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**APPLICATION FOR NOMINATION TO THE  
FIFTH DISTRICT COURT OF APPEAL**

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**Meredith L. Sasso**  
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**APPLICATION FOR NOMINATION TO THE FIFTH DISTRICT COURT**

(Please attach additional pages as needed to respond fully to questions.)

**DATE:** December 21, 2018 Florida Bar No.: 58189

**GENERAL:** Social Security No.: [REDACTED]

1. Name Meredith Lee Sasso E-mail: meredithsasso@gmail.com

Date Admitted to Practice in Florida: October 6, 2008

Date Admitted to Practice in other States: N/A

2. State current employer and title, including professional position and any public or judicial office.

Executive Office of the Governor – Chief Deputy General Counsel

3. Business address: 400 S. Monroe Street, Suite 209

City Tallahassee County Leon State FL ZIP 32399

Telephone (850) 717-9310 FAX (850) 717-9810

4. Residential address: [REDACTED]

City Orlando County Orange State FL ZIP [REDACTED]

Since May 2010 Telephone [REDACTED]

5. Place of birth: Tallahassee, FL

Date of birth: [REDACTED] Age: 35

6a. Length of residence in State of Florida: 35 years

6b. Are you a registered voter?  Yes  No

If so, in what county are you registered? Orange

7. Marital status: Married

If married: Spouse's name [REDACTED]

Date of marriage December 15, 2012

Spouse's occupation Attorney

If ever divorced give for each marriage name(s) of spouse(s), current address for each former spouse, date and place of divorce, court and case number for each divorce.

N/A

8. Children

<i>Name(s)</i>	<i>Age(s)</i>	<i>Occupation(s)</i>	<i>Residential address(es)</i>
[REDACTED]	22 Months	Toddler	Same as applicant

9. Military Service (including Reserves)

<i>Service</i>	<i>Branch</i>	<i>Highest Rank</i>	<i>Dates</i>
N/A			
Rank at time of discharge _____		Type of discharge _____	
Awards or citations _____			

**HEALTH:**

10. Are you currently addicted to or dependent upon the use of narcotics, drugs, or intoxicating beverages? If yes, state the details, including the date(s).

No.

11a. During the last ten years have you been hospitalized or have you consulted a professional or have you received treatment or a diagnosis from a professional for any of the following: Kleptomania, Pathological or Compulsive Gambling, Pedophilia, Exhibitionism or Voyeurism?

Yes  No

If your answer is yes, please direct each such professional, hospital and other facility to furnish the Chairperson of the Commission any information the Commission may request with respect to any such hospitalization, consultation, treatment or diagnosis. ["Professional" includes a Physician, Psychiatrist, Psychologist, Psychotherapist or Mental Health Counselor.]

Please describe such treatment or diagnosis.

11b. In the past ten years have any of the following occurred to you which would interfere with your ability to work in a competent and professional manner?

- Experiencing periods of no sleep for 2 or 3 nights
- Experiencing periods of hyperactivity
- Spending money profusely with extremely poor judgment
- Suffered from extreme loss of appetite

- Issuing checks without sufficient funds
- Defaulting on a loan
- Experiencing frequent mood swings
- Uncontrollable tiredness
- Falling asleep without warning in the middle of an activity

Yes  No

If yes, please explain.

12a. Do you currently have a physical or mental impairment which in any way limits your ability or fitness to properly exercise your duties as a member of the Judiciary in a competent and professional manner?

Yes  No

12b. If your answer to the question above is Yes, are the limitations or impairments caused by your physical or mental health impairment reduced or ameliorated because you receive ongoing treatment (with or without medication) or participate in a monitoring or counseling program?

Yes  No

Describe such problem and any treatment or program of monitoring or counseling.

13. During the last ten years, have you ever been declared legally incompetent or have you or your property been placed under any guardianship, conservatorship or committee? If yes, give full details as to court, date and circumstances.

No.

14. During the last ten years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by Federal or State laws? If your answer is "Yes," explain in detail. (Unlawful use includes the use of one or more drugs and/or the unlawful possession or distribution of drugs. It does not include the use of drugs taken under supervision of a licensed health care professional or other uses authorized by Federal law provisions.)

No.

15. In the past ten years, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned or terminated by an employer as result of your alleged consumption of alcohol, prescription drugs or illegal use of drugs? If so, please state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No.

16. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? If so, please state the date you were requested to submit to such a test, the type of test required, the name of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.

No.

17. In the past ten years, have you suffered memory loss or impaired judgment for any reason? If so, please explain in full.

No.

**EDUCATION:**

18a. Secondary schools, colleges and law schools attended.

<i>Schools</i>	<i>Class Standing</i>	<i>Dates of Attendance</i>	<i>Degree</i>
Leon High	91/433	August 1998-May 2001	H.S.
University of Florida	Summa Cum Laude	August 2001-May 2005	B.A., B.S.
University of Florida	Unranked	August 2005-May 2008	J.D.

18b. List and describe academic scholarships earned, honor societies or other awards.

100% Bright Futures Scholarship; University Scholar; Division of Housing Academic Award, Programming Award, and Special Recognition Award; Justice Campbell Thornall Moot Court Board, Final Four Alternate; Pro Bono Honors Community Service Honors

**NON-LEGAL EMPLOYMENT:**

19. List all previous full-time non-legal jobs or positions held since 21 in chronological order and briefly describe them.

<i>Date</i>	<i>Position</i>	<i>Employer</i>	<i>Address</i>
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N/A

**PROFESSIONAL ADMISSIONS:**

20. List all courts (including state bar admissions) and administrative bodies having special admission requirements to which you have ever been admitted to practice, giving the dates of admission, and if applicable, state whether you have been suspended or resigned.

<i>Court or Administrative Body</i>	<i>Date of Admission</i>
Florida Supreme Court	October 6, 2008
U.S. District Court, Middle District of Florida	May 3, 2012
U.S. District Court, Southern District of Florida	March 6, 2014
U.S. District Court, Northern District of Florida	March 21, 2018

**LAW PRACTICE:** (If you are a sitting judge, answer questions 21 through 26 with reference to the years before you became a judge.)

21. State the names, dates and addresses for all firms with which you have been associated in practice, governmental agencies or private business organizations by which you have been employed, periods you have practiced as a sole practitioner, law clerkships and other prior employment:

<i>Position</i>	<i>Name of Firm</i>	<i>Address</i>	<i>Dates</i>
Deputy and Assistant General Counsel	Executive Office of Governor Rick Scott	400 S. Monroe Street, Tallahassee, FL	8/2016-Present
Trial Attorney	Sanabria, Llorente et. al. employees Farmer's Ins.	2290 Lucien Way, 280 Maitland, FL 32751	1/2015-7/2016
Associate	Hayes Law, P.L.	830 Lucerne Terrace Orlando, FL 32801	2/2014-12/2014
Associate	Broussard & Cullen, P.A.	800 N. Magnolia Ave. Orlando, FL 32803	10/2009-1/2014
Associate	Fox, Wackeen et. al.	3473 SE Willoughby Blvd., Stuart, FL 34994	8/2008-10/2009
Law Clerk	Fox, Wackeen et. al.	3473 SE Willoughby Blvd., Stuart, FL 34994	5/2007-5/2008
Intern	Miami Dade State Attorney's Office	1350 NW 12th Ave Miami, FL 33136	5/2006-8/2006

22. Describe the general nature of your current practice including any certifications which you possess; additionally, if your practice is substantially different from your prior practice or if you are not now practicing law, give details of prior practice. Describe your typical clients or former clients and the problems for which they sought your services.

As Chief Deputy General Counsel to Governor Rick Scott, I am part of a small legal

team advising the Governor and the Executive Office of the Governor regarding the Governor's constitutional duties, personnel and ethics issues, and legal policy, among other matters. We also defend the Governor in state and federal courts against claims involving constitutional law challenges, including original actions in the Florida Supreme Court. In addition, each attorney on our team is responsible for overseeing the legal policy and litigation for a number of executive agencies. During my time in the office, I have been responsible for overseeing legal issues presented by the Department of State, the Department of Education, the Department of Management Services, and the Department of Environmental Protection, among other agencies. We are also involved in the vetting of judicial candidates and judicial nominating commission members. Often, the issues we deal with are incredibly high-stakes, high-profile, and time-sensitive.

Prior to joining the Governor's Office, I worked in private practice, always as a litigator. I began my career with a mixed appellate and trial court practice. Thanks to the opportunities provided to me by my supervisors, I was able to gain significant and meaningful appellate and trial experience as a young lawyer. Over the course of my career, I represented manufacturers and general contractors in construction disputes, small businesses in business dissolution cases, governmental entities in the defense of workers' compensation and liability claims, title insurance companies involved in litigated disputes, and banking institutions in foreclosure claims. While I typically represented businesses or governmental entities, I also had the opportunity to represent a small number of individuals facing various issues including unlawful collections and dissolution of marriages.

Most recently, I was a staff trial attorney for Farmer's Insurance. In this position, I maintained a heavy case load of general liability, auto negligence, and UM/UIM claims, including high exposure cases. During this time, I successfully defended entities ranging from small businesses to Fortune 500 companies at jury trial in cases involving negligent security claims, premise liability claims, auto negligence claims and underinsured motorist claims.

23. What percentage of your appearance in courts in the last five years or last five years of practice (include the dates) was in:

	Court		Area of Practice	
Federal Appellate	_____	%	Civil	100 %
Federal Trial	5	%	Criminal	_____ %
Federal Other	_____	%	Family	_____ %
State Appellate	25	%	Probate	_____ %
State Trial	70	%	Other	_____ %
State Administrative	_____	%		
State Other	_____	%		
	_____	%		
TOTAL	100	%	TOTAL	100 %

24. In your lifetime, how many (number) of the cases you have tried to verdict or judgment were:

Jury?	<u>6</u>	Non-jury?	<u>19+ (including appeals)</u>
Arbitration?	<u>1</u>	Administrative Bodies?	<u>15+</u>

25. Within the last ten years, have you ever been formally reprimanded, sanctioned, demoted, disciplined, placed on probation, suspended or terminated by an employer or tribunal before which you have appeared? If so, please state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No.

26. In the last ten years, have you failed to meet any deadline imposed by court order or received notice that you have not complied with substantive requirements of any business or contractual arrangement? If so, please explain in full.

No.

**(Questions 27 through 30 are optional for sitting judges who have served 5 years or more.)**

27a. For your last 6 cases, which were tried to verdict before a jury or arbitration panel or tried to judgment before a judge, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases).

**David P. Trotti v. Rick Scott, et. al.**, Case No.: SC18-1217 - Attorneys for Petitioner: Philip J. Padavano & Joseph T. Eagleton (813) 223-4300; Robert J. Slama (904) 296-1050; David P. Trotti (904) 399-1616; Attorneys for Respondents: Daniel Nordby, Meredith Sasso, John MacIver, Nicholas Primrose, Alexis Lambert (850) 717-9310; David A. Fugett (941) 487-4877; Jesse Dyer (386) 679-5962

**Rick Scott v. Donald Hinkle**, Case No.: 1D18-0966 - Attorney for Petitioner: Daniel Nordby, Meredith Sasso (850) 717-9310; Attorney for Respondent: Donald Hinkle (850) 205-2055

**League of Women Voters of Florida, Inc. et. al. v. Rick Scott et. al.**, Case No. SC18-1573 - Attorney for Petitioners: John S. Mills, Courtney Brewer, Thomas D. Hall, Jonathan Martin (850) 765-0897; Attorneys for Respondents: Daniel Nordby, Meredith Sasso, John MacIver, Alexis Lambert (850) 717-9310; Raoul G. Cantero (305) 371-2700; George T. Levesque (850) 577-9090

**League of Women Voters of Florida, Inc. et. al. v. Rick Scott et. al.**, Case No. SC17-1122 - Attorney for Petitioners: John S. Mills, Courtney Brewer, Thomas D. Hall (850) 765-0897; Attorneys for Respondents: Daniel Nordby, John P. Heekin, Meredith Sasso, John MacIver, (850) 717-9310; Peter Penrod (850) 766-3970

**Toby Bogorff et. al. v. Rick Scott et. al.**, Case No.: SC17-1155 - Counsel for Petitioners: Bruce S. Rogow (954) 767-8909; Robert C. Gilbert (305) 384-7270; Neal A. Roth (305) 422-8666; Counsel for Respondents: Daniel Nordby, John P.



Heekin, Meredith Sasso (850) 717- 9310; Peter Penrod (850) 766-3970; David A. Fugett (941) 487-4877; W. Jordan Jones (850) 717-5696; Chasity H. O'Steen (850) 413-2898; Janine B. Myrick (850) 413-4126; Paul C. Stadler, Jr. (850) 413-4255

**Barbara Rowland v. 21st Century Centennial Insurance Co.**, Case No. 15-CA-003145 - Attorney for Plaintiff: E. Blake Paul (860) 683-8031; Attorney for Defendant: Kerri E. Utter (954) 560-6285; Meredith Sasso (850) 717-9310

- 27b. For your last 6 cases, which were settled in mediation or settled without mediation or trial, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases).

**League of Women Voters of Florida, Inc. et. al. v. Richard L. Scott**, Case No. 4:18 cv 525 - Attorney for Plaintiffs: John A. Devault, Henry M. Coxe, Michael E. Lockamy (904) 353- 0211; Jane W. Moscovitz (305) 379-8300; Laurence M. Schwartztol (202) 945-2092; Jamila Benkato (202) 945-2157; Jessica Marsden (202) 672-4812; Lawrence S. Robbins, William J. Trunk, Wendy Liu, Megan D. Browder (202) 775-4500; Jeff Marcus (305) 400-4260; Joel S. Perwin (305) 779-6090; Michael S. Olin (305) 964-8003; Attorneys for Defendant: Daniel Nordby, Meredith Sasso, John MacIver (850) 717-9310

**Kristen Rosen Gonzalez v. Rick Scott, et. al.**, Case No. 2018 CA 860 - Attorneys for Plaintiff: Kent Harrison Robbins (350) 532-0500; Herman J. Russomanno (305) 373-2101; Rick L. Yabor (786) 773-3105; Attorneys for Defendants: Daniel Nordby, Meredith Sasso (850) 717-9310; Bradley McVay, Ashley David (850) 245-6536; Jean K. Olin (305) 776-4364; Raul J. Aguila, Nicholas Kallergis (305) 673-7470

**Kirk B. Reams v. Rick Scott et. al.**, Case No.4:18-cv-154 - Attorney for Plaintiff: David Collins (850) 997-8111; Attorneys for Defendants: Daniel Nordby, Meredith Sasso, John MacIver (850) 717-9310; Andy Bardos, George Levesque, Ashley Lukis (850) 577-9090

**Chabad of Key West, Inc. et. al. v. Federal Emergency Management Agency et. al.**, Case No. 4:17-cv-10092 - Attorneys for Plaintiffs: Isaac M. Jaroslawicz (305) 775-7868; Eric C. Rassbach, Diana M. Verm (202) 955-0095; Howard N. Slugh (954) 328-9461; Attorneys for Defendants: Daniel Nordby, Meredith Sasso, Nicholas Primrose (850) 717-0310; Kari D'Ottavio (202) 305-0568

**Stephen Bittel et. al. v. Rick Scott et. al.**, Case No. 2017 CA 002301 - Attorneys for Plaintiffs: Mark Herron, Robert J. Telfer III. (850) 222-0720; Attorneys for Defendants: Daniel Nordby, Meredith Sasso (850) 717-9310; David A. Fugett (941) 487-4877; Jesse Dyer (386) 679-5962

**Sabir Abdul-Haqq Yasir v. Rick Scott**, 2016 CA 002605 - Plaintiff: Sabir Abdul-Haqq Yasir, Pro Se (863) 491-4976 [cube #921]; Attorneys for Defendant: Meredith Sasso (850) 717-9310; (850) 766-3970

- 27c. During the last five years, how frequently have you appeared at administrative hearings?  
0 average times per month
- 27d. During the last five years, how frequently have you appeared in Court?  
4 average times per month
- 27e. During the last five years, if your practice was substantially personal injury, what percentage of your work was in representation of plaintiffs? 0% Defendants?  
100%

28. If during any prior period you have appeared in court with greater frequency than during the last five years, indicate the period during which this was so and give for such prior periods a succinct statement of the part you played in the litigation, numbers of cases and whether jury or non-jury.

During the last two years, I have been employed by the Executive Office of the Governor where we have a smaller case load compared with those I had in private practice. As a result, I appeared in court more frequently before joining the Governor's Office. I estimate that I have appeared in court, on average, about once a month during the past two-and-a-half years. In the two-and-a-half years proceeding those, I estimate that I appeared in court, on average, about 8 times a month.

29. For the cases you have tried to award in arbitration, during each of the past five years, indicate whether you were sole, associate or chief counsel. Give citations of any reported cases.

N/A

30. List and describe the six most significant cases which you personally litigated giving case style, number and citation to reported decisions, if any. Identify your client and describe the nature of your participation in the case and the reason you believe it to be significant. Give the name of the court and judge, the date tried and names of other attorneys involved.

**League of Women Voters of Florida v. Rick Scott, 232 So. 3d 264 (Fla. 2017)**

Which governor – the outgoing or the incoming – had authority to appoint successors for appellate judges, including three Florida Supreme Court justices? This was the question Petitioners requested the Supreme Court resolve in this case. However, Petitioners brought the question to the Supreme Court under the guise of a Petition for Quo Warranto, even though no official action had been taken, and as a result of comments made at a press conference. Considering this backdrop, this case is significant for two primary reasons. First, in dismissing the petition as unripe and refusing the Petitioners’ invitation to weigh in on a hypothetical situation, the Supreme Court made clear that the “use of the writ to address prospective conduct is not appropriate.” Second, by declining to entangle itself with a hot-button political issue, the majority of the Supreme Court demonstrated an essential component of judging – just because a court is invited to weigh in on a topic does not mean it should.

The defense of this claim was a true team effort. I helped formulate our legal arguments, conduct both legal and historical research for inclusion in the briefs and supporting appendix, and drafted portions of the brief. Our team was led by General Counsel Daniel Nordby and rounded out by Jack Heekin, John MacIver and Peter Penrod. Petitioners were represented by John S. Mills, Courtney Brewer, Thomas D. Hall. The case was decided by Justices Charles Canady, Jorge Labarga, Alan Lawson, Fred Lewis, Barbara Pariente, Ricky Polston, and Peggy A. Quince on December 14, 2017.

**David P. Trotti v. Rick Scott, 2018 WL 6167830 (Fla. Nov. 26, 2018); David P. Trotti v. Rick Scott, 43 Fla. L. Weekly D 1691 (Fla. 1st DCA July 26, 2018)**

This was Mr. Trotti’s second attempt in four years to qualify for election to a judicial seat that the constitution and case law instructed should be filled by appointment. This case was significant because the First District again clarified the Governor’s authority to appoint circuit judges under Article V, section 11(b) of the Florida Constitution when a resignation is received and accepted before the election qualifying period but with a future effective date. The case was also significant because the Supreme Court granted jurisdiction and held oral argument. Thus, it initially appeared the court would attempt to fashion a rule aimed at preventing the perceived manipulation of judicial resignation dates but one that may have also unintentionally encroached upon the Governor’s express appointment power. Ultimately, the Supreme Court determined that jurisdiction was improvidently granted, leaving the First District’s decision intact.

The course of this case also read like an appellate procedure exam. Following the State Defendants' appeal of the trial court's order granting preliminary injunction, there was a motion to vacate the automatic stay filed in the lower court, a motion for review of the order vacating the stay filed in the district court, a motion for and response to request for pass-through jurisdiction filed in the district court, petitions for constitutional writs filed in the Supreme Court and the typical jurisdictional and merits briefing in the Supreme Court, along with an oral argument in the Supreme Court. Daniel Nordby and I represented the Governor at the trial and district court level, and our colleagues John MacIver and Alexis Lambert assisted with the Supreme Court litigation. I was primarily responsible for drafting the pleadings and briefs and sat second chair at oral argument. The Secretary of State was initially represented by David Fugett and Jesse Dyer and ultimately represented by Brad McVay and Ashley Davis. The Plaintiff's appellate counsel included Philip J. Padavano, Joseph T. Eagleton and Robert J. Slama. The First District's decision was rendered on July 26, 2018 by Judges L. Clayton Roberts, T. Kent Wetherell, and Timothy D. Osterhaus. The Supreme Court decision discharging jurisdiction was decided in a 4-3 decision on November 26, 2018 by Justices Charles Canady, Jorge Labarga, Alan Lawson, Fred Lewis, Barbara Pariente, Ricky Polston, and Peggy A. Quince.

**League of Women Voters of Fla., et. al. v. Richard L. Scott, Case No. 4:18 cv 525 (N.D. Fla.)**

In the flurry of litigation during the 2018 statewide recount, Plaintiffs filed this case seeking extraordinary relief – they requested the court strip the Governor of certain duties due to his candidacy for the United States Senate. The Plaintiffs based their request on the unfounded argument that the Governor's dual roles violated their constitutional rights.

Like most of the cases filed during that time, we were required to defend the case on a very tight timeline. I quickly got up to speed on the body of federal law governing the issue of when a state official's action may unconstitutionally impede an election. Although it was clear to me the Governor had taken no such action, the consequences of failing to successfully defend the case were daunting. Daniel Nordby and I represented the Governor at the evidentiary hearing scheduled pursuant to Plaintiffs' request for preliminary injunction. I also helped formulate the legal arguments, conduct research, and draft the requisite papers, including a motion to quash a subpoena commanding the Governor appear at hearing.

On November 15, 2018, Judge Mark Walker denied Plaintiffs' requested relief and quashed the subpoena. The Plaintiffs subsequently voluntarily dismissed their Complaint. This case was primarily significant due to the potential consequences of an adverse ruling. However, the case was also significant to me due to the pace of the litigation and atmosphere at the hearing. I will always remember that day: the long days and nights in preparation, the armies of lawyers filling the hearing room, awaiting their turn to argue an issue that would effect millions, breaking news being shuffled in and out by various messengers, the weary but diligent court staff, and the single district court judge presiding over it all. Plaintiffs were represented by John A. Devault, Henry M. Coxe, Michael E. Lockamy, Jane W. Moscovitz, Laurence M. Schwartztol, Jamila Benkato; Jessica Marsden, Lawrence S. Robbins, William J. Trunk, Wendy Liu, Megan D. Browder, Jeff Marcus, Joel S. Perwin, and Michael S. Olin.

**Rick Scott v. Donald Hinkle, 2018 WL 6253291 (Fla. 1st DCA Nov. 30, 2018)**

In this case, Mr. Hinkle attempted to challenge the sufficiency of the Governor's annual financial disclosures that the Governor filed with the Florida Commission on ethics. Mr. Hinkle originally filed a complaint with the Florida Commission on Ethics, which was dismissed by the Commission as legally unfounded. And although the Florida Constitution vests the Commission with the exclusive authority to investigate ethics complaints, Mr. Hinkle then filed a Complaint in the circuit court. Daniel Nordby and I represented the Governor, and moved to dismiss the Complaint, arguing only the Commission has authority to investigate the issues raised by Mr. Hinkle. When the circuit court denied the motion, we filed a writ of prohibition in the First District Court of Appeal. On November 30, 2018, Judges Lori Rowe, Timothy Osterhaus, and Ross Bilbrey granted the petition, holding that Florida law assigns exclusive jurisdiction to the Commission to review "all" complaints, including Mr. Hinkle's complaint. This was significant, both because First District clearly outlined the limitation of the circuit court's authority and because of the sweeping implications if the circuit court's order stood. Mr. Hinkle was self-represented.

**Orange County and Alternative Service, Etc. v. Derek New, 39 So. 3d 423 (Fla. 5th DCA 2010)**

After a 2008 amendment to workers' compensation statutes, employer/carriers were finally able to pursue prevailing party costs, a privilege that already existed for claimants. However, the enforcement provision in chapter 440 provided only claimants the right to seek enforcement of unpaid costs orders. It was not similarly amended, leaving employer/carriers without a clear path for enforcement. Across the state, employer/carriers attempted various methods of obtaining enforcement of unpaid costs orders, each time being denied the relief requested. My client sought enforcement of an unpaid costs order in the trial court via petition for rule nisi. The trial court denied relief noting the legislature apparently granted a "right without a remedy." I represented Orange County and its servicing agent on appeal. There we argued that the statute should be interpreted to allow employer/carriers to have reciprocal enforcement rights to claimants, and if it was not construed in that manner, the statute was unconstitutional as applied. As a result of this case, the Fifth District issued the first appellate opinion addressing the issue. The Court determined that the plain language of the statute did not permit employer/carriers to pursue a petition for rule nisi. The court similarly found the statute was not unconstitutional in its application. However, the court determined that employer/carriers could seek enforcement in a court of competent jurisdiction, just as any other debt could be enforced.

This case was significant because, although our theory was not accepted, it provided employer/carriers statewide with a mechanism for enforcing prevailing party cost orders. It was also personally significant because it was my first oral argument. The argument was held on Law Day in front of several spectators, and a former district court judge presented oral argument on behalf of the opponent. I was grateful for the opportunity to argue a significant issue for a sophisticated client at a relatively early point in my career. The oral argument preparation alone taught me several lessons that have served me my entire career. The case was decided by Judges Vincent Torpy, Kerry Evander and (now Justice) Alan Lawson on June 25, 2010. I was responsible for writing the briefs

and presenting oral argument. Michael Broussard and I represented Orange County, and Kristen Magana sat second chair at oral argument. Respondent/Appellee was represented by Richard W. Ervin, III, Paul Kelley, and Michael Clelland.

**Jose Santos v. Carrie Morrison, d/b/a/ Da Village Coin Laundry, 2012 CA 003249 (5th Cir. Court, Lake County)**

My client's humble, Eustis laundry mat became the location of a fatal shooting. This case involved the tragic circumstances where my client's (now deceased) husband brought two young men to the laundry mat one evening to do their laundry. This was not out of the norm but was somewhat later at night than their typical laundry schedule. Two perpetrators entered the laundry mat, killing Mr. Santos' friend and permanently injuring Mr. Santos. In addition to the criminal cases that followed the incident, the estate of the deceased and Mr. Santos bought a negligent security claim against my client.

I took over this case when most of the pre-trial discovery was complete, and the case was ready to be tried. I therefore was responsible for the final pre-trial motions and hearings, including defending a Daubert challenge to our expert's opinions, along with preparing the case for and conducting the jury trial. The case was significant to me for several reasons. First, the case presented several intellectually stimulating evidentiary issues. One such issue was the admissibility, and scope upon admission, of crime grids, an issue governed by split decisions from Florida's district courts of appeal. There were several other admissibility issues debated via motions in limine, including the immigration status of the plaintiffs, the criminal background of the assailants, my client's personal feelings about law enforcement, news coverage of the incident, the subjective fears plaintiff's expert experienced at the site inspection, and the inclusion of certain medical charges. Second, Plaintiff's attorney was an experienced trial attorney who had garnered multi-million-dollar awards in negligent security cases for past clients. This was my first negligent security trial. Third, the case was significant due to the emotions involved. We did not dispute the permanent nature of Mr. Santos' injuries nor the unimaginable impact this had on his emotional well-being. Yet we felt strongly that my client, a small business owner, was not and should be held liable for the unfortunate circumstances. Ultimately a unanimous jury agreed, entering a complete defense verdict of no liability. Carlos Llorente co-chaired the trial with me. Plaintiffs were represented by Brent Probinsky and Affan Ali. Judge G. Richard Singeltary presided over the trial.

31. Attach at least one example of legal writing which you personally wrote. If you have not personally written any legal documents recently, you may attach writing for which you had substantial responsibility. Please describe your degree of involvement in preparing the writing you attached.

Attached are two writing samples. This first is the reply brief in the case of *Orange County v. Derek New*, which I was solely responsible for preparing, with input from my colleagues on the case. The second is a recent writing sample from a federal case we defended against a public official who had been suspended from office by the Governor. I was primarily responsible for the argument section, which section I have included for your review.

**PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE:**

32a. Have you ever held judicial office or been a candidate for judicial office? If so, state the court(s) involved and the dates of service or dates of candidacy.

N/A

32b. List any prior quasi-judicial service:

<i>Dates</i>	<i>Name of Agency</i>	<i>Position Held</i>
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N/A

Types of issues heard:

32c. Have you ever held or been a candidate for any other public office? If so, state the office, location and dates of service or candidacy.

N/A

32d. If you have had prior judicial or quasi-judicial experience,

(i) List the names, phone numbers and addresses of six attorneys who appeared before you on matters of substance.

(ii) Describe the approximate number and nature of the cases you have handled during your judicial or quasi-judicial tenure.

(iii) List citations of any opinions which have been published.

(iv) List citations or styles and describe the five most significant cases you have tried or heard. Identify the parties, describe the cases and tell why you believe them to be significant. Give dates tried and names of attorneys involved.

(v) Has a complaint about you ever been made to the Judicial Qualifications Commission? If so, give date, describe complaint, whether or not there was a finding of probable cause, whether or not you have appeared before the Commission, and its resolution.

(vi) Have you ever held an attorney in contempt? If so, for each instance state name of attorney, approximate date and circumstances.

- (vii) If you are a quasi-judicial officer (ALJ, Magistrate, General Master), have you ever been disciplined or reprimanded by a sitting judge? If so, describe.

**BUSINESS INVOLVEMENT:**

- 33a. If you are now an officer, director or otherwise engaged in the management of any business enterprise, state the name of such enterprise, the nature of the business, the nature of your duties, and whether you intend to resign such position immediately upon your appointment or election to judicial office.

N/A

- 33b. Since being admitted to the Bar, have you ever been engaged in any occupation, business or profession other than the practice of law? If so, give details, including dates.

No.

- 33c. State whether during the past five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise, institution, organization, or association of any kind. If so, identify the source of such compensation, the nature of the business enterprise, institution, organization or association involved and the dates such compensation was paid and the amounts.

N/A

**POSSIBLE BIAS OR PREJUDICE:**

34. The Commission is interested in knowing if there are certain types of cases, groups of entities, or extended relationships or associations which would limit the cases for which you could sit as the presiding judge. Please list all types or classifications of cases or litigants for which you as a general proposition believe it would be difficult for you to sit as the presiding judge. Indicate the reason for each situation as to why you believe you might be in conflict. If you have prior judicial experience, describe the types of cases from which you have recused yourself.

My husband and father-in-law are attorneys and I intend on recusing myself in any case in which they are trial or appellate counsel.

**MISCELLANEOUS:**

- 35a. Have you ever been convicted of a felony or a first degree misdemeanor?

Yes \_\_\_\_\_ No  X  If "Yes" what charges? \_\_\_\_\_

Where convicted? \_\_\_\_\_ Date of Conviction: \_\_\_\_\_

- 35b. Have you pled nolo contendere or pled guilty to a crime which is a felony or a first degree misdemeanor?

Yes \_\_\_\_\_ No  X  If "Yes" what charges? \_\_\_\_\_

Where convicted? \_\_\_\_\_ Date of Conviction: \_\_\_\_\_

- 35c. Have you ever had the adjudication of guilt withheld for a crime which is a felony or a



first degree misdemeanor?

Yes \_\_\_\_\_ No  If "Yes" what charges? \_\_\_\_\_

Where convicted? \_\_\_\_\_ Date of Conviction: \_\_\_\_\_

36a. Have you ever been sued by a client? If so, give particulars including name of client, date suit filed, court, case number and disposition.

No.

36b. Has any lawsuit to your knowledge been filed alleging malpractice as a result of action or inaction on your part?

No.

36c. Have you or your professional liability insurance carrier ever settled a claim against you for professional malpractice? If so, give particulars, including the amounts involved.

No.

37a. Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you?

No.

37b. Have you ever owned more than 25% of the issued and outstanding shares or acted as an officer or director of any corporation by which or against which a petition in bankruptcy has been filed? If so, give name of corporation, your relationship to it and date and caption of petition.

No.

38. Have you ever been a party to a lawsuit either as a plaintiff or as a defendant? If so, please supply the jurisdiction/county in which the lawsuit was filed, style, case number, nature of the lawsuit, whether you were Plaintiff or Defendant and its disposition.

No.

39. Has there ever been a finding of probable cause or other citation issued against you or are you presently under investigation for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group. If so, give the particulars.

No.

40. To your knowledge within the last ten years, have any of your current or former co-workers, subordinates, supervisors, customers or clients ever filed a formal complaint or formal accusation of misconduct against you with any regulatory or investigatory agency, or with your employer? If so, please state the date(s) of such formal complaint or formal accusation(s), the specific formal complaint or formal accusation(s) made, and the background and resolution of such action(s). (Any complaint filed with JQC, refer to 32d(v).

No.

41. Are you currently the subject of an investigation which could result in civil, administrative or criminal action against you? If yes, please state the nature of the investigation, the

agency conducting the investigation and the expected completion date of the investigation.

No.

42. In the past ten years, have you been subject to or threatened with eviction proceedings? If yes, please explain.

No.

- 43a. Have you filed all past tax returns as required by federal, state, local and other government authorities?

Yes  No  If no, please explain. \_\_\_\_\_

- 43b. Have you ever paid a tax penalty?

Yes  No  If yes, please explain what and why. \_\_\_\_\_

- 43c. Has a tax lien ever been filed against you? If so, by whom, when, where and why?

No.

### HONORS AND PUBLICATIONS:

44. If you have published any books or articles, list them, giving citations and dates.  
Workers' Compensation Cases Face Challenges; Johns Eastern Company, Inc.  
Quarterly Newsletter, Dec. 20, 2013; available at <http://www.johnseastern.com/wp-content/uploads/2016/05/Q3-4-Newsletter.pdf>

45. List any honors, prizes or awards you have received. Give dates.  
Certificate of Appreciation – Legal Aid Society of the Orange County Bar Association  
April 24, 2017

46. List and describe any speeches or lectures you have given.  
I recently lectured regarding the judicial appointment process at:  
Demystifying Judicial Nominations, Palm Beach County Chapter of Florida  
Association for Women Lawyers – March 29, 2018  
Being Heard in the Appointment Process, Jacksonville Women Lawyers Association -  
February 8, 2018  
Authority and role of the JNC – Executive Office of the Governor JNC Training February  
2, 2018

In addition, while associated with Broussard & Cullen, P.A., I presented relatively frequently to the firm's clients regarding various workers' compensation issues, including the application and effect of section 112.18 Florida Statutes (the "Heart/Lung Bill").

47. Do you have a Martindale-Hubbell rating? Yes  If so, what is it? \_\_\_ No

### PROFESSIONAL AND OTHER ACTIVITIES:

- 48a. List all bar associations and professional societies of which you are a member and give the titles and dates of any office which you may have held in such groups and

committees to which you belonged.

The Florida Bar: *Appellate Rules Committee*

Florida Association of Women Lawyers

The Federalist Society

American Enterprise Institute Leadership Network - Member

- 48b. List, in a fully identifiable fashion, all organizations, other than those identified in response to question No. 48(a), of which you have been a member since graduating from law school, including the titles and dates of any offices which you have held in each such organization.

Commissioner – Ninth Circuit Judicial Nominating Commission

Orange Blossom Trail Economic Development Board Member

Central Florida Gator Club

Orange County Bar Association Orange County Young Lawyers

*Law Clerk Reception Committee: 2011, 2012*

Central Florida Women Lawyers Association

*Fall into Fashion Committee, 2012*

Gator Club Martin and Palm Beach County

Martin County Bar Association

*Young Lawyers Division Chair; Constitutional Law Week Speaker*

Orange County Workers' Compensation Section

Orange County Young Republicans

*Secretary, 2015*

Public Risk Management Association

Risk Insurance Management Society Seminole County Bar Association

Seminole County Inns of Court

St. Luke's Lutheran Church

Winter Park YMCA Board Member

*Scholarship Chair, 2012-2013; Community Scholarship Chair, 2011-2012;*

*Teen Board Chair, 2012*

Young Professionals of Martin County

- 48c. List your hobbies or other vocational interests.

Beyond spending time with family, my hobbies include watching Gator football, reading, piano, fitness, and attempting to identify the best doughnut in Central Florida.

- 48d. Do you now or have you ever belonged to any club or organization that in practice or

policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices and whether you intend to continue as a member if you are selected to serve on the bench.

I am a member of St. Luke's Lutheran Church, membership to which requires an affirmation of faith. I will continue my membership if appointed to the bench.

48e. Describe any pro bono legal work you have done. Give dates.

I served as a Guardian ad Litem in Orange County beginning in 2013 until I joined the Governor's Office in 2016. During that time, I served as Guardian ad Litem to two children, both born of the same mother, during the pendency of the State's action for termination of parental rights against the mother. In addition, I received pro bono credit in law school for the hours I served with the Miami-Dade State Attorney's Office, as the internship was on a volunteer basis.

#### **SUPPLEMENTAL INFORMATION:**

49a. Have you attended any continuing legal education programs during the past five years? If so, in what substantive areas?

I attended the following continuing education programs over the past five years:

2/5/2018: The Ethics and Mechanics of Online Reviews (on-line)

2/5/2018: The Fourth Annual Florida Chapters Conference (live)

2/2/2018: Training – Judicial Nomination Committee (live)

1/30/2018: Unveiling the Federal JNC Process (live)

9/1/2017: Sunshine Law Public Records & Ethics for Public (CD)

12/5/2016: Winter and Spring Speaker Series (Live)

5/25/2015: The FL Bar YLD 2016 Government Symposium (on-line)

1/23/2016: 2016 Federalist Society Florida Conference (live)

2/28/2015: Federalist Society Florida Statewide Chapters Conference (live)

7/28/2014: 2013 JNC Training (DVD)

6/13/2014: The Road Less Traveled: Practicing in the Legislative Branch (on-line)

49b. Have you taught any courses on law or lectured at bar association conferences, law school forums, or continuing legal education programs? If so, in what substantive areas?

I recently lectured on three occasions regarding the judicial appointment process:

Demystifying Judicial Nominations, Palm Beach County Chapter of Florida Association for Women Lawyers – March 29, 2018

Being Heard in the Appointment Process, Jacksonville Women Lawyers Association, February 8, 2018

Authority and role of the JNC – Executive Office of the Governor JNC Training February 2, 2018

50. Describe any additional education or other experience you have which could assist you in holding judicial office.

I am a first-generation American on my father's side. My grandparents left Cuba at the tail-end of the Batista regime, seeking the liberty enjoyed by United States citizens. My grandfather arrived in New York on a Sunday and began working in a factory that Monday. My grandmother and father joined him soon thereafter. They worked hard, and eventually settled in Hialeah until they moved to Tallahassee when I was a toddler.

In contrast, my mother's ancestors can be traced back to revolutionary war veterans. My mother's father, a lifelong resident of Louisiana and Alabama, aspired to attend medical school. However, his brother was drafted into the Air Force during World War II. My grandfather received a letter from his brother, in which his brother expressed how much he longed for a Coca-Cola. This drove my grandfather to volunteer for the merchant marines -- he wanted to get his brother that Coca-Cola. Most merchant ships sailed with little to no protection and Mariners suffered the highest rate of casualties of any service in World War II. Although his service derailed my grandfather's medical aspirations, he and his brother made it back home safely and built a successful timber business together.

You would think my two grandfathers wouldn't have much in common, but the core values they shared fostered their great relationship. They both worked hard without complaint. They both made immense sacrifices, without guarantees, but with the hope they were building a better life for their families and their children's families. They both expected the same out of their children and grandchildren, having little tolerance for laziness and complaints. They both expect their children and grandchildren not to become complacent, but to build on the opportunities we've been given. Their stories drive me, and I am constantly mindful that my charmed life exists because of so many others' incredible sacrifices.

51. Explain the particular potential contribution you believe your selection would bring to this position.

If nominated by this Commission and appointed by the Governor, I hope my selection would bring the following: *First*, due to my varied practice and the significant experience I've gained along the way, I am confident in my ability to tackle even the most complex issues, quickly get up to speed, and make the necessary decision points. That being said, I know nothing gets me to a point where I have command over a topic other than putting in the hours. As a result, I would approach this role with the vigor and dedication that it deserves. *Second*, my time serving the executive branch has deepened my admiration for the wisdom behind the separation of powers. With this unique experience behind me, I believe I will be ever mindful of my limited role and of the essential deference to the people's democratically-elected representatives. *Third*, during my time with the Governor's office, I have been involved in over 120 judicial appointments. As a result, I have had the wonderful opportunity to speak with hundreds of people about their views and approach to the law, study their opinions, and challenge my own beliefs. Consequently, I do not come to this application process haphazardly. I am passionate about the law, being a lawyer, and the awesome privilege of serving in the judiciary.

*Finally*, I've always been a litigator, which means I've always practiced adverse to another party's (and attorney's) interest. This has taught me the value of disagreeing without being disagreeable and not allowing ideological differences to interfere with professional and personal relationships. I look forward to possibility of being part of a collegial court and hope to meaningfully contribute to the team.

52. If you have previously submitted a questionnaire or application to this or any other judicial nominating commission, please give the name of the commission and the approximate date of submission.

N/A

53. Give any other information you feel would be helpful to the Commission in evaluating your application.

I have a deep appreciation for the tripartite system of government that our founders deliberately and thoughtfully created for us. Our American form of government is exceptional but fragile. For it to endure, the actors in each branch of government must respect their role, as framed and limited by the constitution. Good government is not defined by its responsiveness to popular demands, but is responsible to the true, long-term interests of the people.

The role of the judiciary in this overall structure must be respected. Judicial officers should be mindful of their duty – to never substitute will for judgment – and stand in humility of their limited role. However, judicial officers must also have the requisite independent spirit, understanding that the judiciary is not superior or inferior to any other branch of government, but that the Constitution is superior to them all. Because, as expressed in Federalist 78, without an independent judiciary that calls out acts contrary to the law, a constitutional form of government is rendered ineffective.

## REFERENCES

54. List the names, addresses, and telephone number of ten persons who are in a position to comment on your qualifications for judicial position and of whom inquiry may be made by the Commission.

The Honorable Jamie R. Grosshans  
Judge of the Fifth District Court of Appeal  
300 South Beach Street, Daytona Beach, FL 32114  
386-255-8600

The Honorable Eric Eisnaugle  
Judge of the Fifth District Court of Appeal  
300 South Beach Street, Daytona Beach, FL 32114  
386-255-8600

The Honorable J. Andrew Atkinson  
Judge of the Second District Court of Appeal  
1700 N Tampa St Ste 300, Tampa, FL 33602  
863-499-2290

Christina Sanabria  
Southeast Division Attorney – Farmer’s Insurance Exchange  
1200 S. Pine Island Rd. Ste 725, Plantation, FL 33324  
954-415-6523

Kerri Utter  
Liability Litigation Managing Attorney – Publix Super Markets, Inc.  
6933 W. Broward Blvd, Plantation, FL 33317  
954-560-6285

William N. Spicola  
Owner – William Spicola, PA  
204 S. Monroe St. Ste 201, Tallahassee, FL 32301  
850-895-1056

Glen Gilzean  
President & CEO – Central Florida Urban League  
2804 Belco Drive, Orlando, FL 32808  
727-488-5403

Mary Alice “Molly” Nardella  
Attorney – Nardella and Nardella PLLC  
250 E. Colonial Dr., Orlando, FL 32801  
407-579-2861

Peter Penrod  
General Counsel – Department of Economic Opportunity  
107 E. Madison Street, Tallahassee, FL 32399  
850-766-3970

Kristen Magana  
Attorney – Broussard, Cullen & Blastic, P.A.  
800 N. Magnolia Ave, Ste. 1301, Orlando, FL 32803  
407-649-8717





## FINANCIAL HISTORY

1. State the amount of gross income you have earned, or losses you have incurred (before deducting expenses and taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

Current year to date	88,313.44		
List Last 3 years	88,689.95	109,274.87	87,071.45

2. State the amount of net income you have earned, or losses you have incurred (after deducting expenses but not taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

Current year to date	88,313.44		
List Last 3 years	88,689.95	109,274.87	87,071.45

3. State the gross amount of income or losses incurred (before deducting expenses or taxes) you have earned in the preceding three years on a year by year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

Current year to date	N/A		
List Last 3 years			

4. State the amount of net income you have earned or losses incurred (after deducting expenses) from all sources other than the practice of law for the preceding three-year period on a year by year basis, and generally describe the sources of such income or losses.

Current year to date	N/A		
List Last 3 years			

**FORM 6  
FULL AND PUBLIC  
DISCLOSURE OF  
FINANCIAL INTEREST**

**PART A – NET WORTH**

Please enter the value of your net worth as of December 31 or a more current date. [Note: Net worth is not calculated by subtracting your *reported* liabilities from your *reported* assets, so please see the instructions on page 3.]

My net worth as of December 18, 2018 was \$505,603.61.

**PART B - ASSETS**

**HOUSEHOLD GOODS AND PERSONAL EFFECTS:**

Household goods and personal effects may be reported in a lump sum if their aggregate value exceeds \$1,000. This category includes any of the following, if not held for investment purposes; jewelry; collections of stamps, guns, and numismatic items; art objects; household equipment and furnishings; clothing; other household items; and vehicles for personal use.

The aggregate value of my household goods and personal effects (described above) is \$ \_\_\_\_\_

**ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:**

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)

VALUE OF ASSET

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
Farmers Group, Inc. 401(k) Savings Plan - [REDACTED]	\$92,291.48
Bank of America Regular Savings Account - [REDACTED]	\$50,000.04
Bank of America Adv Plus Checking Account - [REDACTED]	\$1,403.70
Personal Residence - [REDACTED]	\$531,857.00

**PART C - LIABILITIES**

**LIABILITIES IN EXCESS OF \$1,000 (See instructions on page 4):**

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
Wells Fargo Home Mortgage - PO Box 14411 Des Moines IA 50306-3411	\$169,948.61

**JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:**

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY

**PART D - INCOME**

You may **EITHER** (1) file a complete copy of your latest federal income tax return, including all W2's, schedules, and attachments, **OR** (2) file a sworn statement identifying each separate source and amount of income which exceeds \$1,000 including secondary sources of income, by completing the remainder of Part D, below.

I elect to file a copy of my latest federal income tax return and all W2's, schedules, and attachments.  
 (if you check this box and attach a copy of your latest tax return, you need not complete the remainder of Part D.)

**PRIMARY SOURCE OF INCOME (See instructions on page 5):**

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
State of Florida	200 E. Gaines St. Tallahassee, FL 32399	Salary \$96,999.96

**SECONDARY SOURCES OF INCOME** [Major customers, clients, etc., of businesses owned by reporting person—see instructions on page 6]

NAME OF BUSINESS ENTITY	NAME OF MAJOR SOURCES OF BUSIENSS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE

**PART E – INTERESTS IN SPECIFIC BUSINESS [Instructions on page 7]**

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTITY			
ADDRESS OF BUSINESS ENTITY			
PRINCIPAL BUSINESS ACTIVITY			
POSITION HELD WITH ENTITY			
I OWN MORE THAN A 5% INTEREST IN THE BUSINESS			
NATURE OF MY OWNERSHIP INTEREST			

**IF ANY OF PARTS A THROUGH E ARE CONTINUED ON A SEPARATE SHEET, PLEASE CHECK HERE**

**OATH**

I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed on this form and any attachments hereto is true, accurate, and complete.

*Susannah Sasso*  
**SIGNATURE**

**STATE OF FLORIDA**

**COUNTY OF** Leon

Sworn to (or affirmed) and subscribed before me this 18<sup>th</sup> day of Dec., 2018 by Susan L. Smith

*Susan L. Smith*

(Signature of Notary Public—State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known  OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_



## INSTRUCTIONS FOR COMPLETING FORM 6:

**PUBLIC RECORD:** The disclosure form and everything attached to it is a public record. **Your Social Security Number is not required and you should redact it from any documents you file.** If you are an active or former officer or employee listed in Section 119.071(4)(d), F.S., whose home address is exempt from disclosure, the Commission is required to maintain the confidentiality of your home address **if you submit a written request for confidentiality.**

### PART A – NET WORTH

Report your net worth as of December 31 or a more current date, and list that date. This should be the same date used to value your assets and liabilities. In order to determine your net worth, you will need to total the value of all your assets and subtract the amount of all of your liabilities. Simply subtracting the liabilities reported in Part C from the assets reported in Part B will not result in an accurate net worth figure in most cases.

To total the value of your assets, add:

- form;
- (1) The aggregate value of household goods and personal effects, as reported in Part B of this form;
  - (2) The value of all assets worth over \$1,000, as reported in Part B; and
  - (3) The total value of any assets worth less than \$1,000 that were not reported or included in the category of “household goods and personal effects.”

To total the amount of your liabilities, add:

- (1) The total amount of each liability you reported in Part C of this form, except for any amounts listed in the “joint and several liabilities not reported above” portion; and,
- (2) The total amount of unreported liabilities (including those under \$1,000, credit card and retail installment accounts, and taxes owed).

### PART B – ASSETS WORTH MORE THAN \$1,000

#### HOUSEHOLD GOODS AND PERSONAL EFFECTS:

The value of your household goods and personal effects may be aggregated and reported as a lump sum, if their aggregate value exceeds \$1,000. The types of assets that can be reported in this manner are described on the form.

#### ASSETS INDIVIDUALLY VALUED AT MORE THAN \$1,000:

Provide a description of each asset you had on the reporting date chosen for your net worth (Part A), that was worth more than \$1,000 and that is not included as household goods and personal effects, and list its value. Assets include: interests in real property; tangible and intangible personal property, such as cash, stocks, bonds, certificates of deposit, interests in partnerships, beneficial interest in a trust, promissory notes owed to you, accounts received by you, bank accounts, assets held in IRAs, Deferred Retirement Option Accounts, and Florida Prepaid College Plan accounts. You are not required to disclose assets owned solely by your spouse.

#### How to Identify or Describe the Asset:

— Real property: Identify by providing the street address of the property. If the property has no street address, identify by describing the property’s location in a manner sufficient to enable a member of the public to ascertain its location without resorting to any other source of information.

— Intangible property: Identify the type of property and the business entity or person to which or to whom it relates. **Do not list simply “stocks and bonds” or “bank accounts.”** For example, list “Stock (Williams Construction Co.),” “Bonds (Southern Water and Gas),” “Bank accounts (First

National Bank),” “Smith family trust,” Promissory note and mortgage (owed by John and Jane Doe).”

### **How to Value Assets:**

- Value each asset by its fair market value on the date used in Part A for your net worth.
  
- Jointly held assets: If you hold real or personal property jointly with another person, your interest equals your legal percentage of ownership in the property. However, assets that are held as tenants by the entirety or jointly with right of survivorship must be reported at 100% of their value.
  
- Partnerships: You are deemed to own an interest in a partnership which corresponds to your interest in the equity of that partnership.
  
- Trusts: You are deemed to own an interest in a trust which corresponds to your percentage interest in the trust corpus.
  
- Real property may be valued at its market value for tax purposes, unless a more accurate appraisal of its fair market value is available.
  
- Marketable securities which are widely traded and whose prices are generally available should be valued based upon the closing price on the valuation date.
  
- Accounts, notes, and loans receivable: Value at fair market value, which generally is the amount you reasonably expect to collect.
  
- Closely-held businesses: Use any method of valuation which in your judgment most closely approximates fair market value, such as book value, reproduction value, liquidation value, capitalized earnings value, capitalized cash flow value, or value established by “buy-out” agreements. It is suggested that the method of valuation chosen be indicated in a footnote on the form.
  
- Life insurance: Use cash surrender value less loans against the policy, plus accumulated dividends.

## **PART C—LIABILITIES**

### **LIABILITIES IN EXCESS OF \$1,000:**

List the name and address of each creditor to whom you were indebted on the reporting date chosen for your net worth (Part A) in an amount that exceeded \$1,000 and list the amount of the liability. Liabilities include: accounts payable; notes payable; interest payable; debts or obligations to governmental entities other than taxes (except when the taxes have been reduced to a judgment); and judgments against you. You are not required to disclose liabilities owned *solely* by your spouse.

You do not have to list on the form any of the following: credit card and retail installment accounts, taxes owed unless the taxes have been reduced to a judgment), indebtedness on a life insurance policy owned to the company of issuance, or contingent liabilities. A “contingent liability” is one that will become an actual liability only when one or more future events occur or fail to occur, such as where you are liable only as a partner (without personal liability) for partnership debts, or where you are liable only as a guarantor, surety, or endorser on a promissory note. If you are a “co-maker” on a note and have signed as being jointly liable or jointly and severally liable, then this is not a contingent liability.

### **How to Determine the Amount of a Liability:**

- Generally, the amount of the liability is the face amount of the debt.
  
- If you are the only person obligated to satisfy a liability, 100% of the liability should be listed.

— If you are jointly and severally liable with another person or entity, which often is the case where more than one person is liable on a promissory note, you should report here only the portion of the liability that corresponds to your percentage of liability. *However*, if you are jointly and severally liable for a debt relating to property you own with one or more others as tenants by the entirety or jointly, with right of survivorship, report 100% of the total amount owed.

— If you are only jointly (not jointly and severally) liable with another person or entity, your share of the liability should be determined in the same way as you determined your share of jointly held assets.

**Examples:**

— You owe \$10,000 to a bank for student loans, \$5,000 for credit card debts, and \$60,000 with your spouse to a saving and loan for the mortgage on the home you own with your spouse. You must report the name and address of the bank (\$10,000 being the amount of that liability) and the name and address of the savings and loan (\$60,000 being the amount of this liability). The credit cards debts need not be reported.

— You and your 50% business partner have a \$100,000 business loan from a bank and you both are jointly and severally liable. Report the name and address of the bank and \$50,000 as the amount of the liability. If your liability for the loan is only as a partner, without personal liability, then the loan would be a contingent liability.

**JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:**

List in this part of the form the amount of each debt, for which you were jointly and severally liable, that is not reported in the “Liabilities in Excess of \$1,000” part of the form. Example: You and your 50% business partner have a \$100,000 business loan from a bank and you both are jointly and severally liable. Report the name and address of the bank and \$50,000 as the amount of the liability, as you reported the other 50% of the debt earlier.

**PART D – INCOME**

As noted on the form, you have the option of either filing a copy of your latest federal income tax return, including all schedules, W2's and attachments, with Form 6, or completing Part D of the form. If you do not attach your tax return, you must complete Part D.

**PRIMARY SOURCES OF INCOME:**

List the name of each source of income that provided you with more than \$1,000 of income during the year, the address of that source, and the amount of income received from that source. The income of your spouse need not be disclosed; however, if there is a joint income to you and your spouse from property you own jointly (such as interest or dividends from a bank account or stocks), you should include all of that income.

“Income” means the same as “gross income” for federal income tax purposes, even if the income is not actually taxable, such as interest on tax-free bonds. Examples of income include: compensation for services, gross income from business, gains from property dealings, interest, rents, dividends, pensions, IRA distributions, distributive share of partnership gross income, and alimony, but not child support. Where income is derived from a business activity you should report that income to you, as calculated for income tax purposes, rather than the income to the business.

Examples:

— If you owned stock in and were employed by a corporation and received more than \$1,000 of income (salary, commissions, dividends, etc.) from the company, you should list the name of the company, its address, and the total amount of income received from it.

— If you were a partner in a law firm and your distributive share of partnership gross income exceeded \$1,000, you should list the name of the firm, its address, and the amount of your distributive share.

— If you received dividend or interest income from investments in stocks and bonds, list only each individual company from which you received more than \$1,000. Do not aggregate income from all of these investments.

— If more than \$1,000 of income was gained from the sale of property, then you should list as a source of income the name of the purchaser, the purchaser's address, and the amount of gain from the sale. If the purchaser's identity is unknown, such as where securities listed on an exchange are sold through a brokerage firm, the source of income should be listed simply as "sale of (name of company) stock," for example.

— If more than \$1,000 of your income was in the form of interest from one particular financial institution (aggregating interest from all CD's, accounts, etc., at that institution), list the name of the institution, its address, and the amount of income from that institution.

**SECONDARY SOURCE OF INCOME:**

This part is intended to require the disclosure of major customers, clients, and other sources of income to businesses in which you own an interest. It is not for reporting income from second jobs. That kind of income should be reported as a "Primary Source of Income." You will **not** have anything to report **unless**:

(1) You owned (either directly or indirectly in the form of an equitable or beneficial interest) during the disclosure period, more than 5% of the total assets or capital stock of a business entity (a corporation, partnership, limited partnership, LLC, proprietorship, joint venture, trust, firm, etc., doing business in Florida); and

(2) You received more than \$1,000 in gross income from that business entity during the period.

If your ownership and gross income exceeded the two thresholds listed above, then for that business entity you must list every source of income to the business entity which exceeded 10% of the business entity's gross income (computed on the basis of the business entity's more recently completed fiscal year), the source's address, the source's principal business activity, and the name of the business entity in which you owned an interest. You do not have to list the amount of income the business derived from that major source of income.

Examples:

— You are the sole proprietor of a dry cleaning business, from which you received more than \$1,000 in gross income last year. If only one customer, a uniform rental company, provided more than 10% of your dry cleaning business, you must list the name of your business, the name of the uniform rental company, its address, and its principal business activity (uniform rentals).

— You are a 20% partner in a partnership that owns a shopping mall and your gross partnership income exceeded \$1,000. You should list the name of the partnership, the name of each tenant of the mall that provided more than 10% of the partnership's gross income, the tenant's address and principal business activity.

## **PART E – INTERESTS IN SPECIFIED BUSINESS**

The types of businesses covered in this section include: state and federally chartered banks; state and federal savings and loan associations; cemetery companies; insurance companies; mortgage companies, credit unions; small loan companies; alcoholic beverage licensees; pari-mutuel wagering companies; utility companies; and entities controlled by the Public Service Commission; and entities granted a franchise to operate by either a city or a county government.

You are required to make this disclosure if you own or owned (either directly or indirectly in the form of an equitable or beneficial interest) at any time during the disclosure period, more than 5% of the total assets or capital stock of one of the types of business entities listed above. You also must complete this part of the form for each of these types of business for which you are, or were at any time during the year an officer, director, partner, proprietor, or agent (other than a resident agent solely for service of process).

If you have or held such a position or ownership interest in one of these types of businesses, list: the name of the business, its address and principal business activity, and the position held with the business (if any). Also, if you own(ed) more than a 5% interest in the business, as described above, you must indicate that fact and describe the nature of your interest.



## JUDICIAL APPLICATION DATA RECORD

The judicial application shall include a separate page asking applicants to identify their race, ethnicity and gender. Completion of this page shall be optional, and the page shall include an explanation that the information is requested for data collection purposes in order to assess and promote diversity in the judiciary. The chair of the Commission shall forward all such completed pages, along with the names of the nominees to the JNC Coordinator in the Governor's Office (pursuant to JNC Uniform Rule of Procedure).

(Please Type or Print)

Date: December 21, 2018

JNC Submitting To: Fifth District Court of Appeal

Name (please print): Meredith Sasso

Current Occupation: Attorney

Telephone Number: [REDACTED] Attorney No.: 58189

Gender (check one):  Male  Female

Ethnic Origin (check one):  White, non Hispanic  
 Hispanic  
 Black  
 American Indian/Alaskan Native  
 Asian/Pacific Islander

County of Residence: Orange

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE  
FAIR CREDIT REPORTING ACT (FCRA)

The Florida Department of Law Enforcement (FDLE) may obtain one or more consumer reports, including but not limited to credit reports, about you, for employment purposes as defined by the Fair Credit Reporting Act, including for determinations related to initial employment, reassignment, promotion, or other employment-related actions.

CONSUMER'S AUTHORIZATION FOR FDLE  
TO OBTAIN CONSUMER REPORT(S)

I have read and understand the above Disclosure. I authorize the Florida Department of Law Enforcement (FDLE) to obtain one or more consumer reports on me, for employment purposes, as described in the above Disclosure.

Printed Name of  
Applicant:

Meredith Sasso

Signature of Applicant:

Meredith Sasso

Date: December 21, 2018

IN THE DISTRICT COURT OF APPEAL  
FIFTH DISTRICT, STATE OF FLORIDA

ORANGE COUNTY, FLORIDA and  
ALTERNATIVE SERVICE CONCEPTS,  
(f/k/a Unisource Administrators, Inc.)

Appellants,

CASE NUMBER: 5D09-2970  
L.T. NUMBER: 08-CA-21800

v.

DEREK NEW,

Appellee.

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**APPELLANTS' REPLY BRIEF**

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On Appeal from a Final Order Denying Petitioner's Petition for Rule Nisi from the  
Honorable Stan Strickland,  
Circuit Court Judge, Ninth Judicial Circuit, in and for Orange County, Florida

---

**Michael Broussard, Esquire**

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## II. PRELIMINARY STATEMENT

Herein, Appellants, Orange County (employer) and its Servicing Agent, Alternative Service Concepts (f/k/a Unisource Administrators, Inc.), will be referred to as "Appellants." Appellee, Derek New, will be referred to as "Appellee." The Judge of Compensation Claims may be referred to by the abbreviation "JCC." The Circuit Court for the Ninth Judicial Circuit in and for Orange County may be referred to as the "Trial Court."

The Record citations will be designated "R," followed by the page of the Record, e.g., (R. 1). References to the Appellants' Initial Brief will be referred to as "IB," followed by the applicable page number(s). References to the Appellee's Answer Brief will be referred to as "AB," followed by the page number(s).

## III. ARGUMENT

**POINT I: THE TRIAL COURT ERRED AS A MATTER OF LAW IN CONCLUDING THAT IT LACKED JURISDICTION TO ISSUE A RULE NISI ON BEHALF OF APPELLANTS WHERE THE JCC ORDERED APPELLEE PAY COSTS TO APPELLANTS, AND APPELLEE DEFAULTED UNDER THAT ORDER.**

**A. Section 440.34(3) should be interpreted in *pari materia* with section 440.24 to permit a circuit court to issue a rule nisi on behalf of an employer/carrier.**

1. Section 440.24 should be interpreted to permit a circuit court to issue a rule nisi on behalf of an employer/carrier because no other remedy exists.

In his answer brief, Appellee acknowledges the clear necessity for the prompt payment of costs to an employer/carrier by the nonprevailing employee.

(AB 9) Even so, Appellee contends that the means an employer/carrier should use to obtain enforcement of cost orders is a contempt action as provided by section 440.33(2), Florida Statutes. (AB 6) However, when the JCC has entered a final order disposing of a worker's compensation claim, the JCC is without jurisdiction to certify the facts to the circuit court for enforcement via contempt proceedings. Thus, this remedy is unavailable here.

Section 440.33, titled "Powers of judges of compensation claims" provides in pertinent part:

(1) The judge of compensation claims may preserve and enforce order during any such proceeding;...which may be necessary to enable the judge effectively to discharge the duties of her or his office....

(2) If any person in proceedings before the judge of compensation claims disobeys or resists any lawful order or process...the judge of compensation claims shall certify the facts to the court having jurisdiction in the place in which it is sitting...

The plain language of section 440.33(2) appears to only permit the JCC to certify facts to a circuit court for contempt proceedings when the JCC retains jurisdiction over the matter at issue. When the JCC enters a final order, it no longer has jurisdiction over the parties and their claims. *See Buena Vista Const. Co. v. Capps*, 656 So. 2d 1378, 1380 (Fla. 1st DCA 1995). Under those circumstances, a JCC has no jurisdiction to enforce the prior compensation order. *Id.* at 1380. The "sole remedy for enforcement" is by the procedure outlined in section 440.24, which provides for a petition for rule nisi. *Id.* *See also, Miami-*



*Dade County v. Fonken*, 886 So. 2d 1039, 1039 (Fla. 3d DCA 2004)(“the circuit court has jurisdiction to enforce a final compensation order of a judge of compensation claims[,]” while “interlocutory orders...are matters which properly belong before the judge of compensation claims who has the power to enforce his or her own interlocutory orders”).

The scope of section 440.33(2), as described above, is further demonstrated by a review of the law interpreting that section. Courts apply section 440.33(2) to sanction noncompliance with non-final orders such as orders requiring attendance to an independent medical examiner, authorizing the release of and/or providing medical records, and appearing as a witness when subpoenaed. See e.g., *John Gaul Const. Co. v. Harbin*, 247 So. 2d 33 (Fla. 1971)(contempt action properly brought against claimant who failed to attend ordered medical appointments and scheduled deposition); *Kirk v. Publix Super Mkts.*, 185 So. 2d 161 (Fla. 1966)(where claimant failed to provide hospital records when ordered, JCC should have certified to circuit court for contempt action); *B. G. Willis Painting v. Willis*, 413 So. 2d 1276 (Fla. 1st DCA 1982)(reversing deputy commissioner’s failure to certify medical witnesses for contempt action when they failed to comply with subpoena). In fact, a diligent search of the Florida law revealed no instances where a JCC certified noncompliance with a final order to the circuit court for a contempt proceeding as provided in section 440.33(2).

It is well-settled that the JCC has no authority beyond that which is specifically conferred by statute. *Pruden v. Herbert Contractors, Inc.*, 988 So. 2d 135 (Fla. 1st DCA 2008)(unlike a court of general jurisdiction, a JCC does not have inherent judicial power). Thus, section 440.33(2) does not provide a method of enforcement for a final order awarding costs, such as the order at issue here. As such, this Court should determine that section 440.24 permits a circuit court to issue a rule nisi on behalf of an employer. As argued in Appellants' initial brief, to hold otherwise would deny Appellants a mechanism to obtain enforcement of the JCC's order awarding costs. Such a denial would render section 440.34(3) meaningless, in contradiction of the rules of statutory construction. Consequently, the decision of the Trial Court should be reversed.

2. The interpretation of section 440.34(3) and section 440.24 promoted by Appellee would lead to an absurd result.

In his answer brief, Appellee appears to argue that if section 440.34(3) and section 440.24 are read *in pari materia*, the two sections are consistent because the legislature may have intended to provide the prevailing employer/carrier a hybrid form of recovery under the "net judgment" rule. (AB 7) Appellee then argues that the legislature considered that the rights of the respective parties could be reasonably accommodated by allowing only the prevailing claimant to enforce a compensation award in circuit court and limiting an employer's right of enforcement to section 440.24(4) and section 440.33(2). (AB 7-8)

However, accepting Appellee's argument would lead to absurd results. First, section 440.34(3) provides: "If any party should prevail in any proceedings before a judge of compensation claims or court, there shall be taxed against the nonprevailing party the reasonable costs of such proceedings." So, if the legislature, as asserted by Appellee, intended to limit recovery under the "net judgment" and "separate and distinct claims" tests, those tests would only affect a determination as to who is the prevailing party under section 440.34(3).

Once a court determines which party has prevailed, the party must look to section 440.24 for enforcement. In that regard, if this Court accepts Appellee's interpretation, this Court will be compelled to determine that the legislature only intended to provide costs to an employer/carrier under section 440.34(3) in the limited circumstances that sections 440.33 (contempt) and 440.24(4) (suspension of payments or dismissal of petition) are sufficient to enforce the costs order. So, for example, under Appellee's interpretation the legislature did not intend section 440.34(3) to apply to an employer/carrier who prevails in an action resulting in a final order denying compensability of a claim or on a fraud defense which resolves a claim. Such a limited interpretation of 440.34(3) would lead to absurd results.

A more reasonable interpretation of section 440.34(3) and section 440.24 is that which is promoted by Appellants. That is, when the legislature amended section 440.34(3) in 2003 to provide prevailing party costs to *any* prevailing party,

and did not amend section 440.24 to conform to section 440.34(3), the omission was unintentional.

In *Smalley Transportation Co. v. Moed's Transfer Co.*, 373 So. 2d 55 (Fla. 1st DCA 1979) explained the application of the rule "*expressio unius est exclusio alterius.*" *Id.* at 57. The court held that a provision of the Motor Carrier Act, permitting the remedy of injunction for violation of the Act, left standing a common-law right to money damages. *Id.* at 57. This was so even though the right was not explicitly stated in the statute. *Id.* at 57. The court said:

It is often a valuable servant, but a dangerous master to follow in the construction of statutes or documents. The exclusio is often the result of inadvertence or accident, and the maxim ought not to be applied, when its application, having regard to the subject-matter to which it is to be applied, leads to inconsistency or injustice.

*Id.* at 57 (quoting *Ford v. United States*, 273 U.S. 593, 793 (1927)).

Similarly here, the exclusion of the employer/carrier from 440.24(1) may have been unintentional. As explained in Appellants' initial brief, a consideration of the equities and rules of statutory construction support such an interpretation. In sum, this Court should determine that section 440.24 permits a circuit court to issue a rule nisi on behalf of an employer. The Trial Court's decision should be reversed.

**B. If the Trial Court determined it had jurisdiction to issue a rule nisi under section 440.24, the Trial Court could have properly have issued a rule nisi.**

In his Answer Brief, Appellee argues that this Court should affirm the Trial

Court on the alternative ground that factual and legal issues remained unresolved at the petition for rule nisi hearing. (AB 10) Contrary to Appellee's argument, if the Trial Court determined it had jurisdiction to issue a rule nisi on behalf of Appellants, the legal and factual issues raised by Appellee would not have precluded the Trial Court doing so.

1. Appellee should have presented the legal and factual issues asserted to the JCC.

When considering a request for rule nisi relief, a circuit court is limited to a two-prong inquiry: (1) whether there is a final order in full force and effect, and (2) whether there has been a default under that order. *Gruber v. Caremark, Inc.*, 853 So. 2d 540, 542 (Fla. 5th DCA 2003). Thus, a circuit court cannot determine issues which were raised, or should have been raised before the JCC. *Id.*

In *Gruber*, the JCC entered an order requiring an employer pay attorney fees to a claimant. *Id.* at 541. Prior to the entry of the order, and during the pendency of the worker's compensation action, a stay affecting the parties was entered in a foreign court. *Id.* When the employer failed to pay the fees as ordered, the claimant filed a petition for rule nisi in the circuit court pursuant to section 440.24. *Id.* At the petition for rule nisi hearing, the employer argued the JCC's order was unenforceable due to the stay order entered by the foreign court. *Id.* The circuit declined to issue the rule nisi until such time the stay entered by the foreign court was lifted. *Id.* On appeal, this Court quashed the decision of the circuit court. *Id.*

at 543. In doing so, this Court noted that the employer did not raise the argument regarding the stay in front of the JCC. *Id.* at 542. This Court said that because the circuit court cannot determine issues which were raised, or should have been raised before the JCC, the employer waived the benefit of the stay argument in the rule nisi proceeding. *Id.*

Appellee argues that there was a legal issue as to Appellee's res judicata defense to the petition for rule nisi, as well as a factual issue, as to whether certain costs had already been paid pursuant to a 2007 criminal restitution order. (AB 10, 11). However, like the employer in *Gruber*, Appellee had the opportunity to raise these issues to the JCC and failed to do so. The criminal restitution order was entered in 2007 (R. 11-12), and the hearing on the JCC's motion to tax costs against Appellee was heard in 2008 (R. 4-5). Appellee could have, and should have, raised his res judicata defense and factual disputes to the JCC at that time. Thus, as in *Gruber*, when the Trial Court received Appellant's petition for rule nisi, its inquiry was limited to whether the JCC's order was in full force and effect. As the time for appeal had passed, the JCC's order was in full force and effect. Therefore, the Trial Court should have issued a rule nisi on behalf of Appellants. Its decision should be reversed.

2. Even so, the Trial Court had authority to resolve the issues presented by Appellee.

Appellee argues the legal and factual issues raised by Appellee would have

precluded the Trial Court from hearing Appellants' rule nisi petition. In support of his argument, Appellee cites *Merrit v. Promo Graphics, Inc.*, 691 So. 2d 632 (Fla. 5th DCA 1997) and *Benedict v. Executive Risk Consultants, Inc.*, 616 So. 2d 525 (Fla. 4th DCA 1993). In each of those cases, the circuit court was without jurisdiction to issue a rule nisi because the dispute at issue arose under a specific statute that provided the JCC authority to resolve disputes under that statute. See *Merrit*, 691 So. 2d at 632 (as the dispute at the rule nisi hearing was whether a setoff under section 440.15 was proper, jurisdiction was with JCC); *Benedict*, 616 So. 2d at 525 (issue at rule nisi was whether there was a casual connection between medical expenses and injury; jurisdiction was with JCC). However, where there is a factual issue at a rule nisi proceeding, and there is no specific statutory basis granting the JCC jurisdiction to resolve that issue, the circuit court should hold an evidentiary hearing to resolve the same. *Metro. Dade County v. Rolle*, 661 So. 2d 124 (Fla. 1st DCA 1995).

Thus, in *Metropolitan Dade County*, the First DCA said that if it is necessary to calculate the dollar amount due to the claimant for purposes of enforcing the workers compensation order, it is the function of the circuit court to make that calculation. *Id.* at 127. The court explained:

Once jurisdiction is properly invoked in the circuit court, nothing in the clear terms of subsection 440.24(1) authorizes the circuit court to relinquish jurisdiction to the judge of compensation claims to make findings of fact as to the amount of benefits due the claimant.

Nor is there any statutory authority that would allow the judge of compensation claims to assume the jurisdiction from the circuit court to determine the amount of benefits due in the rule nisi proceeding.

*Id.* As in *Metropolitan Dade County*, there is no specific statutory authority that would have allowed the Trial Court to relinquish jurisdiction to the JCC in this matter. Similarly, like the case in *Metropolitan Dade County*, and unlike the circumstances of *Merit* and *Benedict*, there is no specific statutory authority that would have allowed the JCC to rule on the issues raised by Appellee. Therefore, absent a determination the Trial Court lacked jurisdiction pursuant to section 440.24, the Trial Court could have properly granted a petition for rule nisi on behalf of Appellants. The decision of the Trial Court should be reversed.

**POINT II: IF THE TRIAL COURT'S INTERPRETION OF SECTION 440.24 IS ACCEPTED, SECTION 440.24 DEPRIVES APPELLANTS OF THEIR RIGHTS UNDER THE FLORIDA CONSTITUTION.**

**A. If the Trial Court's interpretation of section 440.24 is accepted, section 440.24 deprives Appellants of their property interests in costs without due process of law and is unconstitutional.**

Appellee argues that Appellants' due process argument is without merit because, although Appellants have established entitlement to a property interest in costs, they do not have a property interest in a particular form of procedure for implementing their right to costs. (AB 14) However, Appellants do not assert that they are entitled to a property right in any particular form of procedure. Appellants simply assert that they have a property right in prevailing party costs. (IB 15)



Because Appellants have a property right in costs, Appellants' interests should be protected by the safeguards of due process. See Art. I, 9, Fla. Const. ("No person shall be deprived of life, liberty or property without due process of law ....").

If the Trial Court's interpretation of section 440.24 is correct, Appellants cannot obtain the costs they are entitled to. Thus, because the law provides no method to enforce Appellant's property right, it effectively deprives Appellants of their property rights. This deprivation occurs without a meaningful, full and fair hearing, because there is no hearing at all.

In sum, if the Trial Court's interpretation of section 440.24 is correct, this Court should determine that section is unconstitutional. The Trial Court's decision should be reversed.

**B. If the Trial Court's interpretation of section 440.24 is accepted, section 440.24 deprives Appellants of their right of access to courts.**

Appellee argues that the Trial Court's interpretation of section 440.24 does not deprive Appellants of their right of access to courts because section 440.24 only reduces the remedies available to Appellants. (A.B. 16). Specifically, Appellant contends the remedies of contempt, via section 440.33, and suspension of payments, via 440.24(4), are available in lieu of the writ of execution. (A.B. 17-18). In support Appellee cites *Alterman Transp. Lines, Inc. v. State*, 405 So. 2d 456 (Fla. 1st DCA 1981), which explains that no substitute remedy need be supplied by legislation which reduces but does not destroy a cause of action.

As explained above, Appellants are without the remedy of contempt as provided by section 440.33 because the JCC no longer retains jurisdiction to certify facts to a circuit court. Additionally, as explained in Appellants initial brief (IB 7-8), the remedies provided by section 440.24(4) are inadequate, as there are no payments to suspend. Thus, Appellants do not have "reduced" remedies. Appellants have no remedy.

Further, there is a fundamental difference between a writ of execution, the remedy provided under section 440.24(1), and an order of contempt, the remedy provided by section 440.33. So, even if a contempt action was available to Appellants under these circumstances, it cannot be said that Appellants' common law right to a writ of execution has been reduced as opposed to abolished. By precluding Appellants from obtaining a writ of execution, section 440.24 does not make obtaining a writ of execution more difficult. Instead section 440.24 completely abolishes the possibility of obtaining a writ of execution at all. As such, the circumstances presented by the instant case are distinguishable from the cases cited by Appellee (AB 16-17). In each of the cases cited by Appellee, the cause of action remained or a substitute remedy was supplied.


Section 440.24 abolishes Appellants' common law right to a writ of execution, and no substitute remedy is provided. Thus, section 440.24 violates

Appellant's right of access to court. The decision of the Trial Court should be reversed.

#### **IV. CONCLUSION**

The Trial Court's decision that it lacked jurisdiction to issue a rule nisi on behalf of Appellants was error. First, section 440.24 should be read in *pari materia* with section 440.34(3) to avoid the Trial Court's interpretation. A decision otherwise is in derogation of the rules of statutory construction as it would render section 440.34(3) meaningless, leaving Appellants without a way to enforce the JCC's order taxing costs. Second, if the Trial Court's interpretation was correct, section 440.24 is unconstitutional as it violates Appellants right to due process and right to access to courts. The Trial Court's decision should be reversed, and the matter remanded for proceedings consistent with that ruling.

Respectfully submitted,



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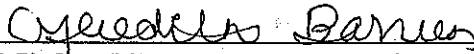
**V. CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 2nd day of February, 2010, via U.S. mail to: Richard W. Ervin, III, Esquire, 1201 Hays Street, Suite 100, Tallahassee, Florida 32301; and Paul Kelley, Esquire/Michael Clelland, Esquire, 541 South Orlando Avenue, Suite 310, Maitland, Florida 32751.

  
MICHAEL BROUSSARD  
MEREDITH BARRIOS

**VI. CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this pleading is typed with Times New Roman 14-point font.

  
**Michael Broussard, Esquire**  
Florida Bar No.: 300403  
**Meredith Barrios, Esquire**  
Florida Bar No.: 58189  
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Attorneys for Appellants

## WRITING SAMPLE OF MEREDITH L. SASSO

*The following is the argument section of a Motion to Dismiss Plaintiff's Complaint filed in the Northern District of Florida. The document was proofed and lightly edited by my colleagues on the case but remains an accurate sample of my writing.*

### ARGUMENT

#### **I. This Court lacks subject matter jurisdiction over Plaintiff's claims against the Governor.**

Attacks on subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) come in two forms: "facial attacks," which require a court to evaluate a pleading and determine if the plaintiff has sufficiently alleged a basis for subject matter jurisdiction and "factual attacks," which challenge the "existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings...are considered." *Lawrence v. Dunbar*, 919 F.2d 1525, 1528-1529 (11th Cir. 1990). When looking at evidence outside the pleadings for the purposes of determining subject matter jurisdiction, courts may consider the complaint supplemented by undisputed facts evidenced in the record or the complaint supplemented by undisputed facts plus the court's resolution of disputed facts. *McElmurray v. Consolidated Gov't of Augusta-Richmond County*, 501 F.3d 1244, 1251 (11th Cir. 2007). This Court has an affirmative duty to determine if jurisdiction is proper, and if jurisdiction is absent, this Court must not proceed on the merits of this case. *Lamb v. Charlotte County*, 429 F. Supp. 2d 1302, 1306 (M.D. Fla. 2006). Ripeness, like other subject matter jurisdiction challenges, is treated as a Rule 12(b)(1) motion to dismiss; thus, it is the plaintiff's burden to

present facts demonstrating the appropriateness of judicial resolution. *See Hames v. City of Miami*, 479 F. Supp. 2d 1276, 1283–84 (S.D. Fla. 2007), *citing Elend v. Basham*, 471 F.3d 1199 (11th Cir. 2006) (analyzing ripeness under Rule 12(b)(1)); *see also Morrison v. Amway Corp.*, 323 F.3d 920, 924, n. 5 (11th Cir. 2003). A “ripeness” motion under rule 12(b)(1) may challenge the court’s subject matter jurisdiction based on the face of the pleadings, or on the case’s actual substantive facts.

A. This Court lacks subject matter jurisdiction because Plaintiff has failed to present a case or controversy with the Governor that is ripe for judicial review.

The ripeness doctrine involves both jurisdictional and prudential concerns. *Digital Props., Inc. v. City of Plantation*, 121 F.3d 586, 589 (11th Cir.1997). “[F]ederal courts are confined by Article III of the Constitution to adjudicating only actual ‘cases’ and ‘controversies.’” *Malowney v. Fed. Collection Deposit Grp.*, 193 F.3d 1342, 1346 (11th Cir. 1999) *quoting Allen v. Wright*, 468 U.S. 737, 750 (1984); *Seay Outdoor Advert., Inc. v. City of Mary Esther, Fla.*, 397 F.3d 943, 946 (11th Cir. 2005) (“The Article III requirement of a case or controversy is a fundamental aspect of our jurisdiction.”). To demonstrate a justiciable controversy, a party seeking relief must show, at an “irreducible minimum,” that at the time the complaint was filed, there was actual or threatened injury resulting from the defendant’s conduct, that the injury fairly can be traced to the challenged action,

and that the injury is likely to be redressed by favorable court disposition. *Atlanta Gas Light Co. v. Aetna Cas. & Sur. Co.*, 68 F.3d 409, 414 (11th Cir. 1995). If the complaining party is alleging the *threat of a future injury*, “[t]here must be a substantial likelihood that the plaintiff will suffer [such] future injury: a ‘perhaps’ or ‘maybe’ chance is not enough.” *Mallowney*, 193 F.3d at 1342, 1347 (11th Cir. 1999) (emphasis added). Even a “well-founded” concern is not sufficient to create a justiciable controversy. *Atlanta Gas Light Co.*, 68 F.3d at 415. However, “[e]ven when the constitutional minimum has been met ... prudential considerations may still counsel judicial restraint.” *Id.* (internal marks omitted). “The ripeness doctrine protects federal courts from engaging in speculation or wasting their resources through the review of potential or abstract disputes.” *Digital Properties*, 121 F.3d at 589.

In considering ripeness, courts must decide whether the issues in a particular case are suitable for judicial decision and whether a failure to adjudicate the matter will impose a hardship on the parties. *Id.* A dispute is not “ripe” and creates no subject matter jurisdiction for the federal courts unless “the claim is sufficiently mature and the issues sufficiently defined and concrete to permit effective decision making by the court.” *Georgia Advocacy Office Inc. v. Camp*, 172 F.3d 1294, 1298 (11th Cir. 1999) (dismissing claim as unripe). The Eleventh Circuit has recognized that, to challenge the constitutionality of government action, a proponent has the

obligation to obtain a conclusive and definitive government decision regarding the alleged unconstitutional application of the legislation questioned. *Hugh Johnson Enterprises, Inc. v. City of Winter Park, Florida*, 231 Fed. Appx. 848, 850 (11th Cir. 2007); *See also Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 807–08 (2003) (“Ripeness is a justiciability doctrine designed ‘to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.’”) (internal citations omitted).

The effect of filing an action before a deadline for the defendant to act was addressed by the Fourth Circuit in a factually distinguishable, yet instructive, case regarding the ripeness doctrine. In *Scoggins v. Lee's Crossing Homeowners Ass'n*, 718 F.3d 262 (4th Cir. 2013), homeowners sued a homeowners' association for monetary damages and injunctive relief, alleging that they were entitled under Fair Housing Amendments Act (FHAA) to a requested modification of restrictive covenants to permit them to build ramp leading to the front door of their home for their adult son. *Id.* at 266. Under the covenants, the review board was allotted 30 days to respond to the plaintiffs' written request. *Id.* at 268. Instead of waiting for the 30-day deadline to run, plaintiffs filed their complaint 17 days before the 30-



day deadline. *Id.* at 268. The district court adjudicated the merits in favor of defendants, but the Fourth Circuit reversed. *Id.* at 271. In doing so, the Fourth Circuit held that the ramp request claim was not ripe for review, because final action on the request is still forthcoming and is “dependent on future uncertainties.” *Id.*

Here, Plaintiff’s constitutional challenge is not ripe for adjudication as Plaintiff cannot satisfy Article III ripeness requirements, and even if he could, prudential considerations counsel against judicial intervention. Due to Plaintiff’s premature filing of this action, the time defined by the Senate Rules to initiate action on the Governor’s executive suspension has not expired. To comply with Rule 12.9(2), the Senate was required to initiate action on Plaintiff’s executive suspension by April 11, 2018, because the legal proceeding abating Senate action concluded with the jury’s acquittal on January 11, 2018. Plaintiff filed this lawsuit on March 20, 2018, more than *three weeks* in advance of the deadline for Senate action to commence. Thus, although Plaintiff’s Complaint alleges the Senate took no action regarding Plaintiff, Plaintiff filed this suit before the Senate was required to act. Moreover, Plaintiff acknowledges that he has potentially placed the resolution of his executive suspension in abeyance, as provided for by Rule 12.9(2). DE 1, p. 11, 16. Because the time for the Senate to initiate action pursuant to its Rules had not yet elapsed before he filed this lawsuit, any delay in the

Senate’s consideration of his executive suspension at this point is attributable solely to his own premature action.

Plaintiff states that he “does not know when his hearing will take place or what procedural due process rules apply.” DE 1, p. 16. Yet it is Plaintiff’s own action in filing this lawsuit that has preempted the Senate’s ability to conduct a hearing and consider whether to remove or reinstate him to his former office. Similarly to the plaintiffs in *Digital Properties* and *Scoggins*, Plaintiff rushed to the courthouse with a constitutional challenge without exhausting the procedures prescribed by the Senate Rules, seeking to circumvent Florida law. Plaintiff has, therefore, failed to present a mature claim that is ripe for judicial review, and this Court should dismiss his Complaint as a result.

**B. Plaintiff lacks standing to raise claims against the Governor regarding the timing of the Florida Senate proceedings.**

The Supreme Court has explained that the “irreducible constitutional minimum” of standing under Article III consists of three elements. First, the plaintiff must have suffered an “injury in fact”—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) “actual or imminent, not ‘conjectural’ or ‘hypothetical’.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (internal citations omitted). Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be “fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the

independent action of some third party not before the court.” *Id.* Third, it must be “likely,” as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision.” *Id.*; *see also Hollywood Mobile Estates Ltd. v. Seminole Tribe of Florida*, 641 F.3d 1259, 1265 (11th Cir. 2011) (internal citations omitted). “The party invoking federal jurisdiction bears the burden of proving standing.” *Id.* Here Plaintiff lacks standing as to his claims against the Governor both because his Complaint fails to demonstrate causation between his alleged injury and action of the Governor and because the Court does not have the authority to grant the relief requested as to the Governor.

First, Plaintiff cannot demonstrate the requisite causation necessary to confer standing against the Governor because the removal/reinstatement proceedings that form the basis for Plaintiff’s Complaint are controlled by both Senate discretion and Senate rules. The Governor’s role, on the other hand, is action that merely commences the process Plaintiff complains of, and thereafter, the Governor is merely a party to the same Senate proceedings as Plaintiff and subject to the same rules. *See generally* Fla. S. Rule 12.9 (recognizing the Governor and the suspended official as parties to the proceedings before the Senate committee, subcommittee, or special master). Similarly, the Governor plays no role in the adoption, implementation, or application of the Senate Rules.

Plaintiff also cannot demonstrate causation because the Governor's exercise of the suspension power under Article IV section 7 of the Florida Constitution does not constitute a final action that deprives Plaintiff, or any other public official, of property. *See, e.g., Fair v. Kirk*, 317 F. Supp. 12, 17 (N.D. Fla. 1970), *aff'd*, 401 U.S. 928 (1971) ("Neither Fair nor any other plaintiff in his position suffers irreparable harm as a result of the suspension, for he may still plead his case in the senate during removal proceedings."). In *Fair*, a former supervisor of elections in Florida challenged, on due process grounds, the constitutionality of Article 4 Section 7 of the Florida Constitution authorizing the governor to suspend a county officer from office. *Id.* at 13. Citing longstanding Supreme Court precedent, the Court recognized that the act of a governor in suspending a public official is not final action. *Id.* at 15 *citing Wilson v. State*, 169 U.S. 586 (1898)). The Court explained that "[i]n effect, the governor proposes, but the legislature disposes," and held that a suspension by the Governor of a public official does not cause irreparable harm. *Id.* at 17.

Plaintiff also alleges that Executive Order 17-273 does not adequately describe Plaintiff's actions so to put him on notice of the basis for his suspension. DE 1, p. 5. However, neither 42 U.S.C § 1983 nor Florida state law permits a general appeal to the courts of an executive suspension. *Wilson v. State*, 169 U.S. at 592. *See also, e.g., State ex rel. Hatton v. Joughin*, 138 So. 392, 394 (Fla. 1931)

(noting action of Governor in suspending officer, if within jurisdiction under constitutional provision, is not subject to review by court); *see also Bruner v. State Commission on Ethics*, 384 So. 2d 1339 (Fla. 1st DCA 1980) (governor may suspend public officer at any time; he may accept recommendations for suspension when made by Commission on Ethics and may suspend then, or he may await result of appellate review, and governor's suspension, when made, shifts forum from District Court of Appeal to the governor and the Senate). As explained in *Kuhn v. Thompson*, 304 F.Supp.2d 1313, 1329-30 (M.D. Ala. 2004),

In *Wilson*, the United States Supreme Court addressed the issue of federal jurisdiction in an action involving the Governor's suspension of the state railroad commissioner. Although the plaintiff alleged that a violation of due process occurred, the Court held that no federal question, and thus no federal jurisdiction, existed in the case because [t]he controversy relates exclusively to the title to a state office, created by a statute of the state, and to the rights of one who was elected to the office so created. Those rights are to be measured by the statute and by the constitution of the state, excepting in so far as they may be protected by any provision of the federal constitution.

The United States Supreme Court noted that “[it] should be very reluctant to decide that [it] had jurisdiction in such a case, and thus, in an action of this nature, to supervise and review the political administration of a state government by its own officials, and through its own courts.”

(internal citations omitted).

Similarly, federal courts should not inquire into the factual basis for reinstatement of an officer previously suspended by the Governor, any more than the courts may inquire as to the sufficiency of the evidence for suspension. *Burks*

*v. Perk*, 470 F.2d 163, 165 (6th Cir. 1972) (“Federal Courts ought not intrude in controversies between state political subdivisions and their officers, over the title to a state office or the rights of persons appointed to such office. We ought not strain unnecessarily the relationship between federal-state judicial systems.”) and *State ex rel. Kelly v. Sullivan*, 52 So. 2d 422, 425 (Fla. 1951) (noting the Governor is the exclusive judge, insofar as the courts are concerned, of the sufficiency of the proof of the charges advanced against an officer, not merely because the courts have been given no power of review, but for the further reason that the Senate has been granted such power). Thus, to the extent Plaintiff seeks judicial review regarding the Governor’s decision to reinstate Plaintiff or the factual basis for the suspension in this first instance, this Court cannot grant the relief requested, and therefore Plaintiff’s claim fail to satisfy redressability requirements. As such, this Court lacks jurisdiction to address the merits of the initial or continued suspension, and Plaintiff’s request for reinstatement is not a remedy this Court can provide.

In sum, Plaintiff can demonstrate neither causation nor redressability of his claims as to the Governor. Settled precedent is clear that the mere suspension of a public official does not cause the requisite irreparable harm to form a basis for Plaintiff’s cause of action. To the extent Plaintiff inquires as to the factual circumstances of his continued suspension, that is not an issue reviewable by this Court. As such, Plaintiff’s Complaint should be dismissed. *See Stalley v. Orlando*

*Reg'l Healthcare Sys.*, 524 F.3d 1229, 1232 (11th Cir. 2008) (“Because standing is jurisdictional, a dismissal for lack of standing has the same effect as a dismissal for lack of subject matter jurisdiction.”) (internal quotations omitted).

## **II. Plaintiff fails to state a claim upon which relief can be granted against the Governor.**

To state a claim for a procedural due process violation, Plaintiff must allege: (1) a deprivation of a constitutionally-protected liberty or property interest, (2) state action, and (3) constitutionally inadequate process. *Donnell v. Lee County Port Auth.*, 509 Fed. Appx. 903, 904–05 (11th Cir. 2013) (internal citations omitted). Plaintiff must also establish an “affirmative causal connection between a [defendant’s] acts or omissions and the alleged constitutional deprivation.” *Id.* To survive dismissal for failure to state a claim, “a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Manzini v. The Florida Bar*, 511 Fed. Appx. 978, 982 (11th Cir. 2013). “Factual allegations must be enough to raise a right to relief above the speculative level.” *Id.* (internal citations omitted) Mere conclusory statements in support of a threadbare recital of the elements of a cause of action will not suffice. *Id.*

Plaintiff fails to state a cause of action against the Governor as he has not and cannot allege that the Governor’s actions violated his due process rights. As stated above, once the Governor suspends Plaintiff, the proverbial “ball” is in the

Senate's court. *Fair*, 317 F. Supp. at 14 (stating that “[i]n effect, the governor proposes, but the legislature disposes” and holding that a suspension by the Governor of a public official does not cause irreparable harm). As such, the chain of causation is broken, and Plaintiff's complaints regarding the timeliness of the Florida Senate's proceedings are properly directed to the Senate—not the Governor. *See, e.g., Manzini v. The Florida Bar*, 511 Fed. Appx. 978, 983 (11th Cir. 2013) (holding Plaintiff could not make a claim for a procedural due process violation because the chain of causation between defendant's action and any alleged deprivation of property was cut off by the independent actions of a state court).

**III. Plaintiff's claims for damages against the Governor are barred by the Eleventh Amendment to the United States Constitution.**

Here, Plaintiff brings suit against the Governor in his official capacity only. Eleventh Amendment immunity bars suits by private individuals against a state in federal court unless the state has consented to be sued, has waived its immunity, or Congress has abrogated the states' immunity. *Henry v. Florida Bar*, 701 Fed. Appx. 878, 880 (11th Cir. 2017) (internal citations omitted). Congress has not abrogated Eleventh Amendment immunity in cases arising under 42 U.S.C. §§ 1981, 1983, or 1985, and Florida has not waived its Eleventh Amendment immunity in federal civil rights actions. *Id.* Suits against state officials in their



official capacities are treated as suits against the state. *Id.* at 880. Thus, official-capacity defendants may assert the same immunities that the governmental entity possesses. *Id.*

Of course, *Ex parte Young*, 209 U.S. 123 (1908) provides an exception to this rule: “state officers c[an] be sued in federal court despite the Eleventh Amendment ... [if] the officers have ‘some connection with the enforcement of the act’ in question or [are] ‘specially charged with the duty to enforce the statute’ and [are] threatening to exercise that duty.” *Id.* However, the required “connection” is not “merely the general duty to see that the laws of the state are implemented,” but “the particular duty to enforce the statute in question and a demonstrated willingness to exercise that duty.” *Id.* at 416. *See, e.g., Morris v. Livingston*, 739 F.3d 740, 745–46 (5th Cir. 2014) (holding Governor of Texas was an improper defendant as he was not responsible for the challenged section’s administration and enforcement). Similarly, *Young* cannot be used to require a state officer to perform a discretionary task. *See, e.g., Seminole Tribe of Florida v. State of Fla.*, 11 F.3d 1016, 1028–29 (11th Cir. 1994), *aff’d sub nom. Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996) (noting IGRA’s compacting process demonstrate that the governors must use their discretion and, under the first exception to the *Ex parte Young* doctrine, retained their Eleventh Amendment Sovereign immunity).

Thus, to the extent Plaintiff's Complaint seeks damages in the form of "back pay" against the Governor, the suit is barred. *Connor v. Halifax Hosp. Med. Ctr.*, 135 F. Supp. 2d 1198, 1214 (M.D. Fla. 2001) (The Eleventh Amendment does not generally prohibit suits against state officials in federal court seeking only prospective injunctive or declaratory relief, but bars suits seeking retrospective relief such as restitution or damages).

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