revenue v. City of Gainesville*, 918 So.2d 250 (Fla. 2005).

The JCC ruled only that Petitioner had no entitlement to "Permanent Partial Disability Benefits." The core of his argument is that the IB's to which he was entitled were an inadequate replacement for the wage-loss benefits he would have been entitled to under previous iterations of the Act. (IB at 23). Even assuming that his assertion has legal relevance, his argument fails since many workers receive *enhanced* compensation under current law.

Impairment benefits are paid even where an injured worker returns to work at his pre-injury wage, while wage-loss benefits were not. Thus, one who suffers an impairment, but who returns to work at his pre-injury wage, receives greater compensation under current law than he would have received when wage-loss benefits were payable. While Petitioner might have received less (the record is unclear), others receive more, thereby satisfying the requirement that "circumstances exist under which the statute would be valid."

B. The rational basis test applies.

The issue adjudicated below addressed a claim for permanent partial disability benefits. Workers' compensation statutes addressing compensation for disability are reviewed using the rational basis test. See *Herrera v. Atlantic Interior Const.*, 772 So.2d 587, 588 (Fla. 1st DCA 2000) ("The claimant's equal protection argument is based principally upon the assertion that a heightened scrutiny test,

rather than the rational basis test, must be applied because the ADA 'has afforded disabled people the status of a protected class.' We rejected this argument in *Winn Dixie v. Resnikoff*, 659 So.2d 1297 (Fla. 1st DCA 1995), and we see no reason to revisit that decision.").

Petitioner claims that all injured workers have a "physical disability" and are therefore subject to Art. I Section 2 of the Florida Constitution. (IB at 11). He is wrong. Most injured workers are not disabled, either totally or partially. The most common claim is the "medical-only" claim, which involves medical treatment, but no lost time from work. [1] Even for those who miss time, an eventual return to full employment is by far the most common result. Petitioner's claim that all injured workers suffer "physical disability" is both wholly unsupported by the record and flatly untrue.

Petitioner's argument therefore rests upon a flawed premise. He claims, "the workers' compensation law affects a suspect class, the physically disabled," and thus argues the "test is strict scrutiny." (IB at 13). He cites two cases, *De Ayala v. Florida Farm Bureau Casualty Ins. Co.*, 543 So.2d 204 (Fla. 1989) and *N. Fla.*

---

[1] In 2013, for example, less than ten percent of covered work injuries resulted in lost time from work.
http://www.myfloridacfo.com/Division/WC/PublicationsFormsManualsReports/Reports/2014-DWC-Results-and-Accomplishments.pdf

Women's Health & Counseling Servs. v. State, 866 So.2d 612 (Fla. 2003). Neither supports him.

De Ayala addressed alienage, a suspect class:

> "The classifier contained in section 440.16(7) involves alienage, one of the traditional suspect classes." 543 So.2d at 207.

N. Fla. Women's Health addressed abortion rights, which implicate the fundamental right of privacy:

> "[I]t is settled in Florida that each of the personal liberties enumerated in the Declaration of Rights is a fundamental right. Legislation intruding on a fundamental right is presumptively invalid and, where the right of privacy is concerned, must meet the 'strict' scrutiny standard." 866 So.2d at 635.

The instant case addresses neither alienage nor privacy rights. Instead, it addresses Petitioner's argument that current compensation levels are inadequate. This case does not address a suspect class or a fundamental right so strict scrutiny does not apply.

Workers' compensation laws are rarely reviewed using strict scrutiny. For example, age-based statutes are subject to rational basis review. See *Berman v. Dillard's*, 91 So.3d 875, 877 (Fla. 1st DCA 2012); *Sasso v. Ram Prop. Mgmt.*, 452 So.2d 932, 934 (Fla.1984) ("We agree with Judge Ervin that there is no basis to

conclude that an elevated standard of review is appropriate in this case. The 'rational basis' test is the proper standard of review.").

The disparate treatment of mental and physical injuries is reviewed using the rational basis test. See *Hensley v. Punta Gorda*, 686 So.2d 724 (Fla. 1st DCA 1997) ("Workers' Compensation Act exclusion on recovery of benefits for mental injuries was valid as bearing rational relationship to legitimate state interest; in crafting overall plan of workers' compensation, legislature apparently decided that some exclusions from coverage were necessary, and mental injury exclusion was but one of several.").

The disparate treatment of employers in the construction industry is reviewed using the rational basis test. See *B & B Steel Erectors v. Burnsed*, 591 So.2d 644 (Fla. 1st DCA 1991) (Statute providing that officers of corporations engaged in construction industry could not exempt themselves from workers' compensation coverage did not violate equal protection under rational basis test.).

In fact, nearly all constitutional challenges to the workers' compensation law are subject to the rational basis test. The only workers' compensation issues reviewed using strict scrutiny address alienage and first amendment rights. See *De Ayala v. Florida Farm Bureau Casualty Ins. Co.*, supra; *Jacobson v. Southeast Personnel Leasing, Inc.*, 113 So.3d 1042 (Fla. 1st DCA 2013) ("First Amendment

rights are undoubtedly fundamental.").

The rational basis test merely requires a reasonable relationship between the statute and a legitimate legislative objective. The party challenging the statute has the burden of proof. *See Florida High School Activities Association, Inc. v. Thomas,* 434 So.2d 306 (Fla. 1983). Here, Petitioner failed entirely to meet his burden, improperly concluding that strict scrutiny applies and further concluding that he had no need to argue that the applicable statute has no rational basis.

The replacement of wage-loss benefits with IB's bears a rational relationship to the Legislature's goal "to assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful reemployment at a reasonable cost to the employer." Section 440.015, Fla. Stat. [2] Petitioner's argument therefore fails.

C. Petitioner has standing to challenge neither the constitutionality of the $10.00 co-pay (which was not litigated below or adjudicated in the order appealed) nor the entirety of the Act (as the record is insufficient to support such a broad challenge).

[2] A 2015 study published by the National Association of Workers' Compensation Judiciary shows that in 1994 Florida's workers' compensation premiums were far above the national average, but are now currently in line with the national average. See http://www.nawcj.org/docs/Comparative_Law/Comparing_the_Premium_Cost_of_WC.pdf

The claimant, under the guise of an appeal of a workers' compensation order addressing a single relevant issue, mounts a wholesale assault on Chapter 440. Petitioner lacks standing to do so. The JCC ruled only that Petitioner had no entitlement to compensation for "Permanent Partial Disability Benefits," while Petitioner argues here primarily about benefits and issues not litigated below.

The order appealed does not address the $10.00 co-pay (IB at 24); apportionment (IB at 24); coverage for domestics or professional athletes (IB at 38); psychiatric impairment (IB at 38); chiropractic care (IB at 39); attendant care (IB at 39); or death benefits (IB at 39). Petitioner made no effort to "opt-out" of workers' compensation prior to his injury. (IB at 29). He did not sue his workers' compensation carrier for bad faith claims handling. (IB at 35).

Petitioner argues about many issues and benefits not addressed by the JCC or the First District. No record exists that would permit the Court to meaningfully review these issues since they were not presented to a lower tribunal. Petitioner's case therefore fails for lack of standing.

D. The specious "opt-out" argument is flawed.

Citing *Kluger v. White*, 281 So.2d 1 (Fla. 1973), Petitioner suggests that the 1970 elimination of the right to "opt-out" of coverage under the Act renders it unconstitutional. The claimant has no standing to make the argument, but if he

does, the argument was not preserved. He neither attempted to opt-out of coverage before his injury nor filed a declaratory judgment action asserting his right to do so. Instead he simply filed an unsuccessful tort suit after his injury. He later intentionally invoked the jurisdiction of the JCC and claimed benefits due under the Act.

Assuming standing and proper preservation, the argument also fails on its merits. The elimination of opt-out did not eliminate a cause of action, but instead changed the rules for coverage under the Act, as has been done many times both before and after 1968. The Legislature routinely expands or contracts coverage based on current needs and economic conditions.

An injured worker covered by the Act has no tort claim for bodily injury against his employer, which has been true since the Act's 1935 adoption. The determination of which employees are covered by the Act has changed and evolved over time, and continues to do so. Many current workers, covered by workers' compensation now, were not covered under earlier versions of the Act. The Legislature does not "eliminate a cause of action" each time the Act is amended to either expand or contract the scope of coverage.

Coverage changes are found in nearly every amendment to the Act. In 1989, for example, coverage for the employees of motor-sports teams was eliminated.

See section 440.02(c)3, Fla. Stat. (1989). In addition, coverage for construction companies was expanded to include those employers with one or more employees instead of only those with four or more. See section 440.02(b)2, Fla. Stat. (1989).

In 1990 coverage was eliminated for employers employing three or fewer persons. See Section 440.02(15)(b)2, Fla. Stat. (1990). Also in 1990, coverage was expanded to cover volunteer fighter fighters. See section 440.15(b)3, Fla. Stat. (1990).

In 1994, many purported independent contractors were brought under the Act by enacting a heightened burden of proof to establish independent contractor status. See section 440.02(13)(d), Fla. Stat. (1994). The same year, however, coverage was curtailed for exercise riders and taxicab drivers. See section 440.02(13)9, 440.13(10), Fla. Stat. (2004).

A 2003 amendment made all construction industry independent contractors employees for coverage purposes. See section 440.02(15)(d)1, Fla. Stat. (2004). The same year, Medicaid-enrolled clients working in sheltered employment pursuant to Chapter 393 were excluded from coverage. See section 440.02(15)(d)12, Fla. Stat. (2004). There are many other examples of the occasional expansion or contraction of coverage as needs change over time.

The 1970 elimination of opt-out expanded mandatory coverage under the

Act by preventing both employees and employers from opting-out. The Legislature is free to expand or contract coverage, including restricting the ability to avoid coverage under the Act. See, e.g., *B & B Steel Erectors v. Burnsed*, 591 So.2d 644 (Fla. 1st DCA 1991) (Statute providing that officers of corporations engaged in construction industry could no longer exempt themselves from workers' compensation coverage did not violate the Constitution.).

Each time the Legislature expands coverage all workers subject to such expansion lose the ability to sue their employers in tort. Such expansion does not "abrogate a cause of action," but even if it does, the covered workers receive workers' compensation benefits, which are a "reasonable replacement" for the right to bring a tort claim. Thus, the Legislature's decision to expand coverage (or restrict the ability to exclude one's self from it) satisfies *Kluger*.

Petitioner's argument is also completely contrived. No case, scholarly article, or other evidence suggests that any individual Florida employee ever opted-out of the workers' compensation system prior to the 1970 repeal of the opt-out provision. Moreover, the same parties vociferously attacking the repeal of opt-out in this case are simultaneously (outside of this appeal) decrying the possibility that the Legislature may follow the lead of Texas and Oklahoma and *enact* a modern

opt-out provision and decimate the current law. [3]

In reality, these lawyers do not want the right to opt-out thirty days *before* an injury occurs (required under the pre-1970 law). Instead, they want this Court to permit them to opt-out *after* the occurrence of an injury, but only when a wealthy or well-insured employer causes such injury. They want a workers' compensation system where injured workers may obtain its benefits when it suits them, but also permits them to obtain a large tort recovery when possible.

If the elimination of opt-out were invalid, then the remedy is not to grant injured workers a one-sided right to invoke a post-injury opt-out. Instead the remedy is to re-instate opt-out as it existed in 1970, which permitted both the employer and the employee to opt-out at least thirty days prior to the occurrence of an injury. This is a remedy, however, that Petitioner has no interest in receiving.

E. The Act remains a reasonable alternative to that in existence in 1968 and Chapter 440, Florida Statutes, prescribes the exclusive remedy for work-related injury.

Petitioner's convoluted argument fails to explain the history behind the current law. In 1993 the Act was substantially rewritten during a special legislative

---

[3] For example, *Amicus* Workers' Injury Law & Advocacy Group calls opt-out "THE BIGGEST THREAT" to workers' compensation laws. See https://www.workcompcentral.com/fileupload/uploads/2015-11-25-040949WILG%20Paper.pdf

session. The Legislature enacted Chapter 93-415 because the Florida Workers' compensation system was in crisis and the Legislature expressly said so. See Ch. 93-415, Preamble, at 67-68, Laws of Florida.

The 1993 Act created, among other things, two new classes of benefits. The first was "Permanent Impairment Benefits" ("IB's"). See section 440.15(3)(a), Fla.Stat. (1994). Unlike wage-loss benefits, IB's compensated injured workers for bodily impairment even without suffering a loss of earnings. The second was "Supplemental Benefits." See section 440.15(3)(b), Fla.Stat. (1994). Supplemental benefits were payable to those rare injured workers who received an impairment rating of twenty percent or higher.

IB's and supplemental benefits replaced the controversial and oft-abused wage-loss benefits. The wage-loss system was difficult and expensive to administer, requiring injured workers to document job search activities and file multiple forms. Carriers were required to monitor the job search activities, which led to substantial litigation. A Lexis search reveals more than 500 reported appellate cases addressing wage-loss benefits between 1980 and 1995 (wage-loss benefits were in the statute from 1979 to 1993).

Reform came again in 2003, when the Legislature replaced the rarely utilized Supplemental Benefits with enhanced IB's. See section 440.15(3), Fla.

Stat. (2003). Prior to the 2003 reform IB's were paid at fifty percent of the AWW. The 2003 amendment increased them to seventy-five percent of the AWW. Moreover, while the number of weeks payable for those with lower ratings was reduced, the number of weeks payable for those with higher ratings was increased. For example, for an injured worker with a twenty-five percent impairment rating the number of weeks payable increased from seventy-five to eighty-five.

The 2003 reform also conditioned the amount of IB's payable on the ability to return to work. Prior to the amendment, IB's were payable irrespective of the ability to work. An injured worker who returned to work received the same IB's as one who did not, so long as the impairment ratings were equivalent. After 2003, one who returns to work at pre-injury wages receives one-half as much as one who has not. See Section 440.15(3)(c), Fla. Stat. (2003).

In the purported halcyon days described by Petitioner, an injured worker earning $500.00 per week at the time of the injury and who received a fifteen percent rating would get *no* wage-loss benefits if she returned to work at her pre-injury wage, since wage-loss was not payable absent a loss of earnings attributable to the injury. Today, that same worker would receive $4,375.00 in IB's. [4] Some

[4] A $500.00 AWW converts to a $333.33 compensation rate, which in turn results in an IB rate of $250.00. For those workers that return to work at the pre-injury

injured workers were better off under the old scheme, but many were not.

Petitioner, without any record support, asserts that benefits were "decimated and eviscerated" in the 1993 and 2003 Acts, which is merely an opinion. (IB at 18). In fact, benefits were *increased* for many injured workers who received compensation for impairment even where they returned to work, and the delivery system (IB's instead of wage-loss benefits) was simplified and arguably improved. A contrary opinion that the reforms *improved* the system for injured workers and employers alike is equally valid, if also equally unsupported by the appellate record.

E. The preservation of immunity from suit under Section 440.11, Fla. Stat. is paramount to Florida's employers.

Petitioner's true goal is revealed at page 24 of his brief. Namely, he seeks the invalidation of the Act's exclusive remedy provision, which has existed since 1935. His lawyer has written numerous briefs, articles, and blog posts proclaiming that goal.[5] He envisions an Act permitting injured workers to claim its benefits

---

AWW, the IB's are reduced by fifty percent, making the weekly payment $125.00. A fifteen percent rating entitles one to thirty-five weeks of IB's, or $4,375.00. Thus, for many workers IB's are worth far more than the wage-loss benefits Petitioner champions, since they were payable only when a loss in earnings occurred.

[5] See, e.g., http://mzlaw.blogspot.com/

when needed, but also permitting tort claims solely at the discretion of the injured worker where facts and finances may result in a lucrative recovery. The exclusive remedy provision provides in pertinent part:

> "The liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability, including vicarious liability, of such employer to any third-party tortfeasor and to the employee, the legal representative thereof, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death…" Section 440.11(1), Fla. Stat. (2003).

This provision is key to the instant *Amici's* interest in this case. FAIA and AAICP represent constituents to whom the exclusive remedy provision in the Act is paramount. Insurance agents and brokers provide workers' compensation policies that are priced based on known risks and predictable losses, which do not include tort suits. AAICP's members adjust workers' compensation claims with the knowledge that both the insured and the adjuster are immune from suit.

Petitioner seeks an Act that is mandatory for employers (thus providing guaranteed recovery at great cost to the employer even where the employer's negligence did not cause the injury), but optional for employees (allowing them to sue their employers when it suits them). This Kafkaesque system would eviscerate the sole benefit (immunity from suit) that employers receive in return for

shouldering the entirety of the cost of the workers' compensation system. [6]

Petitioner suggests that the loss of immunity would not be harmful to employers, who would still purchase workers' compensation policies and who would be protected by Part II of the policy. (IB at 25). When an injury to an employee falls under the coverage of the Act, however, Part II of the policy excludes coverage for any resultant tort claim. Part II is a "gap-filler," providing coverage for an employer where a work-injury is not covered by the Act. Where, as here, an injury is covered by the Act any tort claim filed against the employer is not covered by Part II of the workers' compensation policy:

> "[I]t is clear that the workers' compensation exclusion bars coverage of claims arising from bodily injuries for which [the employer] is required to pay benefits under workers' compensation law — i.e., claims that are covered by the workers' compensation insurance portion of the policy." *Morales v. Zenith Ins. Co*., 152 So.3d 557, 561 (Fla. 2014).

Part II of the workers' compensation policy is not general liability insurance and it expressly excludes coverage for work-related injuries that are otherwise covered by the Act. Even if such injuries were not excluded from coverage,

---

[6] In 2014 total Florida workers' compensation premiums were well in excess of $2 billion. See http://www.floir.com/siteDocuments/2014WorkersCompensationAnnualReport.pdf

insurance coverage under Part II is subject to limits as low as $100,000.00 while coverage for benefits paid pursuant to the Act is unlimited. Petitioner's goal, if successful, would flood the courts with tort claims, and expose employers to uncovered and unlimited liability.

F. The proper action is the dismissal of this appeal

Petitioner's brief reads like a list of grievances more properly presented to the Legislature than a cogent constitutional argument. Instead of record support, the brief relies primarily on non-record anecdotes, quotes from speeches, and wholly unrelated reports, which allegedly establish the paucity of benefits. The Act, however, continues to compensate thousands of injured workers in a self-executing manner and without regard to fault. The Legislature alone establishes both the menu of benefits available and their method of delivery. Petitioner's arguments are for the Legislature and not this Court.

CONCLUSION

Petitioner mounts an overbroad facial challenge to the entirety of the Workers' Compensation Act. The appellate record is wholly inadequate. Petitioner has no standing to make most of the arguments presented, and purported error was unpreserved. Petitioner's arguments address not the law, but policy alone, and such policy arguments are for the Legislature. The Court should dismiss the appeal, or in the alternative, affirm the First District's opinion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to Mark L. Zientz, Esquire, 9130 S. Dadeland Blvd., Suite 1619, Miami, FL 33156 at mark.zientz@mzlaw.com; Kimberly Hill, Esquire, 821 SE 7th Street, Ft. Lauderdale, FL 33301 at kimberlyhillappellatelaw@gmail.com; Geoff Bichler, Esquire, 541 S. Orlando Avenue, Suite 310, Maitland, FL 32751 at geoff@bichlerlaw.com; Louis Pfeffer, Esquire, 250 South Central Blvd., #205, Jupiter, FL 33458 at lpfeffer@pfefferlaw.com; Michael Winer, Esquire, 110 North 11th Street, 2nd Floor, Tampa, FL 33602 at mike@mikewinerlaw.com; Richard Sicking, Esquire, 2030 South Douglas Road, Suite 217, Coral Gables, FL 33134 at sickingpa@aol.com; Ramon Malca, Esquire, Sunset Station Plaza, 5975 Sunset Drive, Suite 801, South Miami, FL 33143 at rmalca@malcaandjacobs.com; Kimberly J. Fernandes, Esq., Esquire, 201 S Monroe St., Suite 5, Tallahassee, FL 32301-1855 at kfernandes@kelleykronenberg.com; William McCabe, Esquire, 1250 South Highway 17-92, Suite 210, Longwood, FL 32750 at billjmccabe@earthlink.net; William Large, Esquire, 210 South Monroe Street, Tallahassee, Fl. 32301 at william@fljustice.org; Roy Young, Esquire, 216 S. Monroe Street Tallahassee, Florida 32301 at ryoung@yvlaw.com; Diane DeWolf, Esquire, 106 East College Avenue, Suite 1200, Tallahassee, Florida 32301 at diane.dewolf@akerman.com; Ken Bell, Esquire, 215 S. Monroe St., Ste. 601, Tallahassee, FL 32301 at kbell@gunster.com; Mark Touby, Esquire, 2030 S. Douglas Road, #217 Coral Gables, FL 33134 at mark.touby@fortheworkers.com; Gerald Rosenthal, Esquire, 1401 Forum Way, Sixth Floor, West Palm Beach, FL 33401 at grosenthal@rosenthallevy.com; Rayford Taylor, Esquire, Suite 800, 980 Hammond Dr., Atlanta, GA 30328 at rtaylor@caseygilson.com; David McCranie, Esquire, 165 Wells Rd., Ste. 302, Orange Park, FL 32073 at dmccranie@mcconnaughhay.com; James McConnaughhay, 1709 Hermitage Blvd., Ste. 200, Tallahassee, FL 32308 at jnmcconnaughhay@mcconnaughhay.com; Jordan Pratt, Esquire, 107 W Gaines St Rm 424J, Tallahassee, FL 32399-6549 at Jordan.Pratt@myfloridalegal.com; Rachel Nordby, Esquire, PL01 The Capitol, Tallahassee, FL 32399-1050 at Rachel.Nordby@myfloridalegal.com; Allen Winsor, Esquire, PL-01 The Capitol, Tallahassee, FL 32399-1050 at allen.winsor@myfloridalegal.com; and to Katherine Giddings, Esquire, 106 E College Ave Ste 1200, Tallahassee, FL 32301-7741 at Katherine.Giddings@akerman.com by Electronic Mail on this 8th day of January, 2016

___/S/_____
William H. Rogner, Esquire
1560 Orange Avenue, Suite 500
Winter Park, FL 32789
(407) 571-7400
Florida Bar Number:0857629
Counsel for *Amici*

CERTIFICATION

I HEREBY CERTIFY that the foregoing Brief complies with the font type and size requirements designated in Rule of Appellate Procedure 9.210 on this 8th day of January 2016.

_____/S/_____
William H. Rogner, Esquire
1560 Orange Avenue, Suite 500
Winter Park, FL 32789
(407) 571-7400
Florida Bar Number:0857629
Counsel for *Amici*