

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

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

**DATE:** August 17, 2019 Florida Bar No.: 957259

**GENERAL:** Social Security No.: \_\_\_\_\_

1. Name Keith F. White E-mail: ctjukw1@ocnjcc.org

Date Admitted to Practice in Florida: September 29, 1992

Date Admitted to Practice in other States: N/A

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

Employer: State of Florida; Title: Circuit Judge, Ninth Judicial Circuit

3. Business address: Orange County Courthouse, 425 N. Orange Ave.

City Orlando County Orange State FL ZIP 32801

Telephone (407) 836-0477 FAX (N/A) N/A-N/A

4. Residential address: \_\_\_\_\_

City \_\_\_\_\_ County Orange State FL ZIP \_\_\_\_\_

Since 1998 Telephone \_\_\_\_\_

5. Place of birth: Honolulu, Hawaii

Date of birth: \_\_\_\_\_ Age: 53

6a. Length of residence in State of Florida: From 1967 to present

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 \_\_\_\_\_

Date of marriage August 12, 1995

Spouse's occupation Sales

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>
None			

9. Military Service (including Reserves)

<i>Service</i>	<i>Branch</i>	<i>Highest Rank</i>	<i>Dates</i>
None			
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.

N/A

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.

N/A

- 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.

N/A

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>
Rockledge High School	Co-Valedictorian	1980-1984	Diploma
Brevard Community College		1984-1986	A.A.
University of Central Florida	Summa Cum Laude	1986-1989	B.S.E.
Florida State University	High Honors	1989-1992	J.D.

18b. List and describe academic scholarships earned, honor societies or other awards.  
 UCF: Awards-Dean's List, Greek Scholar of the Year; Honor Societies-President's Leadership Council, Phi Kappa Phi, Omicron Delta Kappa, Order of Omega  
 FSU: Scholarships-Lambda Chi Alpha Graduate Scholarships; Award-Book Award for Legal Research & Writing II; Honor Societies-Order of the Coif, Law Review, Moot Court

**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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None

**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 Bar	09-29-92
U.S. District Court, M.D. Fla.	12-17-92
U.S. District Court, N.D. Fla.	01-15-99
U.S. District Court, S.D. Fla.	01-15-99
U.S. Court of Appeals, 11th Cir.	03-01-93

**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>
Associate	Broad and Cassel	390 N. Orange Ave., Suite 1400, Orlando, FL 32801	1992-1999
President and Sole Shareholder of Keith F. White, P.A., which was a partner in Broad and Cassel	Broad and Cassel	See above	2000-Jan. 31, 2011
Summer Law Clerk	Moore, Williams, et al.	Tallahassee, FL	1990
Summer Law Clerk	Carlton, Fields, et al.	Orlando, FL	1991

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.

During the period from 1998 to January 2011, I focused my practice in the area of labor and employment ("L&E") law, and was lead L&E counsel for the Greater Orlando Aviation Authority from August 2000 to January 2011. My clients and I attempted to identify potential problems in an effort to avoid future litigation. I assisted employers in navigating through the statutes and regulations that govern the workplace and defending against employment-related claims in administrative and judicial proceedings. Management and I worked together to resolve union-related matters, including collective bargaining, organizing campaigns, and unfair labor practice charges. I also handled a wide variety of complex litigation matters, and assisted my clients with all aspects of such litigation in the trial and appellate courts.

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	<u>0</u> %	Civil	<u>100</u> %
Federal Trial	<u>2</u> %	Criminal	<u>0</u> %
Federal Other	<u>0</u> %	Family	<u>0</u> %
State Appellate	<u>1</u> %	Probate	<u>0</u> %
State Trial	<u>97</u> %	Other	<u>0</u> %
State Administrative	<u>0</u> %		
State Other	<u>0</u> %		
	<u>    </u> %		
TOTAL	<u>100</u> %	TOTAL	<u>100</u> %

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

	3	Non-jury?
	*One of those cases included a non-jury declaratory judgment claim	
Jury?	<u>                    </u>	<u>0</u>
Arbitration?	<u>0</u>	Administrative Bodies? <u>0</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).

Please see attachment.

- 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).

Please see attachment.

- 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?  
2 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?  
0%

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 period from 1993 to 1997, my practice was almost exclusively devoted to commercial litigation matters, including hundreds of collection matters. I had primary responsibility for all but one of the collection matters, and had secondary responsibility for the other commercial litigation matters. I believe that I averaged 4 court appearances per month during that period.

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.

Please see attachment.

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.

Please see attachment.

**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.

Yes. On Jan. 3, 2011, I was appointed as Circuit Judge, Circuit 9, Group 27. I commenced my term on Feb. 1, 2011, for a term ending in Jan. 2013. On Aug. 14, 2012, I won the election for that position for a term that commenced in Jan. 2013. On Nov. 6, 2018, I was elected (unopposed) for that position for a term that commenced in Jan. 2019. I served as an Associate Judge of the Fifth District Court of Appeal on March 22 & 24, 2016, and July 25, 2019.

- 32b. List any prior quasi-judicial service:

*Dates*

*Name of Agency*

*Position Held*

None

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.

Yes. I was elected Councilman for the City of Maitland in 1996 and 1999, and served in that position from 1996 to 2001. In 2000, I was elected as Vice Mayor by the City Council, and served in that position until 2001. No earlier than 1994, I was appointed by City Council to the Board of Zoning Adjustment, and served in that position until my term as Councilman commenced.



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.

Deneen N. Carrier, Esq., 101 E. Kennedy Blvd., Ste. 2125, Tampa, FL 33602, 813-222-8090.

Thomas E. Dukes, III, Esq., McEwan, Martinez, Dukes & Hall, P.A., 108 E. Central Blvd., Orlando, FL 32801, 407-423-8571.

Walter A. Ketcham, Jr., Esq., Grower, Ketcham, Rutherford, Bronson, Eide & Telan, P.A., 901 N. Lake Destiny Rd., Suite 450, Maitland, FL 32751, 407-423-9545.

Robert L. McLeod, Esq., The McLeod Firm, 1200 Plantation Island Dr. S., #140, St. Augustine, FL 32080, 904-471-5007.

Keith R. Mitnik, Esq., Morgan & Morgan, P.A., 20 N. Orange Ave., Suite 1600, Orlando, FL 32801, 407-420-1414.

Justin C. Patrou, Esq., Public Defender's Office, 9<sup>th</sup> Judicial Cir., 2 Courthouse Square, Kissimmee, FL 34741, 407-742-7024.

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

In the Domestic Violence Division, from Feb. 1, 2011 to Dec. 31, 2012, I handled more than 2,000 cases, and presided over more than 1,000 court proceedings, including final injunction hearings and multi-day bench trials for family cases.

In the Criminal Division, from Jan. 1, 2013 to Dec. 31, 2014, and from Jan. 1, 2018 to present, I presided over numerous jury trials, several violation of probation hearings, and a multitude of other proceedings, including bond hearings, competency hearings, pleas, sentencing hearings and suppression hearings. I estimate that I handled thousands of cases because I had approximately 500 cases pending on a daily basis.

In the Civil Division, from Jan. 1, 2015 to Dec. 31, 2017, I presided over numerous jury and non-jury trials, and a panoply of evidentiary and non-evidentiary hearings on the multitude of motions filed in civil cases. I estimate that I handled thousands of cases because I had approximately 2500 cases pending on a daily basis.

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

None.

- (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.

Please see attachment.

- (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.

I do not know of any such complaint.

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

No.

(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.

N/A

### **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.

No

### **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.

None, other than: 1) cases involving my former law firm or former clients for whom I performed substantial services; 2) cases that I handled as a circuit judge; and 3) as permitted or required by applicable law. As a circuit judge, I have recused myself approximately 19 times for reasons 1) and 3).

**MISCELLANEOUS:**

- 35a. Have you ever been convicted of a felony or a first degree misdemeanor?  
Yes \_\_\_\_\_ No  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  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.  
Yes.

I believe that the first suit was filed and tried in 1986. I was the defendant and State Farm or its insured (Ms. Kidd) was the plaintiff. The suit sought recovery of the costs to repair the damage that Ms. Kidd's automobile sustained in a collision between her automobile and my automobile. The court in Brevard County entered a judgment

against me and I paid the judgment pursuant to a payment plan.

The second suit was filed in May 2011. My wife and I filed a petition against Commissioner of Internal Revenue (Docket No. 10703-11S, U.S. Tax Ct.) disputing a Notice of Deficiency for tax year 2008. In July 2011, the court entered a Decision, pursuant to the agreement of the parties, finding that there was no deficiency or penalty due from, and no overpayment due to, my wife and me for tax year 2008.

The third suit was filed in Oct. 2015. John Henry Frederick filed a "Motion for Damages" against "The Honorable Judge Keith F. White" which was docketed by the Clerk as a civil action (2015-CA-9732, Fla. 9<sup>th</sup> Cir. Ct.), but was never served on me. I became aware of this case on Feb. 13, 2017 when I received a copy of the Notice of Lack of Prosecution entered on that date. On May 17, 2017, an Order of Dismissal was entered. The motion does not contain any specific factual allegations against me, so I am unable to respond to the motion. The caption of the motion refers to 2013-CF-12364, a case assigned to Criminal Division 17. I was not assigned to that division until Jan. 1, 2018.

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. Please see attachment.

- 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.  
None

45. List any honors, prizes or awards you have received. Give dates.

See response to 18b. In addition, I was named in the Florida Labor & Employment section of "Chambers USA 2010." In June 2010, I received a Certificate of Appreciation from the Legal Aid Society of the OCBA for service as a guardian ad litem.

46. List and describe any speeches or lectures you have given.

I spoke on the topics of "Mental Health and Emotional Issues in the Workplace" and "Protecting Business Interests" at a seminar sponsored by Sterling Education Services, LLC in Orlando, FL on May 8, 2003. I spoke on the topic of "Strategies for Downsizing-What You Need to Know" at a meeting of the HR Peer Group of Associated Builders & Contractors, Inc. in Orlando, FL on Nov. 18, 2008. I spoke to students enrolled in Professor Kinyel Ragland's U.S. Gov't course at Valencia Community College in Kissimmee, FL on Mar. 28, 2014. I spoke at the "What Civil Judges Want You to Know" Judicial Forum sponsored by National Business Institute, Inc. in Orlando, FL on Nov. 13, 2015. I spoke on the topic of "Courtroom Etiquette" at a seminar sponsored by the Orange County Bar Ass'n in Orlando, FL on Aug. 3, 2018 and Aug. 16, 2019.

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.

Florida Bar (Federal Court Practice Committee, 2004-2010); Orange County Bar Association; Central Florida Association for Women Lawyers; Hispanic Bar Association of Central Florida; Paul C. Perkins Bar Association; George C. Young First Central Florida American Inn of Court; The Federalist Society.

- 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.

Grace Church; First United Methodist Church of Winter Park (Co-Chair, Student Ministry Leadership Committee, 2016-2017; Board of Trustees, 2012-2014); Bible Study Fellowship; Osceola County Bar Association; Central Florida Family Law American Inn of Court; UCF Alumni Association (Board of Directors, 2002-2011; Chair, Legislative Relations Committee, 2004-2008; Vice Chair, 2007-2008; Chair-Elect, 2008-2009; Chairman, 2009-2010; Past Chair, 2010-2011); UCF Golden Knights Club; Lambda Chi Alpha Educational Foundation (Board of Directors, 2009-2011; Chair, Board

Development Committee, 2010-2011); Lambda Chi Alpha Fraternity (Former Director, UCF Chapter Housing Corporation); Maitland Historical Society; Maitland Civic Center; Society for Human Resource Management; Central Florida Human Resource Association; Orange County Young Republicans; Maitland Rotary Club.

48c. List your hobbies or other vocational interests.

Working out, watching movies, reading, listening to classical music, dining out and traveling.

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.

Yes. I am an alumni member of Lambda Chi Alpha Fraternity, a social organization for undergraduate students that restricts its membership to males. I intend to continue as an alumni member if selected to serve on the district court. From 2009 to 2011, I served on the Board of Directors of the Lambda Chi Alpha Educational Foundation, a charitable organization that restricts its Board membership to males. I resigned from that Board prior to taking the circuit court bench. I was a member of the Maitland Rotary Club ("the MRC"), a community service and networking organization. It is my understanding that the MRC had a policy or practice of restricting its membership to males. During the time of my membership in the MRC, that policy or practice was changed and females were accepted for membership. I joined the MRC no earlier than 1994 and resigned from the MRC no later than 2001.

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

I served as a guardian ad litem in several cases over several years prior to February 1, 2011.

#### **SUPPLEMENTAL INFORMATION:**

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

Yes. From Aug. 2014 to present, I earned 95 credit hours of Continuing Judicial Education (CJE) in the substantive areas of civil, ethics, fairness and diversity, and criminal, including the handling capital cases refresher course in 2016 and 2019. I earned 129.25 credit hours of CJE from Feb. 1, 2011 to Jan. 31, 2017, which is more than twice the amount of CJE required during those two 3-year reporting periods. Those courses were in the substantive areas of civil, ethics, family, criminal, and fairness and diversity, including the handling capital cases initial course, and the fairness and diversity course required for all judges.

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?

Yes. See response to 46.

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

My undergraduate training in engineering provides me with analytical skills that complement those skills that I learned in law school, developed in private practice and acquired on the bench. My experience with the City of Maitland assists me as a judge because as Councilman I gave all interested parties an opportunity to be heard, analyzed all aspects of the issue and exercised my reasoned judgment to render a decision. In addition, that experience will assist me as a district judge because I learned how to successfully build consensus without compromising core values. I also believe that experience, coupled with my judicial experience, will enable me to be an effective liaison between the judicial branch and the other branches of government. In fact, in April 2019, a group of legislators asked me to consult with them regarding proposed bills relating to Amendment 4 and existing law.

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

I believe that I will bring a unique combination of humility, commitment to the rule of law, dedication, aptitude for legal analysis and writing, energy, experience, fair-mindedness and temperament to the position.

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.

Fifth District Court JNC: Mar. 2006, Feb. 2017, May 2018 & Dec. 2018; Ninth Judicial Circuit Court JNC: Feb. 2010, Sep. 2010 & Oct. 2010; Florida Federal JNC: Aug. 2013.

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

I was raised in a middle-class family, and I am the product of public schools. With limited assistance from my parents, I paid my way through BCC, UCF and FSU using a combination of part-time employment, loans and scholarships. Since 2011, I have served during the school year as a small group leader for a high school student ministry. I have served as a mock trial or moot court judge for high school, college or law school students at least once a year since 2015. I have interacted with a diversity of people and my background allows me to relate to most people. I believe that I have a duty to serve the community in a capacity that allows me to best utilize my abilities, and that is the primary reason that I am applying for this position.

#### **REFERENCES:**

54. List the names, addresses and telephone numbers 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.

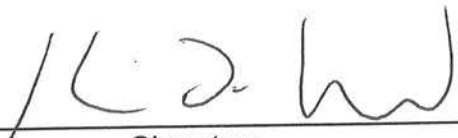
Please see attachment.

## CERTIFICATE

I have read the foregoing questions carefully and have answered them truthfully, fully and completely. I hereby waive notice by and authorize The Florida Bar or any of its committees, educational and other institutions, the Judicial Qualifications Commission, the Florida Board of Bar Examiners or any judicial or professional disciplinary or supervisory body or commission, any references furnished by me, employers, business and professional associates, all governmental agencies and instrumentalities and all consumer and credit reporting agencies to release to the respective Judicial Nominating Commission and Office of the Governor any information, files, records or credit reports requested by the commission in connection with any consideration of me as possible nominee for appointment to judicial office. Information relating to any Florida Bar disciplinary proceedings is to be made available in accordance with Rule 3-7.1(l), Rules Regulating The Florida Bar. I recognize and agree that, pursuant to the Florida Constitution and the Uniform Rules of this commission, the contents of this questionnaire and other information received from or concerning me, and all interviews and proceedings of the commission, except for deliberations by the commission, shall be open to the public.

Further, I stipulate I have read, and understand the requirements of the Florida Code of Judicial Conduct.

Dated this 17 day of August \_\_\_\_\_, 2019.

  
\_\_\_\_\_  
Signature

*(Pursuant to Section 119.071(4)(d)(1), F.S.), . . . The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from the provisions of subsection (1), dealing with public records.*



## 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	\$93,735		
List Last 3 years	\$160,688	\$149,732	\$146,080

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	\$81,305		
List Last 3 years	\$139,379	\$129,656	\$126,462

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	\$31 (acct. int.)		
	-\$2,412 (acct. int., cancelled debt, mut. fund gains, p/s losses)	\$3,263 (acct. int., cancelled debt, mut. fund gains)	\$258 (acct. int., mut. fund gains)
List Last 3 years	(*estimated)		

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	\$31 (see 3)		
List Last 3 years	-\$2,412 (see 3)	\$3,263 (see 3)	\$258 (see 3)

**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 31, 2018 was \$1,021,592.

**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 \$ 125,000

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

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
SEE ATTACHMENT "A"	

**PART C - LIABILITIES**

LIABILITIES IN EXCESS OF \$1,000 (See instructions on page 4): NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
SEE ATTACHMENT "A"	
JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE: NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
NONE	

**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
SEE ATTACHMENT "A"		

**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
NONE			

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

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTITTY	NONE		
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.

*[Handwritten Signature]*

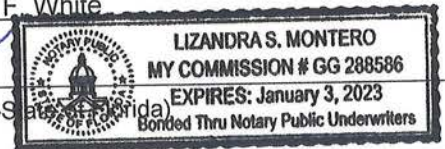
SIGNATURE

**STATE OF FLORIDA**

**COUNTY OF ORANGE**

Sworn to (or affirmed) and subscribed before me this 16 day of August, 2019 by Keith F. White

(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 \_\_\_\_\_

**ATTACHMENT "A" TO FORM 6 FOR 2018**

**PART B – ASSETS INDIVIDUALLY VALUED AT OVER \$1,000**

Single Family Home	\$363,325*
Checking Account (Fifth Third Bank)	\$5,098
Checking Account (Bank of America)	\$74,366
Savings Account (Bank of America)	\$137,762
IRA (Bank of America)	\$10,303
Osprey Fund, LLC (partnership)	\$2,449
IRA (Fidelity Mgmt. Trust Co.)	\$385,235
Mutual Fund (Victory Funds)	\$3,942
Deferred Comp Plan (Nationwide Retirement Services)	\$100,275

**PART C – LIABILITIES IN EXCESS OF \$1,000**

Fannie Mae, 13100 Worldgate Dr., Herndon, VA 20170	\$104,829
Bank of America, P.O. Box 26078, Greensboro, NC 27420	\$45,666

**PART D – PRIMARY SOURCES OF INCOME**

State of Florida, 200 E. Gaines St., Tallahassee, FL 32399	\$160,688
Victory Funds, P.O. Box 182593, Columbus, OH 43218	\$1,841

(\*Estimated)

## 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: August 17, 2019

JNC Submitting To: Fifth District Court of Appeal

Name (please print): Keith F. White

Current Occupation: Circuit Judge

Telephone Number: 407-836-0477 Attorney No.: 957259

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.

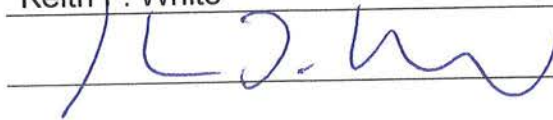
CONSUMER'S AUTHORIZATION FOR FDLE  
TO OBTAIN CONSUMER REPORT(S)

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:

Keith F. White

Signature of Applicant:



Date: August 17, 2019

**Response to 27a:**

A. Three Keys, Ltd. v. Kennedy Funding, Inc., Case No. 2002-CA-003552 (Fla. 9th Cir. Ct.), aff'd, Case Nos. 5D08-802 & 5D08-3884 (Fla. 5th DCA). Plaintiffs' counsel: David Simmons (407-422-2454); Ken Hazouri (407-422-2454); Bart Valdes (813-251-5825). Defendants' counsel: Bob Gatton (407-808-7450); Irwin Gilbert (954-462-5500); Kimberly Doud (407-393-2900); myself.

B. Bared & Co. v. School Board of Orange County, Case No. 97-889-CIV-ORL-18 (M.D. Fla.). Plaintiff's counsel: Paul Platte (727-474-1011); Olga Fernandez (unknown). Defendant's counsel: Drew Thomas (407-404-0898); myself.

C. Carroll v. Scotty's, Inc., Case No. 1991-CA-002054 (Fla. 10th Cir. Ct.). Plaintiff was pro se. Defendant's counsel: Bob Gatton (see A); myself.

**Response to 27b:**

A. Kurucz v. Discovery Marketing & Distributing, Inc., Case No. 53-2010CA-004644-0000-LK (Fla. 10th Cir. Ct.). Plaintiff's counsel: Robert Aranda (863-686-0043). Defendant's counsel: myself.

B. St. James Insurance Group, Inc. v. Gemini Financial Holdings, LLC, Case No. 2009-CA-027074 (Fla. 9th Cir. Ct.). Plaintiff's counsel: Bob Gatton (see 27a.A); myself. Defendants' counsel: Virginia Townes (407-579-3106); Kelly Garcia (407-843-8880).

C. Foster v. BLR-Metrowest, LLC, Case No. 2009-CA-031562 (Fla. 9th Cir. Ct.). Plaintiff's counsel: Jill Schwartz (407-647-8911); Teresa Herrmann (407-616-6584). Defendants' counsel: Candace Harrison (Def. Western Golf) (unknown); John Finnigan (Def. Meadowbrook) (407-478-3700); myself (Def. BLR-Metrowest).

D. Pulte Home Corporation v. JL Land Developer, Inc., Case No. 2008-CA-012561 (Fla. 9th Cir. Ct.). Plaintiff's counsel: Bud Bennington (407-423-3200); Brett Renton (407-423-3200). Defendants' counsel: Bob Gatton (see 27a.A); myself.

E. Laborers' Int'l Union v. Greater Orlando Aviation Authority, Case No. CA-2008-041 (Fla. PERC). Charging Party's counsel: Tobe Lev (407-422-1400). Respondent's counsel: myself.

F. Shearer v. Greater Orlando Aviation Authority, Case No. CA-2008-006 (Fla. PERC). Charging Party's counsel: Tobe Lev (see E). Respondent's counsel: myself.

**Response to 30:**

A. Three Keys, Ltd. v. Kennedy Funding, Inc., 28 So. 3d 894 (Fla. 5th DCA 2009), affirming Case No. 2002-CA-003552 (Fla. 9th Cir. Ct. 2008).

In the Kennedy Funding case, I represented Kennedy Funding, Inc., KFI, LLC and Anglo-American Financial, LLC. Bob Gatton (Partner) was lead counsel, and we were assisted by Kimberly Doud (Associate). Plaintiffs, Three Keys, Ltd. and Brad Muller, as Successor Trustee of the Corinne R. Muller Trust, were represented by David Simmons, Ken Hazouri and Bart Valdes. Shortly before trial, Irwin Gilbert substituted as counsel for Anglo-American.

Plaintiffs, as participant lenders, and Defendants, as lead lenders, made a loan of more than \$16 million, which was secured by a super-priority mortgage lien on certain collateral, and executed an inter-creditor agreement. After the borrower defaulted, Defendants foreclosed, obtained title and sold the collateral. Plaintiffs claimed that Defendants failed to consult with them and failed to sell the collateral in a proper manner. Plaintiffs alleged numerous causes of action in multiple versions of their complaint, and sought approximately \$12 million in damages and a declaratory judgment regarding the distribution of sales proceeds. My involvement in the case began in fall 2003. Soon thereafter, the case was transferred to Business Court (Judge Roche). I had primary responsibility over the day-to-day aspects of the litigation, including, but not limited to, strategic planning, discovery, and motion practice. I frequently interacted with our clients, and provided direction and guidance to Ms. Doud and the paralegal assigned to the case. I attended the trial of the case in June 2007, and assisted Bob Gatton and Irwin Gilbert. I had primary responsibility over the pre-trial stipulation, motions for directed verdict and jury instructions, and handled the arguments regarding those matters. After the jury's verdict, I was primarily responsible for the renewed motion for directed verdict, and was substantially involved in the preparation of the motion for new trial and the motion for entry of final judgment. I argued the renewed motion for directed verdict before the trial court. I had primary responsibility over the appeal of the Final Judgment, and secondary responsibility over the appeal of the order denying attorneys' fees. Irwin Gilbert and I handled the oral argument before the Fifth DCA regarding Plaintiffs' appeal of the Final Judgment. I was primarily responsible for Defendants' Memorandum in Opposition to Plaintiffs' Motion for Rehearing, Rehearing En Banc, and/or Certification. Plaintiffs' Motion was denied on February 18, 2010. Subsequently, Mr. Gilbert and I handled the settlement negotiations that led to the resolution of the case.

The case is legally significant because the Fifth DCA determined the liability standard applicable to a party who is expressly granted "sole discretion" and is sued for breach of the implied covenant of good faith and fair dealing. The case is personally significant because I was extensively involved in all aspects of this extremely contentious and complex case, including a two-week jury trial and a ninety minute appellate oral argument.



B. Laborers' Int'l Union v. Greater Orlando Aviation Authority, 869 So. 2d 608 (Fla. 5th DCA 2004), affirming Case No. CA-2002-037 (Fla. PERC 2002).

In the GOAA case, I represented GOAA, and I was assisted by Kimberly Doud (Associate). Tobe Lev was opposing counsel.

The Union filed an unfair labor practice charge against my client based on alleged failure to bargain. I was substantially involved with the legal analysis and other preparations for the anticipated PERC proceedings. After PERC's summary dismissal of the charge, I took the lead in preparing the brief filed with the Fifth DCA, and argued the case before that court.

The case is legally significant because the Fifth DCA held that GOAA could unilaterally impose a stricter requirement on its employees' access to secured areas, notwithstanding that an employee was terminated because he did not meet the stricter requirements, which could broadly affect union and management relations regarding security measures implemented by other public transportation agencies. The case is personally significant because it was the first appeal that I handled for a very important client and against an opposing counsel with a distinguished career representing unions.

C. Corporate Express Office Products, Inc. v. Phillips, 847 So. 2d 406 (Fla. 2003), quashing 800 So. 2d 618 (Fla. 5th DCA 2001), reversing Case No. CIO-00-8168 (Fla. 9th Cir. Ct. 2001).

In the Phillips case, I represented Doug Phillips, Lori Farrell, Edward Goff and Commercial Design Services, Inc. Alan Gerlach (Of Counsel) was my co-counsel during the proceedings before the trial court (Judge Sprinkel) and the Fifth DCA, and we were assisted by Keith Kress (Associate). I was assisted by Steve Turner (Partner) and Kimberly Doud (Associate) during the Supreme Court proceedings. Allan Weitzman, Joseph Santoro and Sarah Mindes were opposing counsel.

Plaintiff alleged that my individual clients breached their non-compete agreements and alleged other related claims. I was substantially involved in the trial court proceedings, which included handling depositions and other discovery, preparing a motion to dismiss and attending the preliminary injunction hearing. I was also substantially involved in preparing the briefs filed with the Fifth DCA. I took the lead in preparing the brief filed with the Supreme Court, and argued the case before that Court. I handled the settlement negotiations that led to the resolution of the case.

The case is legally significant because the Supreme Court determined the effect of an asset sale, a stock sale, a merger and a name change on a successor's ability to enforce its predecessor's non-compete agreements. The case is personally significant because it is the only case that I handled through all three levels of our judicial system.

D. Remis v. University of Central Florida Board of Trustees, Case No. 6:03-cv-210-Orl-22DAB (M.D. Fla. 2003); Remis v. University of Central Florida Board of Trustees, Case No. 03-CA-1421 (Fla. 9th Cir. 2003).

In the UCF case, I represented UCF and twenty-two employees of UCF who were sued individually, including, the President, the Provost, the Dean of the College of Health and Public Affairs, and the General Counsel. I was assisted by Kimberly Doud (Associate), and Yondy Cook and Scott Cole, both in-house counsel for UCF. Plaintiffs, Rob Remis and Diane Sudia were attorneys and represented themselves.

Plaintiffs were a tenured associate professor (Mr. Remis) and a former assistant professor (Ms. Sudia) who claimed that they had been discriminated against in violation of state and federal law, and alleged various other state law claims. I handled the mediation during the EEOC proceedings. I was lead counsel in the state court (Judge Gridley) and federal court (District Judge Conway, Magistrate Judge Baker) proceedings. I handled the depositions and other discovery, attended hearings in both courts, and prepared and responded to motions in both courts. I had primary responsibility for preparing a motion to dismiss in each court, and argued the motion filed in the state court. I handled the settlement negotiations that led to the resolution of the case.

The case is legally significant because it raised important issues regarding Eleventh Amendment immunity, sovereign immunity, individual liability, the faculty tenure selection process and the faculty contract renewal process. The case is personally significant because it was challenging to represent many highly educated and opinionated individuals and their distinguished university in a very acrimonious dispute, and was satisfying that the success of the motions to dismiss facilitated a settlement that seemed impossible to achieve at the outset.

E. Hydro Aluminum Automotive, Inc. v. Sorensen, 165 F.3d 40 (11th Cir. 1998) (mem.), affirming Case No. 96-635-CIV-ORL-19 (M.D. Fla. 1998).

In the Hydro case, I represented Hydro. Jack Elliott (Partner) was lead counsel and I was associate counsel. Plaintiff was represented by Wayne Allen.

Plaintiff was a former employee who alleged that she had been terminated in violation of the Family and Medical Leave Act (FMLA). I was not involved in the trial court (Judge Fawsett) proceedings. After the adverse judgment, I was substantially involved in the preparation of the briefs filed with the 11th Circuit, and I argued the case before that court.

The case is legally significant because it raised important issues regarding the validity of the regulation providing no less than fifteen days after an employer's request for an employee to submit the medical certification for FMLA leave, an employer's waiver of its right to notice of FMLA leave, and the determination of damages under the FMLA. The case is personally significant because I was required to analyze the record

and applicable legal authorities to determine whether a directed verdict was warranted, just as a judge must do.

F. Bared & Co. v. School Board of Orange County, Case No. 97-889-CIV-ORL-18 (M.D. Fla. 1997).

In the School Board case, I represented the School Board. Andrew Thomas (Partner) was lead counsel and I was associate counsel. After the trial, Arthur England, Thom Rumberger and Chris Hill joined as co-counsel. Plaintiff was represented by Paul Platte and Olga Fernandez.

Plaintiff was an HVAC subcontractor that claimed that it had been subjected to discrimination in violation of federal law. I prepared a pre-trial motion for summary judgment and assisted in trial preparations. I attended the jury trial in June 1997 and assisted Mr. Thomas. After the adverse jury verdict, I was substantially involved in the preparation of a motion for judgment as a matter of law, a motion for a new trial, and the replies to Plaintiff's responses to the post-trial motions. After the court (Judge Sharp) granted the motion for a new trial and set aside the \$3.5 million verdict, the client retained David King and Bruce Blackwell to handle the matter and my involvement ended.

The case is legally significant because it raised important issues regarding respondeat superior liability based on alleged wrongdoing of staff and the use of a disparity study that was commissioned to redress past discrimination. The case is personally significant because I acquired federal court trial experience, had the opportunity to work closely with Arthur England on the post-trial motions, and believe that the success of the motion for a new trial enabled the School Board to settle the case for less than the amount of the verdict that was set aside.

**Response to 31:**

I have attached an unsigned copy of the Order on Motions for Summary Judgment entered in the Singh case referenced in 32d(iv). I analyzed the issues and authorities, discussed same with the assigned Senior Staff Attorney, Megan Bittakis, and provided directions for Ms. Bittakis to prepare several drafts of the order. I reviewed all drafts prepared by Ms. Bittakis, modified them as I deemed appropriate, and signed the final version of the order.

**Response to 32d(iv):**

A. State v. Nelson, Case. No. 2017-CF-15684 (Fla. 9<sup>th</sup> Cir. Ct. 2019), appeal pending, Case No. 5D19-2126 (Fla. 5<sup>th</sup> DCA).

In this case, Defendant, Scott Nelson, was charged with First Degree Murder with a Weapon (Capital felony), Burglary of a Dwelling with an Assault or a Battery with a Weapon (Life felony), Kidnapping with Intent to Inflict Bodily Harm or

Terrorize with a Weapon (Life felony), Carjacking with a Deadly Weapon (1<sup>st</sup> degree felony punishable by life), and Robbery with a Deadly Weapon (1<sup>st</sup> degree felony punishable by life) by the State of Florida. The State sought the death penalty on the First Degree Murder count. State's counsel: Asst. State Attorneys, Linda Burdick, Kelly Hicks & Kenneth Nunnolley. Defendant's counsel: Asst. Public Defenders, Robert Larr, Chelsea Simmons & Sarah Moore.

Jury selection was conducted on June 10-14, 2019 and June 17-21, 2019. The guilt phase was tried on June 24-28, 2019. During the guilt phase, twenty-eight witnesses testified, including Defendant, and one hundred ninety-four exhibits were admitted in evidence. I granted Defendant's motion for judgment of acquittal on the Burglary count because the State conceded that it failed to prove that count, but the remaining counts were submitted to the jury. After several hours of deliberations, the jury found Defendant guilty as charged on all counts. The penalty phase on the First Degree Murder count was tried on July 1-3, 2019 and July 8-11, 2019. During the penalty phase, nineteen witnesses testified, including Defendant, and sixteen exhibits were admitted in evidence. After two days of deliberations, the jury returned a verdict for life imprisonment. I sentenced Defendant to life imprisonment on the First Degree Murder count, followed by three concurrent life imprisonment sentences on the other three counts.

This case is legally significant because it presents the following issues: 1) whether Defendant may raise on appeal alleged errors during jury selection after he instructed his attorneys to not take any action to prevent a jury from being sworn on June 21, 2019; and 2) whether Defendant was entitled to the Insanity Instruction based on testimony at trial, even though he did not comply with Rule 3.216.

This case is personally significant because it was my first trial of a capital case, it had extensive publicity before and during trial, it required a complicated three-phase jury selection with 424 potential jurors, it involved a challenging defendant, and it was the most emotionally and intellectually demanding case that I have ever handled. It was both humbling and motivating to handle such a case. In addition, handling the case filled me with gratitude for all the support I received from so many people, and with pride for the jurors and others whose service was essential in bringing this case to conclusion.

- B. Singh v. Orange County, Case No. 2014-CA-10858 (Fla. 9<sup>th</sup> Cir. Ct. 2016), aff'd, 230 So. 3d 639 (Fla. 5<sup>th</sup> DCA 2017), approved, 268 So. 3d 668 (Fla. 2019).

In this case, Plaintiffs, Sheriff Jerry Demings, Property Appraiser Rick Singh and Tax Collector Scott Randolph, in their official capacities, filed suit against Defendants, Orange County, Florida, Supervisor of Elections Bill Cowles and Orange County Canvassing Board ("OCCB"). Subsequently, OCCB was dropped as Defendant, and Rick Singh and Scott Randolph, in their individual capacities,

were added as Plaintiffs. Plaintiffs' counsel: Eric Dunlap (Sheriff Demings); Michael Marder (Mr. Singh, in both capacities); Gigi Rollini (Mr. Randolph, official capacity); Scott Randolph (pro se). Defendants' counsel: William Turner (Orange County); Edward Chew (OCCB); Nicholas Shannin (Mr. Cowles).

Plaintiffs alleged that an amendment to the Orange County Charter, proposed by the County Commission, and ratified by the voters in 2014, was invalid under various provisions of the Florida Constitution, Florida Statutes and the Charter. Essentially, the amendment established non-partisan elections and term limits for county constitutional officers, including Sheriff, Property Appraiser and Tax Collector. Plaintiffs sought declaratory and supplemental relief. Orange County denied Plaintiffs' allegations and challenged Plaintiffs' standing to assert the claims in their official capacities. The parties filed motions for summary judgment, and presented extensive written arguments to the court. Hearings on the motions were held on December 2, 2015, April 18, 2016 and May 26, 2016. On March 28, 2016, I announced my decision and rationale regarding the motion for summary judgment as to standing, which is set forth in the transcript filed on April 12, 2016. A Final Judgment in that regard was entered on June 16, 2016. As to the other motions for summary judgment, I entered an order on June 16, 2016 (see Response to 31) and a Final Judgment on July 12, 2016. On August 25, 2016, I entered a corrected order granting Plaintiffs' emergency motion to vacate automatic stay.

This case is legally significant because I believe it presented the following issues of first impression: 1) whether county constitutional officers have standing to challenge a charter amendment that establishes non-partisan elections and term limits for the offices they hold; 2) whether such a charter amendment, if proposed by ordinance, is governed by, and complies with, the single-subject statute; and 3) whether such a charter amendment conflicts with the constitutional and statutory provisions regarding the Legislature's authority to regulate elections. This case is personally significant because I had no prior experience with an elections case, and it thoroughly prepared me to perform the duties of an appellate judge. I read voluminous filings, conducted extensive research, analyzed a vast array of authorities, listened to sophisticated arguments and pondered complex issues. After Ms. Bittakis was assigned to assist me, I worked with her as an appellate judge works with a law clerk. I believe my oral and written rulings are clear and understandable, and reflect my dedication to judicial restraint, stare decisis and textualism, which are essential to upholding the rule of law.

- C. U.S. Bank v. Village Square, Case No. 2014-CA-7727 (Fla. 9<sup>th</sup> Cir. Ct. 2015), aff'd, 206 So. 3d 806 (Fla. 5<sup>th</sup> DCA 2016).

In this case, Plaintiff, U.S. Bank Nat'l Ass'n, filed suit against Defendant, Village Square Condo. Plaintiff's counsel: Avri Ben-Hamo. Defendant's counsel: Jacob Brainard.

Plaintiff asserted claims to compel compliance with section 718.116(1)(b), Fla. Stat., for declaratory relief and for damages. Defendant disputed those claims and asserted that Plaintiff did not qualify for safe harbor under the statute, which limits a first mortgagee's liability for past-due condominium association assessments. Each party filed a motion for summary judgment. On June 25, 2015, both motions were heard, and I entered a Final Judgment in favor of Plaintiff.

This case is legally significant because it resulted in the holding that a party who is the holder, but not the owner, of the note and mortgage is entitled to the protections of section 718.116(1)(b). The case raised a very important issue that needed to be resolved because foreclosure actions are often filed by non-owner holders. Two other district courts are in accord with the Fifth DCA. See Brittany's Place Condo. Ass'n v. U.S. Bank, 205 So. 3d 794 (Fla 2d DCA 2016); San Matera the Gardens Condo. Ass'n v. Fed. Home Loan Mortgage Corp., 207 So. 3d 1017 (Fla. 4<sup>th</sup> DCA 2017). This case is personally significant because, without the benefit of any appellate decision, I analyzed the authorities, considered the arguments and utilized a textualist approach to reach a conclusion that has been approved by every appellate court that has addressed the issue.

- D. State v. Paolercio, Case No. 2012-CF-793 (Fla. 9<sup>th</sup> Cir. Ct. 2013), pet. granted, 129 So. 3d 1174 (Fla. 5<sup>th</sup> DCA 2014).

In this case, Defendant, Alfonso Paolercio, was charged with Possession of Cocaine (3d degree felony) and two misdemeanors by the State of Florida. State's counsel: An Asst. State Attorney, but I cannot recall his or her name. Defendant's counsel: Asst. Public Defender, Justin Patrou.

My predecessor had released Defendant on his own recognizance after he was found incompetent to proceed because of a traumatic brain injury that occurred several years prior to his arrest. Subsequently, Defendant was arrested on new charges: burglary of dwelling (2d degree felony); grand theft (3d degree felony); and criminal mischief (misdemeanor). The Initial Appearance Judge revoked his pretrial release and detained him without bond pursuant to section 903.0471, Fla. Stat., which authorizes such detention when the court find probable cause to believe the defendant committed a new crime while on pretrial release. Defendant filed a motion for release on his own recognizance. I held hearings on September 10, 12 and 19, 2013, October 24, 2013 and November 22, 2013. I concluded that: 1) Defendant remained incompetent to proceed; 2) Defendant could not be restored to competency through treatment; 3) section 916.17, Fla. Stat., was inapplicable; 4) there was probable cause that Defendant committed new crimes while on pretrial release; 5) section 903.0471 was applicable; and 6) the totality of the circumstances, including burglary of dwelling being defined as a "dangerous crime" under section 907.041, Fla. Stat. (regulating pretrial detention and release), authorized the court to detain Defendant without bond.

This case is legally significant because it raised an issue of first impression: whether a defendant who is unable to be restored to competency, able to survive alone or with assistance, and unlikely to cause serious bodily harm to himself or others, may be detained pursuant to section 903.0471. This issue arises frequently in criminal cases and needed to be addressed. The appellate court stated that I “may [have been] correct” in finding that section 916.17 did not apply and recognized that “[t]his case presents a troubling set of circumstances.” It concluded, however, that section 903.0471 does not permit detention of such a defendant who commits new crimes while on pretrial release. This case is personally significant because it was the first time that an appellate court overruled a decision I made. This was an important lesson because the judicial oath requires me to submit to a higher court, even if I disagree with that court’s decision. Without humility, a judge cannot uphold the rule of law.

E. Colaneri v. Romans, 2011-DR-16408 (Fla. 9<sup>th</sup> Cir. Ct. 2011).

In this case, Petitioner, Judy Colaneri, filed an action seeking an injunction for protection against domestic violence against Respondent, Christopher Romans. Petitioner’s counsel: Calvin Horvath. Respondent was pro se.

Petitioner alleged that Respondent had brutally attacked her with a brick and caused significant injuries. In his pending criminal case, Respondent was charged with Attempted 1<sup>st</sup> Degree Murder with a Weapon. I conducted a hearing on October 4, 2011. Petitioner and Respondent testified. It was undisputed that the parties did not have children together. It was also undisputed that the parties were homeless and had lived together on the street, but had never lived together in a building, house, room or even a tent. Based on the undisputed facts and applicable statute, I dismissed the petition without prejudice.

This case is legally significant because it presented an important question regarding the meaning of section 741.28, Fla. Stat. Under that statute, if the parties do not have a child in common, then the petitioner cannot obtain a domestic violence injunction unless the parties are currently residing or previously resided together “in the same single dwelling unit.” I concluded that the plain language of the statute precluded Petitioner’s claim. Although the allegations of violence were horrific, I declined Petitioner’s counsel’s invitation to essentially rewrite the statute to cover the homeless. The Legislature has not amended the statute after my ruling. This case is personally significant because it was the first case where my decision was publicly criticized. In addition, my opponent used media reports about that decision during the 2012 election campaign. I value that experience because it strengthened my resolve to do what is right despite the consequences.

**Response to 43b:**

A tax penalty in the amount of \$114 was paid in 2007 because an insufficient amount of federal income tax was withheld during 2006.

**Response to 54:**

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IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,  
IN AND FOR ORANGE COUNTY, FLORIDA

**Jerry L. Demings, Sheriff of  
Orange County; Rick Singh,  
Orange County Property Appraiser;  
Scott Randolph, Orange County  
Tax Collector; Rick Singh,  
individually; and Scott Randolph,  
individually;**

CASE NO.: 2014-CA-010858-O

Plaintiffs,

v.

**Orange County, Florida; and  
Bill Cowles, Orange County  
Supervisor of Elections;**

Defendants.

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**ORDER ON MOTIONS FOR SUMMARY JUDGMENT**

**THIS MATTER** comes before the Court on the following motions: “Plaintiffs’ Motion for Summary Judgment and Memorandum of Law” (Pls.’ Mot. Summ. J.), filed on September 25, 2015; “Orange County, Florida’s Memorandum in Opposition to Plaintiffs’ Motion for Summary Final Judgment and Cross-Motion for Summary Final Judgment in Favor of Orange County and Memorandum of Law” (Cross Mot. Summ. J.), filed on November 10, 2015; and “Plaintiffs’ Omnibus Reply to Orange County’s Motion for Summary Judgment, Memorandum in Opposition to Plaintiffs’ Motion for Summary Final Judgment and Cross-Motion for Summary Final Judgment” (Pls.’ Reply), filed on November 24, 2015. After hearing arguments on April 18, 2016, and May 26, 2016, the Court finds as follows:

A. Facts

In 2014, the Orange County Board of County Commissioners debated whether they should pass an ordinance asking county electors to vote on whether the Orange County Charter should be amended to change the elections for county constitutional officers to nonpartisan elections and to impose term limits on those officers. During the hearings regarding these proposals, several county commissioners discussed whether the provisions should be separated into two separate ordinances—one for the term limits provisions and one for the nonpartisan elections provisions. Ultimately, the Board voted to include both in one ordinance, and on August 19, 2014, the Board enacted Ordinance No. 2014-21, which states, in its entirety:

**AN ORDINANCE PROPOSING AN AMENDMENT TO THE ORANGE COUNTY CHARTER; AMENDING THE ORANGE COUNTY CHARTER TO PROVIDE FOR TERM LIMITS AND NON-PARTISAN ELECTIONS FOR COUNTY CONSTITUTIONAL OFFICERS, AND TO PROVIDE FOR CLARIFICATION THAT THE ESTABLISHMENT OF NON-PARTISAN ELECTIONS AND TERM LIMITS FOR COUNTY CONSTITUTIONAL OFFICERS SHALL NOT AFFECT OR IMPUGN THEIR INDEPENDENT CONSTITUTIONAL STATUS; CALLING A REFERENDUM ON THE PROPOSED CHARTER AMENDMENT; PROVIDING THE BALLOT TITLE AND SUMMARY FOR THE REFERENDUM; CONDITIONING THE EFFECTIVENESS OF THE CHARTER AMENDMENT ON VOTER APPROVAL AT THE REFERENDUM; PROVIDING FOR OTHER RELATED MATTERS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR EFFECTIVE DATES.**

BE IT ORDAINED BY THE BOARD OF  
COUNTY COMMISSIONERS OF ORANGE  
COUNTY, FLORIDA:

*Section 1. Charter Amendment.* Section 703 of the Orange County Charter is amended to read as follows:

**Sec. 703. County officers.**

A. The charter offices of property appraiser, tax collector and sheriff formerly created by this section 703 are abolished. The functions and duties of each of these respective charter offices are transferred to the property appraiser, tax collector, and sheriff, as county officers under Article VIII, Section 1(d) of the Florida Constitution and each of these offices is hereby reestablished under Article VIII, Section 1(d) of the Constitution of the State of Florida.

This subsection A. shall take effect on January 8, 1997. The holders of the former charter offices of property appraiser, tax collector and sheriff as of the effective date shall be retained and shall constitute the initial county officers serving as property appraiser, tax collector and sheriff, as those offices are reestablished under Article VIII, Section 1(d) of the Constitution of the State of Florida.

B. Except as may be specifically set forth in the Charter, the county officers referenced under Article VIII, Section 1(d) of the Florida Constitution and Chapter 72-461, Laws of Florida, shall not be governed by the Charter but instead governed by the Constitution and laws of the State of Florida. The establishment of non-partisan elections and term limits for county constitutional officers shall in no way affect or impugn their status as independent constitutional officers, and shall in no way imply any authority by the board whatsoever over such independent constitutional officers.

C. Elections for all county constitutional offices shall be non-partisan. No county constitutional office candidate shall be required to pay any party assessment or be required to state the party of which the candidate is a member. All county constitutional office candidates' names shall be placed on the ballot without reference to political party affiliation.

In the event that more than two (2) candidates have qualified for any single county constitutional office, an election shall be held at the time of the first primary election and, providing no candidate receives a majority of the votes cast, the two (2) candidates receiving the most votes shall be placed on the ballot for the general election.

D. Any county constitutional officer who has held the same county constitutional office for the preceding four (4) full consecutive terms is prohibited from appearing on the ballot for reelection to that office; provided, however, that the terms of office beginning before January 1, 2015 shall not be counted.

*Section 2. Referendum Called.* Pursuant to its authority and duty under Article VII of the Orange County Charter, the Board of County Commissioners calls a referendum on the amendment to the charter set forth in Section 1. The referendum shall be held at the countywide election to be held on November 4, 2014. The ballot title and ballot summary for the referendum shall be as follows:

**CHARTER AMENDMENT PROVIDING FOR  
TERM LIMITS AND NON-PARTISAN  
ELECTIONS FOR COUNTY  
CONSTITUTIONAL OFFICERS**

For the purpose of establishing term limits and non-partisan elections for the Orange County Clerk of the

Circuit Court, Comptroller, Property Appraiser, Sheriff, Supervisor of Elections and Tax Collector, this amendment provides for county constitutional officers to be elected on a non-partisan basis and subject to term limits of four consecutive full 4-year terms.

\_\_\_\_\_ Yes

\_\_\_\_\_ No

*Section 3. Severability.* If any section, subsection, sentence, clause, or provision of this ordinance or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect any other provision or application of this ordinance, and to this end the provisions of this ordinance are declared severable.

*Section 4. Effective Date.* This ordinance shall take effect pursuant to general law. However, the amendment to the Orange County Charter in Section 1 shall take effect only if and when approved by a majority of the electors voting in the referendum called by the Board in Section 2.

(Am. Compl. Ex. 1.) Orange County voters passed the Ordinance.

Plaintiffs filed suit against Orange County and the Orange County Supervisor of Elections seeking a declaratory judgment that the Ordinance and resulting amendment are unconstitutional under the Florida Constitution and violate Florida Statutes and Orange County Charter provisions. Plaintiffs allege that the ballot title and summary are defective, that the Ordinance violates the single

subject rule, and that it infringes on the constitutional officers' independent status. Plaintiffs also seek injunctive relief, asking the Court to prohibit Orange "County and the Orange County Supervisor of Elections from enforcing any changes to the Charter pending the resolution of the litigation on the substantive issues . . . ." (Am. Compl. at 29.) Before the Court are the parties' cross motions for summary judgment.

## **B. Standard of Review**

"Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to a judgment as a matter of law." *Volusia Cnty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000); Fla. R. Civ. P. 1.510(c). Determining whether there are genuine issues of material fact is a question of law for the court, and the court may find that such issues exist, even when both parties move for summary judgment. *Daniel Laurent, Inc. v. Coral Television Corp.*, 431 So. 2d 1047, 1048 (Fla. 3d DCA 1983).

## **C. Discussion**

### **1. Count I Ballot Summary Defects**

Plaintiffs argue that Ordinance No. 2014-21's ballot title and summary violate Florida Statute section 101.161(1) (2014), which states, "The ballot summary of the . . . public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure." The ballot title and summary state:

CHARTER AMENDMENT PROVIDING FOR  
TERM LIMITS AND NON-PARTISAN  
ELECTIONS FOR COUNTY  
CONSTITUTIONAL OFFICERS



For the purpose of establishing term limits and non-partisan elections for the Orange County Clerk of the Circuit Court, Comptroller, Property Appraiser, Sheriff, Supervisor of Elections and Tax Collector, this amendment provides for county constitutional officers to be elected on a non-partisan basis and subject to term limits of four consecutive full 4-year terms.

(Am. Compl. Ex. 1.)

The ballot title and summary are read together to determine if they properly inform the voter. *O'Connell v. Martin Cnty.*, 84 So. 3d 463, 465 (Fla. 4th DCA 2012). "While the ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain every detail or ramification of the proposed amendment." *Id.* The court should first consider whether the proposed amendment's chief purpose is fairly conveyed in the title and summary. *Id.* Then, the court should consider whether the title and summary are misleading. *Id.* The proposed ballot summary and title must be "clearly and conclusively defective" to violate section 101.161(1). *Askew v. Firestone*, 421 So. 2d 151, 154 (Fla. 1982). Voters should have notice of what they are voting on. *Id.* at 155. These principles "are applicable to proposed amendments to county charters." *Elected Cnty. Mayor Pol. Comm., Inc. v. Shirk*, 989 So. 2d 1267, 1273 (Fla. 2d DCA 2008).

In *Askew*, the ballot summary was misleading because it appeared to impose limitations on lobbying, but was in fact a loosening of lobbying restrictions. *Askew*, 421 So. 2d at 155-56. "The purpose of section 101.161 is to assure that the electorate is advised of the true meaning, and ramifications, of an amendment. A proposed amendment cannot fly under false colors . . ." *Id.* at 156. Ballot summaries also violate section 101.161(1) if they appear to create new rights or protections, but the "actual effect is to reduce or eliminate rights or protections already in existence." *Harris v. Moore*, 752 So. 2d 1241, 1243 (Fla. 4th DCA 2000). The ballot summary does not need to include what was in place before, so long as there is no affirmative misrepresentation of the amendment's chief purpose. *Id.* In *Harris v. Moore*, the ballot summary was not misleading, as it

informed the voters of the proposed change to the county government structure, and omitting that the change was “an important change in the present form of government [was] not misleading.” *Id.*

Plaintiffs argue that Ordinance No. 2014-21’s ballot title and summary are misleading because they do not explain that the proposed amendment will change when the constitutional officers are elected—from the general election to the primary election. But a title and summary are not misleading if they do not contain every detail regarding the proposed change. *See Advisory Op. to Attorney Gen. Re: Fla. Growth Mgmt. Initiative Giving Citizens the Right to Decide Local Growth Mgmt. Plan Changes*, 2 So. 3d 118, 123 (Fla. 2008) (rejecting argument that ballot summary and title were misleading because they did not contain details of petition process being voted upon, as the proposed amendment would “not conflict with or restrict any existing rights . . .”).

Plaintiffs also argue that it was not explained that the current process is partisan and that there are no term limits. In *Advisory Opinion to Attorney General—Limited Political Terms in Certain Elective Offices*, 592 So. 2d 225, 228 (Fla. 1991), the Supreme Court of Florida held that the ballot summary complied with section 101.161. The chief purpose of the proposed amendment before the court was term limits, and the ballot title and summary identified the offices affected and stated that an incumbent who held the office for the previous eight years could not run again. *Id.* Although the summary did not state that currently there were no term limits, this did not render the summary misleading, especially because it did not conceal “a conflict with an existing provision.” *Id.*

Here, the ballot summary states that nonpartisan elections and term limits are being established, which expressly states the Ordinance’s chief purpose. Just as in the case discussed above, term limits and nonpartisan elections did not exist for these offices before the Ordinance was enacted. Because there was no conflict with an existing provision, and the ballot title and summary specifically state that the Ordinance would establish term limits and nonpartisan elections, it does not violate section 101.161 for failing to explain the previous state of affairs. Additionally, the word

“establish” used in the Ordinance informs the voter that these provisions did not exist in the past. *See Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984) (holding ballot summary misleading when it said amendment “establishes” a right that currently existed).

Plaintiffs argue that the summary does not explain that the voters will be giving up their right to know the candidates’ political parties and that the candidates’ party affiliations will no longer appear on the ballot. The summary clearly states that the elections will be nonpartisan, however, and thus the voter that wants the elections to be nonpartisan will be unconcerned about no longer knowing the candidates’ political parties.

Plaintiffs also argue that the summary does not inform voters that the term limits will be locally-imposed, will be applied to current constitutional officers, and that the “change eliminates voter’s right to re-elect constitutional officers.” (Am. Compl. ¶ 83.) Plaintiffs complain that the summary does not explain that terms commenced before 2015 are not counted toward the term limits, and instead, the “summary erroneously informs voters that the term limits proposed are ‘four consecutive full 4-year terms.’” (*Id.* at ¶ 84.)

In *Abramowitz v. Glasser*, 656 So. 2d 1332, 1332-33 (Fla. 4th DCA 1995), a term limits amendment to a city charter was challenged under section 101.161. The opponents to the amendment argued that it was misleading because it neglected to mention an exception to the term limits. *Id.* at 1333. The Fourth District rejected this argument. *Id.* at 1334. Ballot summaries are not invalidated when they “accurately set forth the substance of the proposal to be voted on, or omit[] only exceptions which were narrower than the general proposal.” *Id.* at 1333. “Term limits . . . is a general concept, and voters who are interested are either for or against limits.” *Id.* at 1334.

Here, the Ordinance’s ballot title and summary specifically include the phrase “term limits.” (Am. Compl. Ex. 1.) The summary expressly states that the amendment will establish term limits for the listed constitutional offices. Just as in *Abramowitz*, not every detail regarding the Ordinance and

its effects were contained in the title and summary. Also just as in *Abramowitz*, the title and summary clearly state that the Ordinance is about term limits. Because the ballot title and summary clearly informed the voters that they were voting on term limits, they were not misleading.

The ballot title and summary told the voters that a “yes” vote will create nonpartisan elections and term limits for the enumerated offices, which was the Ordinance’s chief purpose. Thus, the title and summary did not misstate the chief purpose of the amendment, and the word “establish” contained in the summary informed the voters that these were changes to the status quo. The ballot summary and title complied with section 101.161(1), and therefore summary judgment is granted for Orange County on Count I.

## **2. Count II Single Subject Violation**

### **a. Whether the single subject rule applies**

Although Plaintiffs argue that Ordinance No. 2014-21 violates Florida law because it addresses more than one subject, Orange County contends that the single subject rule does not apply. This presents the Court with a question of first impression: whether a charter county must comply with the single subject rule in Florida Statute section 125.67 when the charter amendment is proposed via an ordinance, rather than by the charter review commission? The Court holds that the answer is no, unless the county’s charter imposes such a requirement.

The single subject rule is found in the Florida Constitution, Article III, section 6, which states that statutes “shall embrace but one subject and matter properly connected therewith . . . .” Florida Statute section 125.67 uses the same language to apply the single subject rule to county ordinances. Both the Orange County Charter and the Florida Constitution give charter counties powers of local self-government, so long as those powers are not inconsistent with general law. Specifically, the Orange County Charter, in article I, section 103, states, “Unless provided to the

contrary in this Charter, Orange County shall have all powers of local self-government not inconsistent with general law . . . .” Article VIII, section 1(g), of the Florida Constitution, gives charter counties “all powers of local self-government not inconsistent with general law . . . . The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law.”

In *Charter Review Commission of Orange County v. Scott*, 647 So. 2d 835, 835-36 (Fla. 1994), the following question was certified to the Supreme Court of Florida as being one of great public importance: “Whether ballot questions containing county charter revisions proposed by a charter review commission are subject to a single subject rule?” In answering no to the certified question, the court noted the single subject rule in Article III, section 6, and Florida Statute section 125.67, but then stated, “Neither the constitution nor Florida Statutes applies the rule to proposed amendments to county charters.” *Id.* at 836-37. Although the court “has on occasion in some of our older cases applied a general single-subject requirement to ballot questions in the absence of constitutional or statutory authority[,] . . . we have never applied the rule to proposed revisions to county charters.” *Id.* at 837.

The Supreme Court compared the state constitution revision process to Orange County’s Charter Review Commission. *Id.* Although there are four ways to propose changes to the Florida constitution, only one—through a petition initiative—is “subject to the single-subject rule.” *Id.* The process to change the Florida Constitution through the Constitution Revision Commission provides “adequate safeguards to protect against logrolling and deception[,]” and thus the single subject rule does not apply to changes proposed through that process. *Id.* Proposed changes to Orange County’s charter through the Charter Review Commission follow the same procedures “that reduce the danger of logrolling and diminish the possibility of deception.” *Id.* As the charter does not contain a

single subject rule, and there are safeguards to prevent the harm that the rule is designed to prevent, the Supreme Court “decline[d] to impose a single-subject requirement on this process.” *Id.*

*Shulmister v. Larkins*, 856 So. 2d 1149, 1150 (Fla. 4th DCA 2003), concerned amendments proposed through an initiative petition, and the Fourth District held that the city charter’s single subject rule did not apply to those amendments. The city charter stated, “Every proposed ordinance or resolution . . . shall not contain more than one subject.” *Id.* at 1151 (quoting the city charter). Because the provision stated that it applied only to ordinances or resolutions, the court held that there was no single subject rule for petitions to amend the city charter. *Id.* The court cited *Scott*, stating, “Neither the Florida Constitution nor Florida Statutes applies the single-subject rule to proposed amendments to county or city charters. Therefore, any limitation must be found within the city charter itself.” *Id.* (citation omitted).

The Fifth District used this same phrase in *Seminole County v. City of Winter Springs*, 935 So. 2d 521, 528 n.5 (Fla. 5th DCA 2006). In *Seminole County*, the court disagreed with the trial court’s conclusion that a charter amendment violated the single subject rule. *Id.* at 522. In that case, the county charter itself contained the single subject rule. *Id.* at 528.

*Scott*, *Shulmister*, and *Seminole County* all have one thing in common: all require the charter itself to impose the single subject rule upon amendments to it. In *Scott*, because the Orange County charter did not require amendments proposed by the Charter Review Commission to have a single subject, the Supreme Court “decline[d] to impose” such a rule. *Scott*, 647 So. 2d at 837. In *Shulmister*, because the charter imposed the single subject rule only on ordinances and resolutions, the court declined to impose it on a petition to amend the charter. *Shulmister*, 856 So. 2d at 1151. And in *Seminole County*, the Fifth District noted that the county charter did impose the single subject rule on proposed charter amendments while stating that the Florida Constitution and statutes do not do so. *Seminole County*, 935 So. 2d at 528. Plaintiffs correctly point out that the *Scott*, *Shulmister*, and *Seminole*

*County* decisions did not hold that section 125.67, Florida Statutes, does not apply to an ordinance passed by Orange County to amend its Charter. Those decisions did not hold to the contrary, either.

Plaintiffs also attempt to distinguish *Scott* by pointing to the Supreme Court's discussion of the safeguards inherent in proposed charter amendments from the Charter Review Commission. But those same safeguards exist when the Legislature proposes amendments to the Florida Constitution. In *Advisory Opinion to Attorney General Regarding Independent Nonpartisan Commission to Apportion Legislative & Congressional Districts Which Replaces Apportionment by Legislature*, 926 So. 2d 1218, 1224 (Fla. 2006), the Supreme Court of Florida stated that the single subject rule is imposed on citizen petitions to amend the state constitution because the petitions are lacking the "same opportunity for public hearing and debate that accompanies the other constitutional proposal and drafting processes (i.e., constitutional amendments proposed by the Legislature . . .)." Here, the Board of County Commissioners is similarly situated to the Florida Legislature, and it provided opportunities for public hearings and debate on Ordinance No. 2014-21. The safeguards discussed in the Advisory Opinion to the Attorney General existed here, and therefore this attempt to distinguish *Scott* fails.

Plaintiffs rely on Orange County Charter Section 207(1), which states that the Board of County Commissioners has the power and duty to adopt or enact "in accordance with the procedures provided by general law, ordinances and resolutions it deems necessary and proper for the good governance of the county . . ." (Pls.' Reply 23.) Plaintiffs argue that an ordinance, to be enacted in accordance with general law, must have a single subject, as Florida Statute section 125.67 mandates.

The Orange County Charter allows three entities to place proposed amendments to it on the ballot: the citizens, through a petition initiative; the Board of County Commissioners; and the Charter Review Commission. Orange County, Fla. Charter art. VI, § 601, art. VII, §§ 701, 702(B).

The Charter section regarding the Charter Review Commission's ability to propose amendments requires the following of those proposals:

- they may only be placed on the ballot at general election;
- a report of the proposal must have been delivered to the clerk of the board of county commissioners on or before the last day for qualifying for election to county office;
- a report that includes an analysis and financial impact statement of the estimated change in any revenues or costs resulting from the proposal must be prepared;
- the ballot language must contain a summary of the analysis or financial impact statement; and
- at least four public hearings prior to presenting the proposal to the public must be held.

§ 702(B)(C). Regarding a citizens petition to amend the Charter, the petition must be approved by the Supervisor of Elections and signed by a certain percentage of county electors within a specified time period. §§ 601(A), 602. When the Board proposes amending the Charter, the Charter only requires a majority vote of the board to make the proposal, and the proposal must be subject to a referendum of the general electorate, at any primary, general or special election. § 701. None of these sections require that a proposed Charter amendment comply with the single subject rule.

Additionally, Florida Statutes regarding county governance indicate that the single subject rule does not apply to an ordinance proposing amendments to a county charter. Florida Statute section 125.82 permits the board of county commissioners to propose a charter to the county's electors via an ordinance. An ordinance proposing that a county become a charter county would necessarily include many subjects, such as the powers given to the county's legislative and executive branches, among other things. The Florida Legislature could not have intended to grant the county this right, but then have it rendered ineffective by applying the single subject rule to such an



ordinance. *See generally Agency for Health Care Admin. v. Estate of Johnson*, 743 So. 2d 83, 86-87 (Fla. 3d DCA 1999) (courts have duty to construe statutes to give “a field of operation to all rather than construe one statute as being meaningless . . . . [C]ourts must attempt to harmonize and reconcile two different statutes to preserve the force and effect of each.”).

An “ordinance” contemplated under section 125.67 is akin to a law enacted by the Legislature, and neither require voter approval. Section 125.67 is identical to Article III, section 6 of the Florida Constitution, except “ordinance” replaced “law.” An “ordinance” contemplated under section 125.82 is akin to a joint resolution from the Legislature proposing an amendment to the Florida Constitution, and both require voter approval. The single subject rule does not apply to the Legislature’s joint resolutions. *Scott*, 647 So. 2d at 837. Therefore, the single subject rule is inapplicable in this case because an ordinance proposing an amendment to a county charter is akin to an ordinance under section 125.82 and a joint resolution proposing a constitutional amendment.

If the County wanted to impose a single subject rule upon proposed amendments to the Charter, it would have done so expressly, as it did with other requirements in sections 601, 602, 701, and 702. Agreeing with Plaintiffs that the language regarding enacting ordinances in accordance with general law requires a single subject would impose an additional requirement on proposed charter amendments not expressed in the sections regarding proposing charter amendments. This would be contrary to the statutory construction principle that specific provisions govern over general provisions. *See Murray v. Mariner Health*, 994 So. 2d 1051, 1061 (Fla. 2008) (“where two statutory provisions are in conflict, the specific provision controls the general provision.”), *superseded by statute on different grounds as stated in Castellanos v. Next Door Co.*, 41 Fla. L. Weekly S197 (Fla. Apr. 28, 2016). That same principle requires that Florida Statute section 125.82 control over section 125.67.

For all the foregoing reasons, even though the Board used an ordinance as the vehicle for proposing the Charter amendment, the Court finds that the single subject rule does not apply to Ordinance No. 2014-21.<sup>1</sup>

**b. Whether Ordinance No. 2014-21 violates the single subject rule**

Even if the single subject rule does apply to Ordinance No. 2014-21, the Court finds that the Ordinance does not violate it. Plaintiffs argue that Ordinance No. 2014-21 contravenes the single subject rule because it encompasses two separate subjects: term limits on county constitutional officers and nonpartisan elections for those officers. Orange County argues that there is but one subject: either amending the Orange County Charter, or amending the Orange County Charter regarding election of county constitutional officers.

Regularly-enacted ordinances are presumed valid. *Miami-Dade Cnty. ex rel. Walthour v. Malibu Lodging Invs., LLC*, 64 So. 3d 716, 719 (Fla. 3d DCA 2011). They “are presumed to be constitutional, and all reasonable doubts regarding the . . . ordinance must be resolved in favor of constitutionality.” *State v. Hanna*, 901 So. 2d 201, 204 (Fla. 5th DCA 2005).

*Franklin v. State*, 887 So. 2d 1063 (Fla. 2004), sets forth the framework for considering a constitutional challenge to a statute based on an alleged violation of the single subject rule. Although *Franklin* was concerned with the single subject rule found in Article III, section 6 of the Florida

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<sup>1</sup> Pursuant to sections 207, 210, and 701 of the Charter, the Board could have used a resolution, rather than an ordinance, to propose the amendment to the Charter. There is no contention that a resolution would have provided more due process than an ordinance. To the contrary, it appears that using an ordinance to propose the Charter amendment provided more notice and opportunities to be heard than a resolution would have provided. If the proposed amendment had been promulgated by the Board as a resolution, then there would have been no argument regarding the single subject rule. Applying the single subject rule to invalidate an action of the Board because it was designated as an “ordinance” rather than a “resolution” would exalt form over substance. See *Plantation Residents’ Ass’n v. Sch. Bd. of Broward Cnty.*, 424 So. 2d 879, 881 (Fla. 1st DCA 1982) (refusing to impose on hearing officers a standard of reversal of a school board decision that “would exalt form over substance.”)

Constitution, the constitutional language is identical to the statutory language, with the statute simply substituting the word “ordinance” for “law.” § 125.67, Fla. Stat. (2014); Art. III, § 6, Fla. Const.<sup>2</sup> The single subject rule requires three things: “First, each law shall ‘embrace’ only ‘one subject.’ Second, the law may include any matter that is ‘properly connected’ with the subject. The third requirement, related to the first, is that the subject shall be ‘briefly expressed in the title.’” *Franklin v. State*, 887 So. 2d at 1072 (quoting Art. III, § 6). The single subject rule also has three purposes: preventing two unrelated matters from being in one act, also known as logrolling legislation; preventing unintentional adoption of laws, either by surprise or fraud, due to the titles not providing clues as to what the laws encompass; and three, giving citizens notice and an opportunity to be heard regarding the proposed laws’ subjects. *Id.*

In reviewing laws under the single subject rule, “the standard of review is highly deferential.” *Id.* at 1073. Courts construe the rule liberally, instead of imposing a strict construction that is unnecessary to accomplish the law’s purpose. *Id.* Constitutionality is presumed, and a violation must exist beyond a reasonable doubt. *Id.*

i. Single subject and title

The first inquiry in the analysis of whether a law violates the single subject rule is determining the law’s single subject. *Id.* at 1074. The court first looks to the law’s title. *Id.* Because the rule states that the single subject “shall be briefly expressed in the title,” the court considers the law’s short title. *Id.* at 1075. The *Franklin* court described the short title as “the language immediately following the customary phrase ‘an act relating to’ and preceding the indexing of the act’s provisions.” *Id.* Even though the subject can be found in the short title, “the title of an act may be general,” provided that the generality is not used to hide incongruent legislation. *Id.* at 1076. “[I]f the Legislature’s short title is suspect for being overly broad, a court should look to the remainder of the

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<sup>2</sup> Article III, section 6, states, “Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.”

act and the history of the legislative process to determine if the act actually contains a single subject or violates the constitution by encompassing more than one subject.” *Id.* at 1076-77.

Applying *Franklin*, the Court first reviews the title of Ordinance No. 2014-21:

AN ORDINANCE PROPOSING AN AMENDMENT TO THE ORANGE COUNTY CHARTER; AMENDING THE ORANGE COUNTY CHARTER TO PROVIDE FOR TERM LIMITS AND NON-PARTISAN ELECTIONS FOR COUNTY CONSTITUTIONAL OFFICERS, AND TO PROVIDE FOR CLARIFICATION THAT THE ESTABLISHMENT OF NON-PARTISAN ELECTIONS AND TERM LIMITS FOR COUNTY CONSTITUTIONAL OFFICERS SHALL NOT AFFECT OR IMPUGN THEIR INDEPENDENT CONSTITUTIONAL STATUS; CALLING A REFERENDUM ON THE PROPOSED CHARTER AMENDMENT; PROVIDING THE BALLOT TITLE AND SUMMARY FOR THE REFERENDUM; CONDITIONING THE EFFECTIVENESS OF THE CHARTER AMENDMENT ON VOTER APPROVAL AT THE REFERENDUM; PROVIDING FOR OTHER RELATED MATTERS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR EFFECTIVE DATES.

(Am. Compl. Ex. 1.) Under *Franklin*, looking to “the language immediately following the customary phrase ‘an act relating to’ and preceding the indexing of the act’s provisions[.]” to determine the short title, the Ordinance’s short title and subject is “an amendment to the Orange County Charter.” *Franklin v. State*, 887 So. 2d at 1075.

Because this subject is so broad, under *Franklin*, the Court looks “beyond the short title to determine whether the act encompassed a single subject that was briefly stated in the title.” *Id.* at 1076. Specifically, the court looks to “the remainder of the act and the history of the legislative process . . . .” *Id.* at 1076-77.

In considering the remainder of the Ordinance, the entire Ordinance relates to county constitutional officers. Regarding the legislative process, Plaintiffs point out that when the

commissioners first considered term limits and nonpartisan elections, several considered them as two different ideas, even putting them forth as two separate ordinances. Eventually, however, a majority of the commissioners changed their minds and put both the term limits and nonpartisan elections provisions into Ordinance No. 2014-21.

Orange County suggests two different subjects for the Ordinance, either that it is an amendment to the Orange County Charter, which, as discussed above, is too broad, or that it is “an amendment to the Orange County Charter dealing with the election of constitutional officers.” (Cross Mot. Summ. J. 17.) As all of the provisions in the Ordinance do relate to the election of constitutional officers, this is the subject of the Ordinance.<sup>3</sup> Plaintiffs point out that “an amendment to the Orange County Charter dealing with the election of constitutional officers” is not in the title of the Ordinance. (Pls.’ Reply 14.)

Although the Ordinance’s title does not use this exact phrasing, the long title does state the following regarding the Ordinance:

- it is a proposed amendment to the Charter;
- the amendment provides term limits and nonpartisan elections for county constitutional officers;
- these changes do not affect the officers’ constitutional status;
- it provides the ballot title and summary for the referendum;
- it conditions the Charter amendment’s effectiveness on voter approval; and
- it provides for other related matters, severability, and effective dates.

Under *Franklin*, the court gives substantial deference to the legislature’s title choice, and “length alone will not invalidate an act under the single subject clause.” *Franklin v. State*, 887 So. 2d

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<sup>3</sup> The purpose of a statute is different from the subject of the statute. See *Franklin v. State*, 887 So. 2d at 1078, quoting *Gibson v. State*, 16 Fla. 291, 299 (1877) (“The single subject clause contained in article III, section 6 ‘refers to the subject-matter of the legislation, and not to a single purpose or end sought to be accomplished.’”).

at 1074. Although the legislature is not required to index the act's provisions in the title, doing so "does tend to further one of the purposes of the single subject provision—notice to the public and the Legislature." *Id.* at 1076. The full title must be worded so that a person of average intelligence will not be misled regarding the scope of the act, will be provided with sufficient notice, and will cause the person to review the act itself. *Id.*

The requirement in section 125.67 is that the single subject be briefly expressed in the title. Although the exact phrasing, "an amendment to the Orange County Charter dealing with the election of constitutional officers" is not in the Ordinance's title, the title does list the provisions it contains, which mostly pertain to the election of constitutional officers. The title fulfills the purpose of the single subject rule, as it tells the voters that they are deciding whether to impose term limits on the county constitutional officers and whether the elections for those officers should be nonpartisan. Keeping this purpose in mind, Plaintiffs cannot demonstrate beyond a reasonable doubt that the title of the Ordinance does not contain a brief expression of its single subject of amending the Charter regarding the election of county constitutional officers. Due to this, and the large amount of deference given to the legislature regarding its choice of titles, the Court finds that the title does contain a brief expression of the Ordinance's single subject.

ii. Proper connection to single subject

Now that the Ordinance's single subject of "an amendment to the Orange County Charter dealing with the election of constitutional officers" has been determined, *Franklin* states that the next step is considering whether all the provisions are properly connected to that single subject.

*Franklin v. State*, 887 So. 2d at 1077.

A connection between a provision and the subject is proper (1) if the connection is natural or logical, or (2) if there is a reasonable explanation for how the provision is (a) necessary to the subject or (b) tends to make effective or promote the objects and purposes of legislation included in the subject.

*Id.* at 1078.

Applying *Franklin* to the case at bar, the Ordinance's single subject is amending the Charter regarding the election of constitutional officers, and the connection between that subject and term limits for those officers and nonpartisan elections is natural or logical.

Plaintiffs argue that imposing term limits does not deal with elections of constitutional officers. Instead, Plaintiffs contend that the "two subjects are only tangentially related in that they both have something broadly to do with elected county constitutional officers." (Pls.' Mot. Summ. J. 34.) Plaintiffs state that the term limits provisions preclude an incumbent who serves four consecutive four year terms from seeking a fifth consecutive term, and the nonpartisan provisions eliminate the existing cycle in which constitutional officers are elected and establishes a new process for candidates running for the position of county constitutional officer. The Court finds that both issues are properly connected to the election of constitutional officers, however, because both have a natural or logical connection to the election of those officers. The nonpartisan provisions are logically connected to the election of the constitutional officers as it deals with the election itself, and the term limits provisions have a natural or logical connection to the election because it determines whether a candidate is qualified to be elected.

In *Franklin*, the single subject of the act at issue was sentencing. *Franklin v. State*, 887 So. 2d at 1080. The Supreme Court of Florida held that the act did not violate the single subject rule, even though it contained a provision changing the definition of armed burglary to include a railroad vehicle. *Id.* at 1081-82. The provision had a natural or logical connection to sentencing because its effect was to impose a harsher sentence on one that commits a crime against a person inside a railroad vehicle. *Id.* Although the connection between term limits and elections may seem attenuated, there appears to be more of a connection between term limits and elections than there is between adding "railroad vehicles" to the definition of armed burglary and sentencing.

Additionally, returning to the standard of review, violations of the single subject rule must be demonstrated beyond a reasonable doubt. It is not beyond a reasonable doubt that term limits for constitutional officers are not logically or naturally connected to the elections of those officers.

Plaintiffs also argue that the Ordinance constitutes impermissible logrolling of legislation, which would demonstrate that there is not a proper connection between term limits and the election of constitutional officers.

Logrolling occurs when a piece of legislation has unrelated provisions in an attempt to get an unpopular provision passed along with the popular provision. *Advisory Op. to Attorney Gen. Re: Indep. Nonpartisan Comm'n to Apportion Legislative & Cong. Dists. Which Replaces Apportionment by Legislature*, 926 So. 2d 1218, 1224 (Fla. 2006). As noted above, preventing logrolling is one of the purposes of the single-subject rule. *Franklin v. State*, 887 So. 2d at 1072. The courts also use the “logically or naturally connected” factor in considering whether the legislation constitutes logrolling. *Advisory Op. to Attorney Gen.*, 926 So. 2d at 1226 (quoting *Advisory Op. to Attorney Gen. Re: Fla.’s Amendment to Reduce Class Size*, 816 So. 2d 580, 582 (Fla. 2002)). A proposed amendment meets this test when it “may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. Unity of object and plan is the universal test.” *Id.* at 1225 (quoting *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984)).

In the advisory opinion regarding a constitutional amendment to apportion legislative and congressional districts, the proposed amendment violated the single subject rule because it contained new standards for apportioning the districts, along with creating a redistricting commission. *Advisory Op. to Attorney Gen. Re: Indep. Nonpartisan Comm'n to Apportion Legislative & Cong. Dists. Which Replaces Apportionment by Legislature*, 926 So. 2d at 1226. Voters that only agreed with one provision had to vote for both to see the one provision they supported be enacted. *Id.* “Thus, a voter would be forced to vote in the ‘all or nothing’ fashion that the single subject requirement safeguards against.”



*Id.* The same conclusion was reached in *In re Advisory Opinion to the Attorney General-Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994). The proposed constitutional amendment in that case contained many different classifications that would be protected from discrimination, and the court held that putting all of them into one amendment violates the purpose of the single subject rule because it would “[r]equir[e] voters to choose which classifications they feel most strongly about, and then requir[e] them to cast an all or nothing vote on the classifications listed in the amendment . . . .” *Id.* See also *Advisory Op. to the Attorney Gen. Re: Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563, 566 (Fla. 1998) (proposed amendment violated single subject rule and was logrolling legislation because it “forces the voter who may favor or oppose one aspect of the ballot initiative to vote on the health care provider issue in an ‘all or nothing’ manner.”).

Plaintiffs argue that Ordinance No. 2014-21 constitutes improper logrolling because it forces voters into an all-or-nothing position. During the first hearings on the term limits and nonpartisan provisions, several County Commissioners stated that some voters could favor term limits, but not nonpartisan elections, and vice versa. Orange County argues that there is no logrolling because the dominant plan or scheme of the ordinance was to give voters a referendum dealing with a proposed charter amendment changing election criteria for constitutional officers, and each part of the Ordinance has a natural connection to the objective of putting that question to the voters.

The cases discussed above are distinguishable in that they involve citizen petitions to amend the Florida Constitution. The standard of review for violations of the single subject rule in such cases is stricter than in cases involving review of statutes passed by the legislature. *Franklin v. State*, 887 So. 2d at 1077. “The use of the phrase ‘properly connected’ in article III, section 6 is broader than the phrase ‘directly connected’ required by article XI, section 3 of the Florida Constitution, which authorizes changes in our constitution by citizen initiative petition.” *Id.* It is more appropriate to take a broader view of statutes proceeding through the legislative process because those will go

through debate and public hearing. *Id.* Constitutional amendments proposed via citizen petition do not go through this process. *Id.* The court demands strict compliance with the single subject rule in reviewing citizen petitions to amend the constitution because, most importantly, the constitution “is the basic document that controls our governmental functions, including the adoption of any laws by the legislature.” *Id.* (quoting *Fine v. Firestone*, 448 So. 2d 984, 988-89 (Fla. 1984)).

The amendment to the Orange County Charter embodied in Ordinance No. 2014-21 was proposed by the Board of County Commissioners after debate and public hearings. Therefore strict compliance with the single subject rule as noted in the *Advisory Opinions* cases does not apply here. Instead, the standard of review enunciated in *Franklin* is more appropriate, as that case also involved laws coming from a legislative body, just as here, the proposed amendment comes from Orange County’s legislative body—the Board of County Commissioners.

Both the term limits and nonpartisan provisions have a natural or logical connection to the Ordinance’s subject. Also, Plaintiffs did not cite, and the Court did not find, a case invalidating a law under the single subject rule that put voters in an all-or-nothing position that was not a citizens’ petition case. Because the cases that do support Plaintiffs’ position involve a strict application of the single subject rule, and in this circumstance the rule should be applied broadly, Plaintiffs do not demonstrate beyond a reasonable doubt that Ordinance No. 2014-21 constitutes logrolling and violates the single subject rule.

Under *Franklin*, there are two ways to satisfy the proper connection test of the single subject rule: (1) there is a natural or logical connection to that single subject, discussed above, “or (2) if there is a reasonable explanation for how the provision is (a) necessary to the subject or (b) tends to make effective or promote the objects and purposes of legislation included in the subject.” *Franklin v. State*, 887 So. 2d at 1078. When determining (2), “the court may consider the citation name, the full title, the preamble, and the provisions in the body of the act.” *Franklin v. State*, 887 So. 2d at 1072.

Because there is an “or” separating the two factors, even if the Ordinance fails the natural or logical connection prong, the provision still could have a proper connection to the single subject if there is a reasonable explanation for how it is necessary to the subject or if there is a reasonable explanation for how the provision tends to make effective or promote the purposes included in the subject. The nonpartisan elections provisions are connected to the single subject of amending the Charter regarding the election of county constitutional officers, as they specifically deal with those elections. Thus, the Court must consider whether the term limits provisions are also connected to that single subject.

First, there appears to be a reasonable explanation for how term limits are necessary to amending the Charter regarding the election of county constitutional officers. Term limits determine who qualifies to be a county constitutional officer, and determining whether one qualifies for the office is necessary to the election of the person for that office.

Second, there seems to be a reasonable explanation for how the term limits provisions tend to make effective or promote the objects and purposes of the proposed amendment regarding the election of constitutional officers. As discussed in Part C.1., *supra*, one purpose of the Ordinance was to create term limits. The term limits provisions do this. Therefore, Ordinance No. 2014-21 does satisfy the single subject rule because there is a reasonable explanation of how the provisions are necessary to the Ordinance’s subject or tend to make effective or promote the objects and purposes of the subject.

Therefore, even if the single subject rule did apply, Plaintiffs did not establish beyond a reasonable doubt that Ordinance No. 2014-21 violates it. Plaintiffs’ motion for summary judgment on Count II is denied, and Orange County’s motion for summary judgment on Count II is granted.

### **3. Count III Independent Status**

In Count III of the Amended Complaint, Plaintiffs allege that Ordinance No. 2014-21 is inherently conflicting because it states that the constitutional officers will be governed by the Charter, instead of the Florida Constitution, but then states that establishing term limits and nonpartisan elections does not imply any Board authority over the constitutional officers. Plaintiffs contend that the Ordinance interferes with the constitutional officers' independence by changing the elections to nonpartisan ones, which alters the timing and method for selecting them, and imposing term limits. They also argue that the ordinance is ambiguous, which undermines its validity, because it contains the sentence stating that it does not imply Board authority over the constitutional officers, which prevents the ordinance from specifically and permissibly stating that it is governing the method by which the officers are selected. Plaintiffs assert that the Florida Constitution limits the areas in which the Charter may govern county officers, and this makes it clear that the Florida Constitution and Statutes govern constitutional officers, not an alternative provision in the Charter. They argue that Florida's Election Code preempts all matters to the state.

Orange County asserts that Plaintiffs did not plead preemption or conflict with Florida law. Orange County relies on *Arky, Freed, Stearns, Watson, Greer, Weaver & Harris, P.A. v. Bowmar Instrument Corp.*, 537 So. 2d 561 (Fla. 1988). In that case, the plaintiff was permitted to proceed on an unpled claim that was disclosed to the defendant twelve days before trial. *Id.* at 562. The court held that the plaintiff was precluded from recovering on that unpled claim. *Id.*

Here, the Amended Complaint alleges that the Ordinance alters the timing and method for selecting constitutional officers and that the Florida Constitution limits the areas in which the Charter may govern county officers. Thus, Plaintiffs did sufficiently plead that the Ordinance conflicts with the Florida Constitution regarding the timing and method of electing county constitutional officers. Additionally, Plaintiffs' arguments are fully set forth in their motion for summary judgment, and Orange County replied to those arguments in its response to the motion.

and its own motion for summary judgment. These documents were filed more than four months before the April hearing on the summary judgment motions. Therefore, Orange County had sufficient notice of Plaintiffs' arguments and adequate time to respond to them (and did respond to them). The Court rejects Orange County's arguments that the preemption and conflict contentions were not plead.

**a. Term limits and nonpartisan elections**

In *Telli v. Broward County*, 94 So. 3d 504, 513 (Fla. 2012), the Supreme Court of Florida expressly receded from *Cook v. City of Jacksonville*, 823 So. 2d 86 (Fla. 2002), in which it held that a charter could not impose term limits on constitutional officers. In the *Telli* case, the Supreme Court was reviewing a charter amendment imposing term limits on county commissioners. *Id.* at 505. The term limits opponents "argu[ed] that the term limits were unconstitutional under the Florida Constitution." *Id.* In holding that the term limits were constitutional, the Supreme Court receded from *Cook*, stating that it was wrongly decided. *Id.* at 513. Instead, the Supreme Court agreed with Justice Anstead's dissent in *Cook*. *Id.* at 512. Justice Anstead's dissent stated that the Florida Constitution contains broad language "'intend[ing] to allow charter counties wide latitude in enacting regulations governing the selection and duties of county officers . . .'" *Id.* (quoting *Cook*, 823 So. 2d at 96 (Anstead, J., dissenting)). Because general law regarding elected county officers did not conflict with the charter's term limits and the broad grant of authority to charter counties, there was "no legal justification for concluding that charter counties should not be allowed to ask their citizens to vote on eligibility requirements of local elected officials, including term limits, since they could abolish the offices completely or decide to select the officers in any manner of their choosing." *Id.* (quoting *Cook*, 823 So. 2d at 96 (Anstead, J., dissenting)). Restrictions on home rule power must be expressed, not implied, because "[i]nterpreting Florida's Constitution to find implied restrictions on powers otherwise authorized is unsound in principle." *Id.* at 513.

*Telli* specifically permits charter counties to impose term limits upon their constitutional officers and did not find a conflict with Florida’s constitution or statutes. *Id.* Thus, the term limits provisions in the Ordinance are valid. Additionally, *Telli* dictates that a restriction on making county constitutional officers nonpartisan must be expressly stated. Under *Telli*, restrictions on a charter county’s home rule power must be expressed, not implied. *Id.* Plaintiffs have not provided the Court with an express restriction on charter counties making their constitutional officers nonpartisan. Instead, Plaintiffs’ arguments rest on implying this restriction from various constitutional provisions, statutes, cases, Charter provisions, and advisory opinions. This is not sufficient to prohibit Orange County electors from choosing to make their county constitutional officers nonpartisan. As noted in *Telli*, under the constitution, Orange County voters can choose “any manner”<sup>4</sup> to select such officers. Plaintiffs concede that the voters can make those offices appointive offices. Thus, the voters can surely take the less undemocratic step of making those offices nonpartisan elective offices, as there is no express prohibition against a charter county doing so. *See id.* at 512-13; *Cook*, 823 So. 2d at 95-96 (Anstead, J., dissenting); *see also* Art. I, § 1, Fla. Const.; Op. Att’y Gen. Fla. 00-02 (2000). Therefore, the Court finds that the first sentence of Section 1.C of the Ordinance is valid.

**b. Procedure for nonpartisan elections**

The constitution mandates that elections be regulated by law. *See* Art. VI, § 1, Fla. Const. The Legislature has enacted a plethora of statutes pursuant to that mandate, including provisions regarding nonpartisan elections. *See, e.g.*, §§ 97.021(21), 105.031, 105.041, 105.051, 105.10, Fla. Stat. (2014).

In *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880 (Fla. 2010), the Florida Supreme Court held “that the Florida Election Code does not preempt the field of elections law . . .

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<sup>4</sup> Florida law recognizes several manners which are used to select state and local officials, including appointment, nonpartisan election, partisan election, and merit retention.

” *Id.* at 883. The case involved a county charter amendment regarding several elections issues, such as paper ballots and certifying election results. *Id.* at 884-85.

After *Browning*, as pointed out by Orange County in its motion for summary judgment, Florida Statute section 97.0115 was enacted. Section 97.0115 states, “All matters set forth in chapters 97-105 are preempted to the state, except as otherwise specifically authorized by state or federal law.” Thus, the Florida Legislature overruled *Browning* by expressly preempting local election laws. *Allen Winsor, Sarasota Alliance for Fair Elections, Inc. v. Browning, The Implied End to Implied Preemption*, 41 Stetson L. Rev. 499, 514-15 (2012).

Orange County argues that the Florida Election Code does not expressly require constitutional officers’ elections to be nonpartisan, and thus charter counties can exercise their discretion in this area. As explained above, the Court agrees that Orange County is authorized to make the county constitutional offices nonpartisan elective offices. The Court disagrees, however, that Orange County may regulate the nonpartisan elections for such offices because those matters are preempted to the Legislature. *See Masone v. City of Aventura*, 147 So. 3d 492, 495 (Fla. 2014); *Phantom of Brevard, Inc. v. Brevard Cnty.*, 3 So. 3d 309, 314 (Fla. 2008). This renders Section 1.C, except the first sentence, of the Ordinance unconstitutional.

#### 4. Severability

Because the Court has found certain provisions of Ordinance No. 2014-21 unconstitutional, the Court must address whether the unconstitutional provisions can be severed from the rest of the Ordinance.

“When a part of a statute is declared unconstitutional the remainder of the act will be permitted to stand provided: (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which

are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken.”

*Ray v. Mortham*, 742 So. 2d 1276, 1281 (Fla. 1999) (quoting *Smith v. Department of Ins.*, 507 So. 2d 1080, 1089 (Fla. 1987)).

The party challenging the validity of the legislation has the burden of demonstrating that it is not severable and thus subject to complete invalidation. *Ray v. Mortham*, 742 So. 2d at 1281. “When the valid sections can accomplish the legislature’s intent without the invalid portions, the statute is severable.” *Sloban v. Fla. Bd. of Pharmacy*, 982 So. 2d 26, 31-32 (Fla. 1st DCA 2008).

**a. Nonpartisan elections provisions**

The Court has determined that only the first sentence of Section 1.C survives the Florida Election Code’s preemption. The second factor under *Ray v. Mortham* is whether the legislative purpose of making the county constitutional offices nonpartisan elective offices can be accomplished independently of the invalid provisions of Section 1.C. Florida’s Election Code does contain procedures for nonpartisan elections, but these procedures are directed towards candidates for judicial office, school boards, and multicounty offices. For example, Florida Statute section 105.031(1) sets forth the time for qualifying. It contains specific deadlines for candidates for judicial office and school board members to qualify, but it does not set forth qualifying deadlines for candidates for nonpartisan offices other than judicial and school board positions. § 105.031(1). *See also* §§ 105.041, .051.

Without the invalid provisions, there is no method to hold the nonpartisan election, as the Election Code does not provide for the nonpartisan election of county constitutional officers. Therefore, the purpose of the valid provision cannot be accomplished without the unconstitutional



provisions of Section 1.C. Because this second factor under *Ray v. Mortham* cannot be met, the invalid provisions are not severable, and Section 1.C in its entirety is invalid.<sup>5</sup>

**b. Term limits provisions**

Since all provisions regarding nonpartisan elections are invalid, the Court now turns to whether those provisions are severable from the remaining provisions. Plaintiffs concede that the first and fourth factors of the severability analysis are met. That leaves the second and third factors: whether the legislative purpose expressed in the valid provisions can be accomplished independently of the invalid provisions, and whether “the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other.” *Ray v. Mortham*, 742 So. 2d at 1281.

Plaintiffs argue that the Ordinance’s legislative purpose was to let the voters decide whether to impose term limits on the offices and whether the offices should be nonpartisan. Because the issues were intentionally combined into one ballot question, one cannot determine whether the legislative purpose is satisfied if the nonpartisan provisions are severed or whether the term limits provisions would have passed without the nonpartisan provisions.

If severance would result in a statute that is contrary to legislative intent, then severance is not permitted. *State v. Catalano*, 104 So. 3d 1069, 1080-81 (Fla. 2012) (severability would not be applied where it would expand the statute’s scope beyond what the legislature intended); *Sloban v. Fla. Bd. of Pharmacy*, 982 So. 2d at 32-33 (statute could not be severed because severing provisions would make revocations permanent, and legislature intended to give board discretion regarding allowing those with revoked licenses to reapply); *Fla. Dep’t of State, Div. of Elections v. Martin*, 916 So. 2d 763, 773-74 (Fla. 2005) (severance would prohibit candidates from withdrawing after a certain date, which is contrary to legislative intent to allow discretion to permit withdrawal after time period;

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<sup>5</sup> This necessarily requires the Court to find that the words “non-partisan elections and” in Section 1.B are invalid.

thus, statute was not severable). Here, severing the nonpartisan provisions from the term limits provisions would not result in a Charter amendment contrary to the purpose of imposing term limits upon county constitutional officers. Thus, the second factor weighs in favor of severability.

The third factor is whether “the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other.” *Ray v. Mortham*, 742 So. 2d at 1281. Orange County argues that “the party challenging severability may not invoke the single subject rule to argue that a particular piece of legislation is not severable, because severability would necessarily require a violation of the single subject rule.” (Orange Cnty. Br. 8-9.) Orange County relies on *Ray v. Mortham*, where the appellants argued that because the amendment did not violate the single subject rule, it was not subject to severability. *Ray v. Mortham*, 742 So. 2d at 1282. The court rejected that argument, as satisfying the single subject rule does not mean the provisions are so dependent on each other that the statute’s purpose cannot be accomplished without all of the provisions. *Id.*

Plaintiffs carry the burden to demonstrate that the nonpartisan provisions are not severable. To support their argument against severability, they rely on comments made by county commissioners at prior hearings that some voters could support term limits but not support nonpartisan elections, and vice versa. The Court finds that the county commissioners’ opinions expressed before they voted to put the term limits provisions and nonpartisan elections provisions into one ordinance are not sufficient for Plaintiffs to meet their burden regarding severability. Thus, Plaintiffs fail to demonstrate that the third factor precludes severability.

The term limits provisions are not preempted by the Election Code and those provisions can be implemented independent of the invalid provisions of the Ordinance. Orange County voters knew that the Ordinance’s provisions were subject to severability, as its title specifically states that it provides for severability. Severing the nonpartisan provisions from the term limits provisions would

not be contrary to legislative intent, and the term limits provisions can accomplish one of the Ordinance's goals. Additionally, the Orange County Charter, Article I, Section 110, provides for severability of any subsection of the Charter held to be invalid. Thus, the Court finds that the nonpartisan provisions are severable from the term limits provisions. *See Ray*, 742 So. 2d at 1283; *Vill. of Wellington v. Palm Beach Cnty.*, 941 So. 2d 595, 600-01 (Fla. 4th DCA 2006).

Accordingly, it is hereby **ORDERED AND ADJUDGED** as follows:

1. Orange County's Motion for Summary Judgment as to Count I and Count II is **GRANTED** and Plaintiffs' Motion for Summary Judgment as to Count I and Count II is **DENIED**.
2. The parties' Motions for Summary Judgment as to Count III are **GRANTED IN PART** and **DENIED IN PART**. Section 1.C. and the words "non-partisan elections and" in Section 1.B are **INVALID** and are **SEVERED** from Ordinance No. 2014-21. The other challenged provisions of that Ordinance are **VALID**.
3. The parties shall submit a proposed final judgment consistent with this Order.

**DONE AND ORDERED** in Chambers, at Orlando, Orange County, Florida, on this \_\_\_\_ day of \_\_\_\_\_, 2016.

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**KEITH F. WHITE**  
Circuit Judge

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Order has been furnished to: **Eric D. Dunlap, Esq.**, Orange County Sheriff's Office, Legal Services Section, 2500 W. Colonial Drive, Orlando, FL 32804, Eric.Dunlap@ocfl.net; **Michael E. Marder, Esq.**, Greenspoon Marder PA, 201 E. Pine Street, Suite 500, Orlando, FL 32801, Michael.Marder@gmlaw.com; **Mark Herron, Esq.**, and **Gigi Rollini, Esq.**, Messer Caparello, P.A., 2618 Centennial Place, Tallahassee, FL 32308, mherron@lawfla.com, grollini@lawfla.com; **Scott Randolph, Esq.**, 701 Delaney Park Drive, Orlando, FL 32806-1321, randolphscott007@gmail.com; **William C. Turner, Jr., Assistant County Attorney**, and **Edward Chew, Assistant County Attorney**, Orange County Attorney's Office, 201 S. Rosalind Avenue, Third Floor, Orlando, FL 32801, WilliamChip.Turner@ocfl.net, edward.chew@ocfl.net; **Nick Shannin, Esq.**, 119 W. Kaley Street, Orlando, FL 32806, nshannin@ocfelections.com; on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Judicial Assistant

