APPLICATION FOR NOMINATION
TO THE SUPREME COURT OF FLORIDA

Roger K. Gannam

gannamr@flcourts.org

[redacted]

APPLICATION FOR NOMINATION
TO THE SUPREME COURT OF FLORIDA

Instructions: *Respond fully to the questions asked below. Please make all efforts to include your full answer to each question in this document. You may attach additional pages, as necessary, however it is discouraged. In addition to the application, you must provide a recent color photograph to help identify yourself.*

Full Name: Roger Michael Karam Gannam **Social Security No.:** [redacted]

Florida Bar No.: 240450 **Date Admitted to Practice in Florida:** 5/5/2000

1. Please state your current employer and title, including any professional position and any public or judicial office you hold, your business address and telephone number.

Judge of the District Court of Appeal, Sixth Appellate District, State of Florida

811 East Main Street, Lakeland, FL 33801
(863) 274-9737

2. Please state your current residential address, including city, county, and zip code. Indicate how long you have resided at this location and how long you have lived in Florida. Additionally, please provide a telephone number where you can be reached (preferably a cell phone number), and your preferred email address.

[redacted]
(since July 15, 2023—2 years 5 months as of December 15, 2025)

I have been a Florida resident since December 1974*
(51 years as of December 2025).

*From December 1981 to March 1985 I lived in Dunoon, Scotland, U.K., while my stepfather was deployed to the United States Navy Fleet Ballistic Missile Refit Site One at Holy Loch.

Preferred telephone number: [redacted] (mobile)

3. State your birthdate and place of birth. July 26, 1974, Savannah, Georgia

4. Are you a registered voter in Florida (Y/N)? Yes

5. Please list all courts (including state bar admissions) and administrative bodies having special admissions requirements to which you have ever been admitted to practice, giving the dates of admission, and if applicable, state whether you have ever been suspended or resigned. Please explain the reason for any lapse in membership.

I have been generally admitted to practice in the following courts (admission current unless otherwise indicated):

Court	**Bar no.**	**Date**
Supreme Court of Florida	240450	May 5, 2000
Supreme Court of the United States	299805	November 7, 2016
United States Courts of Appeals—		
First Circuit	1180328	June 16, 2017
Second Circuit		August 30, 2017
Third Circuit		November 3, 2016
Fourth Circuit		August 29, 2017
Fifth Circuit		September 6, 2017
Sixth Circuit		August 19, 2015
Seventh Circuit		August 18, 2017
Eighth Circuit		August 30, 2017
Ninth Circuit		August 18, 2017
Tenth Circuit		August 30, 2017
Eleventh Circuit*		January 16, 2003– January 15, 2018; March 12, 2019– March 11, 2024
District of Columbia Circuit	60612	September 15, 2017
United States District Courts—		
Middle District of Florida**		May 31, 2000– September 30, 2025
Northern District of Florida		February 16, 2001
Southern District of Florida		February 16, 2001
Northern District of Indiana		February 15, 2019
Southern District of Indiana		May 19, 2017

[*]I inadvertently did not submit my five-year renewal to the Eleventh Circuit in 2018 and was readmitted in 2019. I did not renew my admission in 2024 because of my 2023 judicial appointment.

[**]I did not submit my five-year renewal to the Middle District of Florida in 2025 because of my 2023 judicial appointment.

I have been specially admitted *pro hac vice* to the following courts:

Court	**Date(s)**
Supreme Court of Alabama	February 19, 2015
4th Judicial District Court, Teller County, Colorado	October 20, 2020
District of Columbia Court of Appeals	June 14, 2019
Superior Court of the District of Columbia	February 2, 2016
Magisterial District Court 11-3-06, Luzerne County, Pennsylvania	August 27, 2014
Magisterial District Court 45-3-01, Lackawanna County, Pennsylvania	October 1, 2014
United States District Courts—	
Central District of California	August 4, 2020
Northern District of Illinois	May 14, 2020 October 28, 2021
Eastern District of Kentucky	July 9, 2015
Western District of Kentucky	April 21, 2020
District of Maine	June 4, 2020 August 25, 2021
District of Maryland	January 24, 2019
District of Massachusetts	April 23, 2015 July 10, 2018
Eastern District of New York	July 24, 2017 September 27, 2021
Middle District of Pennsylvania	July 18, 2016
District of Rhode Island	March 13, 2023
Eastern District of Virginia	May 7, 2020

6. Have you ever been known by any aliases? If so, please indicate and when you were known by such alias.

Since 1999, I have been known professionally as "Roger Karam Gannam" or "Roger K. Gannam."

EDUCATION:

7. List in reverse chronological order each secondary school, college, university, law school or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, the date the degree was received, class standing, and graduating GPA (if your class standing or graduating GPA is unknown, please request the same from such school).

University of Florida Levin College of Law, January 1997 to December 1999
Juris Doctor, *with honors*, December 18, 1999
Standing: 38/133 | GPA: 3.15

Note: I worked full time as an undergraduate to finance 100% of education cost.

University of North Florida, Fall 1993 to Winter 1996*
Bachelor of Business Administration, December 13, 1996
Standing: N/A† | GPA: 2.87

*I also completed two graduate level courses in the College of Education, for law school credit, in Fall 1999.

Florida Community College at Jacksonville
(now Florida State College at Jacksonville), Fall 1991 to Spring 1993
Associate in Arts, August 6, 1993
Standing: N/A† | GPA: 3.77

Robert E. Lee Senior High School
(now Riverside High School), Fall 1989 to Spring 1991
Standard Diploma, June 7, 1991
Standing: 32/169 | GPA: 3.54

Bishop Kenny High School, Fall 1987 to Spring 1989
Completed freshman and sophomore years.
Standing: 96/226 | GPA: 2.62

†Not provided by institution.

8. List and describe any organizations, clubs, fraternities or sororities, and extracurricular activities you engaged in during your higher education. For each, list any positions or titles you held and the dates of participation.

Chester Bedell Inn of Court, *Pupil Student Member*, 1998–1999.

Student Fee Assessment Committee, University of North Florida, *Chairman*, 1995. Directed committee responsible for review and approval of combined $3.27 million Student Activity & Service, Athletic, and Health budgets.

Sigma Chi Fraternity, Kappa Beta Chapter, University of North Florida, Fall 1993 to Spring 1996. *Tribune* (alumni relations), Spring 1994; *Consul* (president), Fall 1994 to Spring 1995; *Magister* (pledge educator), Fall 1995. *Most Outstanding Member*, 1994, 1995; *Balfour Outstanding Senior*, 1996.

Phi Theta Kappa Honor Society, Florida Community College at Jacksonville, *Member*, Fall 1991 to Spring 1993.

EMPLOYMENT:

9. List in reverse chronological order all full-time jobs or employment (including internships and clerkships) you have held since the age of 21. Include the name and address of the employer, job title(s) and dates of employment. For non-legal employment, please briefly describe the position and provide a business address and telephone number.

District Court of Appeal, Sixth Appellate District, State of Florida
811 East Main Street, Lakeland, Florida 33801
Judge, September 2023 to present

Liberty Counsel
1053 Maitland Center Commons Boulevard, Maitland, Florida 32751
Assistant Vice President of Legal Affairs, July 2016 to August 2023;
Senior Litigation Counsel, August 2014 to July 2016

Lindell & Farson, P.A. (now Lindell & Zebouni, P.A.)
12276 San Jose Boulevard, Suite 126, Jacksonville, Florida 32223
Partner, January 2009 to July 2014; *Associate*, April 2006 to December 2008

Smith, Gambrell & Russell, LLP
50 North Laura Street, Suite 2600, Jacksonville, Florida 32202
Associate, September 2003 to April 2006

LeBoeuf, Lamb, Greene & MacRae, L.L.P.
(later Dewey & LeBoeuf LLP; later dissolved)
50 North Laura Street, Suite 2800, Jacksonville, Florida 32202
Associate, January 2000 to August 2003; *Summer Associate*, 1999

Chief Judge George L. Proctor and Judge Jerry A. Funk,
United States Bankruptcy Court, Middle District of Florida, Jacksonville Division, 300 North Hogan Street, Suite 3-150, Jacksonville, Florida 32202
Judicial Extern, Fall 1999

Sheppard & White, P.A. (now Sheppard, White, Kachergus, & DeMaggio, P.A.)
215 N. Washington Street, Jacksonville, Florida 32202
Summer Associate, 1998

AT&T Universal Card Services Corp. (now Citibank, N.A.)
8787 Baypine Road, Jacksonville, Florida 32256
Calling Card Troubleshooter, May 1995 to December 1996. Worked in 24-hour call center resolving long-distance calling card usage issues and fraud claims.
Customer Service Associate, July 1992 to May 1995. Worked in 24-hour call center handling all aspects of credit card account customer service and maintenance.

Note: In Summer and Fall 1996, to earn additional money before starting law school, I also worked part time for The Loop Restaurant, 8221 Southside Blvd., Jacksonville, FL 32256, providing counter service, and then UPS, 4420 Imeson Rd., Jacksonville, FL 32219, unloading trucks.

10. 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.

Prior to my judicial appointment, from August 2014 to August 2023, I engaged in a nationwide constitutional law practice representing individuals and organizations in public interest, religious liberty litigation. Typical clients were seeking vindication of constitutional free speech, free exercise, and equal protection rights in the face of governmental or employment policies that burdened religious exercise or discriminated against religious viewpoints. I also advised and defended claims against government bodies and officials in matters concerning accommodation of protected speech and free exercise. All legal services were provided pro bono.

My prior practice was substantially different. From April 2006 to July 2014, my practice comprised a broad range of business and consumer litigation matters, including prosecution of consumer class actions and pro bono religious liberty litigation. My typical clients were individuals and small businesses seeking assistance in contract, construction, real estate, corporate governance, employment non-competition, and estate and trust disputes. During the later five of those years, I also regularly advised clients in company formation and in the purchase, sale, and financing of businesses and commercial real estate.

From January 2000 to April 2006, I worked for two large, international law firms, where my practice involved commercial litigation for small to large businesses and high net worth individuals, including class action defense.

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

Note: The first number in each category represents my public interest practice (August 2014 to August 2023), and the second number represents my commercial practice during the preceding five years.

Court			Area of Practice		
Federal Appellate	45 | 2	%	Civil	99 |95	%
Federal Trial	45 | 2	%	Criminal	1 | 0	%
Federal Other		%	Family		%
State Appellate	5 |20	%	Probate	0 | 5	%
State Trial	4 |75	%	Other		%
State Administrative	1 | 1	%			
State Other		%			
TOTAL	100 | 100	%	TOTAL	100 | 100	%

If your appearance in court the last five years is substantially different from your prior practice, please provide a brief explanation:

See Note, *supra.*

12. In your lifetime, how many (number) of the cases that you tried to verdict, judgment, or final decision were:

Jury?	0	Non-jury?	11
Arbitration?	6	Administrative Bodies?	8
Appellate?	13		

Note: In addition to the 25 cases I have tried to a judge, arbitrator, or administrative body, I have completed 21 contested evidentiary hearings in the nature of a trial on temporary or preliminary injunction, class certification, and similarly contested motions.

13. Please list every case that you have argued (or substantially participated) in front of the United States Supreme Court, a United States Circuit Court, the Florida Supreme Court, or a Florida District Court of Appeal, providing the case name, jurisdiction, case number, date of argument, and the name(s), e-mail address(es), and telephone number(s) for opposing appellate counsel. If there is a published opinion, please also include that citation.

Note: In each of the following appeals I was the principal writer unless otherwise indicated, and I also argued the appeal where indicated.

Supreme Court of the United States

Elim Romanian Church v. Pritzker, No. 19A1046.
Elim Romanian Pentecostal Church v. Pritzker, No. 20-569.

Opposing appellate counsel:
Kwame Raoul, Illinois Attorney General, (312) 814-4767
Jane Elinor Notz, jnotz@atg.state.il.us, (312) 814-5376
Sarah A. Hunger, shunger@atg.state.il.us, (312) 814-5202
Alex Hemmer, alex.hemmer@ilag.gov, (312) 814-3000
Priyanka Gupta, priyanka.gupta@ilag.gov, (312) 814-2109
Nadine Jean Wichern, nadine.wichern@gmail.com, (312) 814-1497

Harvest Rock Church, Inc. v. Newsom, No. 20A94, 141 S. Ct. 889 (2020) (GVR).
Harvest Rock Church, Inc. v. Newsom, No 20A137, 141 S. Ct. 1289 (2021) (granting writ of injunction).

Opposing appellate counsel:
Xavier Becerra, Secretary, HHS
Thomas S. Patterson, thomas.patterson@doj.ca.gov, (415) 510-3609
Benjamin M. Glickman, benjamin.glickman@doj.ca.gov, (916) 210-6054
Todd Grabarsky, todd.grabarsky@doj.ca.gov, (213) 269-6044
Seth E. Goldstein, seth.goldstein@doj.ca.gov, (916) 210-6063

Shurtleff v. City of Boston, No. 20-1800, 142 S. Ct. 1583 (2022) (9–0 reversal). Argument date: Jan. 18, 2022. (*See* significant case (1), Question 21, *infra*.)

Opposing appellate counsel:
Douglas Hallward-Driemeier, douglas.hallward-driemeier@ropesgray.com, (202) 508-4776
Samuel L. Brenner, samuel.brenner@ropesgray.com, (617) 951-7120
Deanna Barkett Fitzgerald, deanna.fitzgerald@ropesgray.com, (617) 951-7834
Thanithia Billings, thanithia.billings@ropesgray.com, (617) 951-7684
Adam N. Cederbaum, law@boston.gov, (617) 635-4030
Susan M. Weise, susan.weise@boston.gov, (617) 635-4040
Robert S. Arcangeli, robert.arcangeli@boston.gov, (617) 635-4044
Eugene O'Flaherty, gene@ballardpartners.com, (857) 328-1212

Does 1–6 v. Mills, No. 21A83.
Does 1–6 v. Mills, No. 21A90.
Does 1–6 v. Mills, No. 21-717.

Opposing appellate counsel—

For Janet T. Mills, Jeanne M. Lambrew, Nirav D. Shah:
Aaron M. Frey, Maine Attorney General, (207) 626-8599
Kimberly L. Patwardhan, kimberly.patwardhan@maine.gov, (207) 626-8570
Thomas A. Knowlton, thomas.a.knowlton@maine.gov, (207) 626-8800
Valerie A. Wright, vwright@littler.com, (207) 699-1116

For MaineHealth; Genesis Healthcare of Maine, LLC;
Genesis Healthcare, LLC, MaineGeneral Health:
Nolan L. Reichl, nreichl@pierceatwood.com, (207) 791-1304
James R. Erwin, jerwin@pierceatwood.com, (207) 791-1237
Katharine I. Rand, krand@pierceatwood.com, (207) 791-1100
Katherine L. Porter, kporter@pierceatwood.com, (207) 791-1212

For Northern Light Health Foundation:
Ryan P. Dumais, rdumais@eatonpeabody.com, (207) 729-1144 x.3810

United States Court of Appeals for the First Circuit

Sexual Minorities Uganda v. Lively, No. 17-1593, 899 F.3d 24 (1st Cir. 2018).

Opposing appellate counsel:
Pamela C. Spees, pspees@ccrjustice.org, (212) 614-6431
Baher Azmy, bazmy@ccrjustice.org, (212) 614-6464
Jeena D. Shah, jeena.shah@law.cuny.edu, (718) 340-4208
Judith Brown Chomsky, jchomsky@igc.org, (215) 266-7170
Luke Ryan, lryan@strhlaw.com, (413) 586-4800
Mark S. Sullivan, sullivan.mark@dorsey.com, (212) 415-9245
Joshua Colangelo-Bryan, colangelo.joshua@dorsey.com, (212) 415-9234
Kaleb McNeely, mcneely.kaleb@dorsey.com, (212) 415-9215

Shurtleff v. City of Boston, No. 18-1898, 928 F.3d 166 (1st Cir. 2019).
Argument date: May 8, 2019.
Shurtleff v. City of Boston, No. 20-1158, 986 F.3d 78 (1st Cir. 2021).
Argument date: Oct. 28, 2020.

Opposing appellate counsel: *see Shurtleff*, Sup. Ct. No. 20-1800, *supra*.

Calvary Chapel of Bangor v. Mills, No. 20-1507, 984 F.3d 21 (1st Cir. 2020).
Argued—argument date: Sept. 9, 2020.
Calvary Chapel of Bangor v. Mills, No. 21-1453, 52 F.4th 40 (1st Cir. 2022).
Argument date: Apr. 6, 2022.

Opposing appellate counsel:
Aaron M. Frey, Attorney General, (207) 626-8800
Christopher C. Taub, christopher.c.taub@maine.gov, (207) 626-8565
Sarah A. Forster, sarah.forster@maine.gov, (207) 626-8866

Does 1–6 v. Mills, No. 21-1826, 16 F.4th 20 (1st Cir. 2021).
Does 1–3 v. Mills, No. 22-1435, 39 F.4th 20 (1st Cir. 2022).
Lowe v. Mills, No. 22-1710, 68 F.4th 706 (1st Cir. 2023).
Argument date: May 4, 2023. (*See* case (1), Question 16, *infra*.)

Opposing appellate counsel: *see Does 1–6*, Sup. Ct. No. 21-717, *supra*.

United States Court of Appeals for the Second Circuit

New York ex rel. James v. Griepp, Nos. 18-2454, 18-2623, 18-2627, 18-2630, 991 F.3d 81 (2d Cir. 2021), *vacated, reh'g granted*, 997 F.3d 1258 (2d Cir. 2021), *op. on reh'g*, 11 F.4th 174 (2d Cir. 2021) (principal writer for Defendant–Appellee/Cross-Appellant Scott Fitchett, Jr.).
Argument date: Sept. 26, 2019. (*See* settled case (3), Question 17, *infra*.)

Opposing appellate counsel:
Barbara D. Underwood, Solicitor General, (212) 416-8020
Steven C. Wu, wus@dany.nyc.gov, (212) 335-9326
Philip J. Levitz, philip.levitz@ag.ny.gov, (212) 416-6325
Ester Murdukhayeva, ester.murdukhayeva@ag.ny.gov, (212) 416-6279

Does 1-2 v. Hochul, No. 22-2858, 2024 WL 5182675 (2d Cir. Dec. 20, 2024), *petition for cert. filed* (U.S. Mar. 24, 2025) (No. 24-1015) (participation ended August 2023).

Opposing appellate counsel—

For Kathy Hochul, Mary T. Bassett, M.D., M.P.H.:
Mark Stephen Grube, mark.grube@ag.ny.gov, (212) 416-8028

For Trinity Health Corporation:
Jacqueline Phipps Polito, jpolito@littler.com, (585) 203-3400
Erin Train, etrain@littler.com, (585) 203-3402

For Westchester Medical Center Advanced Physician Services, P.C.:
Michael J. Keane, mkeane@garfunkelwild.com, (516) 393-2263
Marc A. Sittenreich, msittenreich@garfunkelwild.com, (516) 393-2533
Anthony Ryan Prinzivalli, aprinzivalli@garfunkelwild.com, (516) 393-2512

For New York-Presbyterian Healthcare System, Inc.:
Liza M. Velazquez, lvelazquez@paulweiss.com, (212) 373-3096
Bruce A. Birenboim, bbirenboim@paulweiss.com, (212) 373-3165

Michael Gertzman, mgertzman@paulweiss.com, (212) 373-3281
Jonathan H. Hurwitz, jhurwitz@paulweiss.com, (212) 373-3254
Gregory Laufer, glaufer@paulweiss.com, (212) 373-3441
Emily A. Vance, evance@paulweiss.com, (212) 373-3559

United States Court of Appeals for the Third Circuit

Reilly v. City of Harrisburg, No 18-2884.
Reilly v. City of Harrisburg, No. 22-1795, 2023 WL 4418231 (3d Cir. July 10, 2023). Argument date: June 8, 2023.

Opposing appellate counsel:
Frank J. Lavery, Jr., flavery@laverylaw.com, (717) 233-6633
Andrew W. Norfleet, anorfleet@laverylaw.com (717) 233-6633
Jessica S. Hosenpud, receptionist@fiffiklaw.com, (717) 385-6602
Elizabeth L. Kramer, ekramer@salzmannhughes.com, (717) 234-6700
Josh Autry, jautry@forthepeople.com, (859) 899-8785

United States Court of Appeals for the Fourth Circuit

Lighthouse Fellowship Church v. Northam, No. 20-1515.
Lighthouse Fellowship Church v. Northam, No. 21-1153, 20 F.4th 157 (4th Cir. 2021). Argument date: Oct. 27, 2021.

Opposing appellate counsel:
Hon. Toby J. Heytens, United States Circuit Judge, (804) 916-2700
Jacqueline C. Hedblom, jhedblom@oag.state.va.us, (804) 786-9532
Mark R. Herring, mherring@akingump.com, (202) 887-4023
Michelle S. Kallen, mkallen@jenner.com, (202) 639-6093
Jessica Merry Samuels, jsamuels@cov.com, (202) 662-5788
Kendall T. Burchard, ktburchard@gmail.com, (775) 829-6921
Samuel T. Towell, (804) 371-2087

Doyle v. Hogan, No. 19-2064, 1 F.4th 249 (4th Cir. 2021). Argument date: Oct. 26, 2020.

Opposing appellate counsel:
Brian E. Frosh, Maryland Attorney General (Ret.), (410) 576-6311
Kathleen A. Ellis, kathleen.ellis@maryland.gov, (410) 767-1867
Brett E. Felter, brett.felter@maryland.gov, (410) 767-1878

United States Court of Appeals for the Sixth Circuit

Miller v. Davis, Nos. 15-5880, 15-5961, 15-5978.
Miller v. Caudill, Nos. 17-6385, 17-6404, 936 F.3d 442 (6th Cir. 2019). Argued—argument date: Jan. 31, 2019.

Opposing appellate counsel—

For April Miller, et al.:
Daniel Mach, dmach@aclu.org, (202) 675-2330
James D. Esseks, jesseks@aclu.org, (212) 549-2627
Ria Tabacco Mar, rmar@aclu.org, (212) 549-2627
Heather L. Weaver, hweaver@aclu.org, 202-675-2330
William Ellis Sharp, info@metrodefender.org, (502) 574-3800
Daniel J. Canon, daniel.canon@louisville.edu, (502) 852-6378
Laura E. Landenwich, laura@justiceky.com, (502) 561-0085
Leonard Joe Dunman, kchr.mail@ky.gov, (502) 595-4024
Amy D. Cubbage, acubbage@tachaulaw.com, (502) 238-9905

For Steve Beshear, Wayne Onkst:
Palmer G. Vance, II, gene.vance@skofirm.com, (859) 231.3935
William M. Lear, Jr., william.lear@skofirm.com, (859) 231.3011

For Rowan County:
Jeffrey C. Mando, jmando@adamsattorneys.com, (859) 495-3798

Ermold v. Davis, No. 16-6412, 855 F.3d 715 (6th Cir. 2017). Argued—argument date: Mar. 8, 2017.
Ermold v. Davis, Nos. 17-6119, 17-6120, 17-6226, 17-6233, 936 F.3d 429 (6th Cir. 2019). Argued—argument date: Jan. 31, 2019.
Ermold v. Davis, Nos. 22-5260/5261, 2022 WL 4546726 (6th Cir. Sept. 29, 2022).

Opposing appellate counsel—

For David Ermold, David Moore:
Michael J. Gartland, mgartland@dlgfirm.com, (859) 251-7159
Thomas Paul Szczgielski, tom@cbslaw.com, (859) 309-4880
Joseph D. Buckles, joe@joebuckles.com, (859) 225-9540

For James Yates, Will Smith:
W. Kash Stilz, Jr., kash@roushandstilzlaw.com, (859) 291-8400
Rene B. Heinrich, rheinrich@nkylawfirm.com, (859) 291-2200

For Rowan County:
Jeffrey C. Mando, jmando@adamsattorneys.com, (859) 495-3798
Mary Ann Stewart, mstewart@adamsattorneys.com, (859) 495-3798

Maryville Baptist Church, Inc. v. Beshear, Nos. 20-5427, 20-5465, 957 F.3d 610 (6th Cir. 2020) (granting injunction pending appeal), 977 F.3d 561(6th Cir. 2020). Argument date: Oct. 13, 2020. (*See* significant case (4), Question 21, *infra*.)

Maryville Baptist Church, Inc. v. Beshear, No. 22-5952, 2023 WL 3815099 (6th Cir. June 5, 2023).

Opposing appellate counsel:
La Tasha Buckner, latasha.buckner@ky.gov, (502) 564-2611
Travis Mayo, travis.mayo@ky.gov, (502) 564-2611
Taylor Payne, taylor.payne@ky.gov, (502) 564-2611
Laura Tipton, laurac.tipton@ky.gov, (502) 564-2611
Marc Ferris, marc.farris@ky.gov, (502) 564-2611
David T. Lovely, davidt.lovely@ky.gov, (502) 564-7905
Wesley W. Duke, wesduke1@gmail.com, (502) 564-7042

United States Court of Appeals for the Seventh Circuit

Elim Romanian Pentecostal Church v. Pritzker, No. 20-1811, 962 F.3d 341 (7th Cir. 2020). Argument date: June 12, 2020.

Opposing appellate counsel: *see Elim Romanian Pentecostal Church*, Sup. Ct. No. 20-569, *supra*.

Woodring v. Jackson County, No. 20-1881, 986 F.3d 979 (7th Cir. 2021). Argument date: Nov. 12, 2020.

Opposing appellate counsel:
Kenneth J. Falk, kfalk@aclu-in.org, (317) 635-4059
Stevie J. Pactor, spactor@aclu-in.org, (317) 635-4059
Gavin M. Rose, grose@aclu-in.org, (317) 635-4059

Doe 1 v. Northshore University Health System, No. 21-3242 (principal writer on motion for injunction pending appeal; case settled before merits briefing—*see* settled case (2), Question 17, *infra*).

Opposing appellate counsel:
Marc R. Jacobs, mjacobs@seyfarth.com, (312) 460-5626
David E. Dahlquist, david.dahlquist@usdoj.gov, (202) 805-8563

United States Court of Appeals for the Ninth Circuit

Harvest Rock Church, Inc. v. Newsom, No. 20-55907, 977 F.3d 728 (9th Cir. 2020), 981 F .3d 764 (9th Cir. 2020).
Harvest Rock Church, Inc. v. Newsom, No. 20-56357, 985 F.3d 771 (9th Cir. 2021). Argument date: Jan. 4, 2021.
(*See* settled case (4), Question 17, *infra*.)

Opposing appellate counsel:
Xavier Becerra, Secretary, HHS
Thomas S. Patterson, thomas.patterson@doj.ca.gov, (415) 510-3609

Benjamin M. Glickman, benjamin.glickman@doj.ca.gov, (916) 210-6054
Todd Grabarsky, todd.grabarsky@doj.ca.gov, (213) 269-6044
Seth E. Goldstein, seth.goldstein@doj.ca.gov, (916) 210-6063

United States Court of Appeals for the Eleventh Circuit

Beta Upsilon Chi Upsilon Chapter at the University of Florida v. Machen, No. 08-13332, 586 F.3d 908 (11th Cir. 2009) (substantial participant). Argument date: Dec. 10, 2008.
Beta Upsilon Chi Upsilon Chapter at the University of Florida v. Machen, No. 11-12037 (substantial participant).
Beta Upsilon Chi Upsilon Chapter at the University of Florida v. Machen, No. 12-14767 (substantial participant).
Beta Upsilon Chi Upsilon Chapter at the University of Florida v. Machen, No. 14-14554 (substantial participant).

Opposing appellate counsel:
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Otto v. City of Boca Raton, No. 19-10604, 981 F.3d 854 (11th Cir. 2020), *reh'g denied*, 41 F.4th 1271 (11th Cir. 2022). Argument date: Feb. 11, 2020. (*See* case (5), Question 16, settled case (1), Question 17, significant case (3)(b), Question 21, *infra*.)

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Vazzo v. City of Tampa, No. 19-14387.
(*See* case (3), Question 16, *and* significant case (3)(a), Question 21, *infra*.)

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Navy SEAL 1 v. Secretary of the United States Department of Defense, No. 22-10645. Argument date: Dec. 14, 2022

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Captain v. Secretary of the United States Department of Defense, No. 22-12029-DD.

Opposing appellate counsel: *see Navy SEAL 1*, *supra*.

Chief Warrant Officer 4 v. Secretary of the United States Department of Defense, No. 22-13522-D.

Opposing appellate counsel: *see Navy SEAL 1*, *supra*.

Florida First District Court of Appeal

S.D.S. Autos, Inc. v. Chrzanowski, Nos. 1D06–4293, 1D06–4294, 976 So. 2d 600 (Fla. 1st DCA 2007) (substantial participant).
S.D.S. Autos, Inc. v. Chrzanowski, Nos. 1D06-5664, 1D06-5662, 982 So. 2d 1 (Fla. 1st DCA 2007) (substantial participant).

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Montenegro v. Matrix Employee Leasing, No. 1D08-1372 (PCA).

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Wells Capital Investments, LLC v. Exit 1 Stop Realty, No. 1D13–5232, 148 So. 3d 791 (Fla. 1st DCA 2014).

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Parsons v. City of Jacksonville, No. 1D18-284, 295 So. 3d 892 (Fla. 1st DCA 2020). Argued—argument date: Jan. 8, 2019. (*See* significant case (2), Question 21, *infra*.)

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Florida Second District Court of Appeal

Florida Family Action, Inc. v. Shore, No. 2D15-361.

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William A. Van Nortwick, Jr. (†2019)

Florida Fourth District Court of Appeal

Thoma v. O'Neal, No. 4D14-3459, 180 So. 3d 1157 (Fla. 4th DCA 2015).

Opposing appellate counsel: N/A (pro se)

Florida Fifth District Court of Appeal

Paladyne Corp. v. Weindruch, Nos. 5D03-1567, 5D03-2011, 867 So. 2d 630 (Fla. 5th DCA 2004). Argued—argument date: Feb. 11, 2004.

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Florida Family Action, Inc. v. Ramirez, No. 5D15-0289.

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Florida Family Action, Inc. v. Russell, No. 5D15-0304.

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14. 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.

15. 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 full.

No.

16. For your last six cases, which were tried to verdict or handled on appeal, either before a jury, judge, appellate panel, arbitration panel or any other administrative hearing officer, list the names, e-mail addresses, and telephone numbers of the trial/appellate counsel on all sides and court case numbers (include appellate cases). *This question is optional for sitting judges who have served five years or more*.

Note: My last six cases responsive to this question are appeals in which I was the principal writer. Five of the six cases were federal appeals, included in my answer to Question 13, supra*, and one was before the District of Columbia Court of Appeals.*

(1) *Lowe v. Mills*, 1st Cir. Ct. App. No. 22-1710; D. Me. (Bangor) No. 1:21-cv-00242-JDL. I represented seven plaintiff healthcare workers whose employment was terminated under the State of Maine's COVID-19 vaccine mandate for healthcare workers which forbids any accommodation of religious objections for on-site employees. Plaintiffs brought First Amendment Free Exercise and Fourteenth Amendment Equal Protection claims against the Maine officials responsible for the mandate, and Title VII wrongful termination claims against their respective private employers. The district court dismissed the case, but the First Circuit reversed the dismissal of the Free Exercise and Equal Protection claims and remanded to the district court for further proceedings. *See Lowe v. Mills*, No. 22-1710, 68 F.4th 706 (1st Cir. 2023), *rev'g in part* No. 1:21-cv-00242-JDL, 2022 WL 3542187 (D. Me. Aug. 18, 2022).

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(2) (a) *Navy SEAL 1 v. Secretary of the United States Department of Defense*, 11th Cir. Ct. App. No. 22-10645;
M.D. Fla. (Tampa) No. 8:21-cv-2429-SDM-TGW

(b) *Captain v. Secretary of the United States Department of Defense*, 11th Cir. Ct. App. No. 22-12029-DD;
M.D. Fla. (Tampa) No. 8:22-cv-01275 SDM-TGW

(c) *Chief Warrant Officer 4 v. Secretary of the United States Department of Defense*, 11th Cir. Ct. App. No. 22-13522-D;
M.D. Fla. (Tampa) No. 8:22-cv-01275 SDM-TGW

I treat these three related appeals as one because they arose from the same original district court case, M.D. Fla. No. 8:21-cv-2429-SDM-TGW, a putative class action on behalf of servicemembers from all military branches and the Coast Guard, challenging the Department of Defense COVID-19 vaccine mandate implementation policy which, effectively, was to deny all requests for accommodation of religious objections in violation of the First Amendment Free Exercise Clause and the federal Religious Freedom Restoration Act (RFRA). After the plaintiffs obtained a preliminary injunction in the district court on behalf of a Navy Commander and a Marine Corps Lieutenant Colonel, leading to the government's appeal in *Navy SEAL 1*, the district court severed the action into separate cases for each service branch, leaving Navy servicemembers in the original case and assigning Marine Corps and other servicemembers to new cases. In the new Marine Corps case, M.D. Fla. No. 8:22-cv-01275 SDM-TGW, the plaintiffs obtained another preliminary injunction for a Marine Corps Captain, and then a classwide preliminary injunction for all similarly situated Marines, leading to the government's *Captain* and *Chief Warrant Officer 4* appeals, respectively. Following the rescission of the DOD vaccine mandate and issuance of remedial implementing policies, and an indicative ruling from the district court dismissing the cases as

moot, the Eleventh Circuit remanded all three appeals to the district court for dismissal.

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(3) *Vazzo v. City of Tampa*, 11th Cir. Ct. App. No. 19-14387; M.D. Fla. (Tampa) No. 8:17-cv-02896-WFJ-AAS (also significant case (3)(a), Question 21, *infra*). I represented the plaintiffs, licensed mental health counselor Robert Vazzo, and counseling referral organization New Hearts Outreach Tampa Bay, in a constitutional challenge to the defendant City of Tampa's ordinance banning "conversion therapy" for minors. The City appealed the district court's summary judgment striking the ordinance and permanently enjoining its enforcement under doctrines of implied preemption and constitutional avoidance. The Eleventh Circuit affirmed, on alternate constitutional grounds, in accordance with its recent decision in *Otto v. City of Boca Raton*, 981 F.3d 854 (11th Cir. 2020), *reh'g denied*, 41 F.4th 1271 (11th Cir. 2022) (also case (5), *infra*, and case (1), Question 17, *infra*).

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(4) *Ermold v. Davis*, 6th Cir. Ct. App. Nos. 22-5260, 22-5261; E.D. Ky. (Ashland) Nos. 0:15-CV-00046-DLB-EBA, 0:15-CV-00062-DLB-EBA. I represented the defendant, former Kentucky county clerk Kim Davis, who was sued in 2015 by two couples seeking money damages for claimed violation of the constitutional right to marry. The defendant appealed from the district court's interlocutory order granting partial summary judgment to the plaintiffs, and the Sixth Circuit affirmed. (The district court cases were tried in September 2023, after I was appointed to the Florida Sixth District Court of Appeal. One resulted in judgment against Davis. *See Ermold v. Davis*, No. 15-46-DLB-EBA, 2024 WL 2789426 (E.D. Ky. Apr. 23, 2024), *aff'd*, 130 F.4th 553 (6th Cir. 2025), *reh'g denied*, No. 24-5524, 2025 WL 1409285 (6th Cir. Apr. 28, 2025), *cert. denied sub nom*, *Davis v. Ermold*, No. 25-125, 2025 WL 3132017 (U.S. Nov. 10, 2025).)

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(5) *Otto v. City of Boca Raton*, No. 19-10604, 981 F.3d 854 (11th Cir. 2020), *rev'g* 353 F. Supp. 3d 1237 (S.D. Fla. 2019), *reh'g denied*, 41 F.4th 1271 (11th Cir. 2022); S.D. Fla. (West Palm Beach) No. 18-CV-80771-ROSENBERG/REINHART (also case (1), Question 17, and significant case (3)(b), Question 21, *infra*). I represented the plaintiff licensed mental health counselors, Robert Otto

and Julie Hamilton, in a constitutional challenge to the ordinances of the defendants, City of Boca Raton and Palm Beach County, banning "conversion therapy" for minors. The district court initially denied the plaintiffs' motion for preliminary injunction, but the Eleventh Circuit reversed and remanded for entry of the preliminary injunction and subsequently denied rehearing.

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(6) *Nicdao v. Two Rivers Public Charter School, Inc.*, Nos. 16-CV-458, 16-CV-459, 16-CV-500, 275 A.3d 1287 (D.C. 2022); D.C. Super. Ct. No. 2015 CA 009512 B. I represented Larry Cirignano, one of six defendants sued by a Washington, D.C. public charter school for engaging in protected pro-life speech on the public sidewalks that the school shares with an abortion facility next door. The superior (trial) court denied the defendants' respective special motions to dismiss under the D.C. Anti-SLAPP Act, but the court of appeals reversed and remanded for dismissal of the action.

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17. For your last six cases, which were either 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). *This question is optional for sitting judges who have served five years or more.*

(1) *Otto v. City of Boca Raton*, S.D. Fla. (West Palm Beach) No. 18-CV-80771-ROSENBERG/REINHART (also case (5), Question 16, *supra*, and significant case (3)(b), Question 21, *infra*). After the Eleventh Circuit reversed the district court's denial of the plaintiffs' motion for preliminary injunction, and denied rehearing, the district court case settled by offers of judgment from the defendants (Final Judgment entered April 6, 2023). (For trial counsel on all sides and appellate case numbers, *see* case (5), Question 16, *supra*.)

(2) *Doe 1 v. NorthShore University HealthSystem*, N.D. Ill. (Eastern) No. 21-cv-05683. I represented a plaintiff class of healthcare workers whose employment was terminated by the defendant health system after denying accommodation of class members' religious objections to the employer's COVID-19 vaccine mandate. Though finding the plaintiffs had established a likelihood of success on the merits of their religious liberty claims, the district court denied a classwide preliminary injunction against the mandate. The parties convened a pre-discovery mediation conference (Prof. Lynn P. Cohn, Co-Director of the Center on Negotiation, Mediation, and Restorative Justice, Northwestern Pritzker School of Law, Mediator), but ultimately settled the class claims without mediation for a $10.3 million payment to the class members along with a vaccination policy change and reinstatement to former positions (Final Judgment and Order Approving Class Action Settlement entered December 23, 2022). Upon settlement, the plaintiffs voluntarily dismissed their appeal to the Seventh Circuit from the denial of their preliminary injunction motion (*Doe 1 v. NorthShore University HealthSystem*, No. 21-3242).

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(3) *New York ex rel. James v. Griepp*, Nos. 18-2454, 18-2623, 18-2627, 18-2630, 991 F.3d 81 (2d Cir. 2021), *vacated, reh'g granted*, 997 F.3d 1258 (2d Cir. 2021), *op. on reh'g*, 11 F.4th 174 (2d Cir. 2021); E.D.N.Y. No. 17-cv-3706-CBA-TAM (filed as *New York ex rel. Schneiderman v. Griepp*). I represented Scott Fitchett, Jr., one of thirteen defendants sued by the New York Attorney General to restrain their protected pro-life speech on public sidewalks outside a Queens, New York abortion facility. The district court denied the Attorney General's motion for preliminary injunction. The Second Circuit initially reversed, but subsequently affirmed the district court on rehearing. On remand, the case settled without mediation by the parties' stipulation of voluntary dismissal filed November 16, 2021, with New York's payment of taxable costs to my client.

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(4) *Harvest Rock Church, Inc. v. Newsom*, C.D. Cal. (Los Angeles) No. 2:20-cv-06414JGB(KKx). I represented Plaintiffs, Harvest Rock Church, Inc. and Harvest International Ministry, Inc., on behalf of itself and its 162 member churches. The district court initially denied the plaintiffs' motion for preliminary injunction against enforcement of California executive orders restricting assembled religious worship. After multiplex appellate proceedings, including two reported decisions from the United States Supreme Court, the case settled without mediation by a stipulated Final Judgment Entering Permanent Injunction, Awarding Attorney's Fees and Costs, and Dismissing Action, entered, May 14, 2021. *See Harvest Rock Church, Inc. v. Newsom*, No. 20-55907, 977 F.3d 728 (9th Cir. 2020) (denying injunction pending appeal); *Harvest Rock Church, Inc. v. Newsom*, No. 20A94, 141 S. Ct. 889 (2020) (granting certiorari before judgment, vacating district court denial of preliminary injunction, and remanding (GVR)); *Harvest Rock Church, Inc. v. Newsom*, 981 F .3d 764 (9th Cir. 2020) (remanding to district court per GVR); *Harvest Rock Church, Inc. v. Newsom*, No. 20-56357, 985 F.3d 771 (9th Cir. 2021) (granting in part and denying in part injunction pending appeal); *Harvest Rock Church, Inc. v. Newsom*, No 20A137, 141 S. Ct. 1289 (2021) (granting writ of injunction).

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(5) *Teller County Department of Public Health and Environment v. Andrew Wommack Ministries, Inc.*, No. 20CV30054, 4th Judicial District Court, Teller County, Colorado. I represented the defendant, Andrew Wommack Ministries, Inc. The trial court initially enjoined the defendant's assembled religious worship under a County executive order. After the County withdrew the executive order following the United States Supreme Court's decision in *Roman*

Catholic Diocese of Brooklyn v. Cuomo, 141 S. Ct. 63 (2020), the case settled by stipulation of dismissal filed December 17, 2020.

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(6) *Dunnavant v. Clay Family Policy Forum, Inc.*, No. 2014-CA-001110, Fourth Judicial Circuit Court of Florida, in and for Clay County. I represented the defendant and counterclaim plaintiff, Clay Family Policy Forum, Inc. The case settled at mediation (Hon. Bernard Nachman, Mediator) on November 24, 2014 (Consent Final Judgment against the plaintiff entered January 12, 2015).

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18. During the last five years, on average, how many times per month have you appeared in Court or at administrative hearings? If during any period you have appeared in court with greater frequency than during the last five years, indicate the period during which you appeared with greater frequency and succinctly explain.

From August 2014 to August 2023, in my public interest practice, I appeared in court, on average, once per month. My practice during that time was primarily in federal courts where most pretrial matters are decided on the papers. During the preceding five years, in my commercial practice primarily in Florida state courts, I appeared in court approximately twice per month.

19. If Questions 16, 17, and 18 do not apply to your practice, please list your last six major transactions or other legal matters that were resolved, listing the names, e-mail addresses, and telephone numbers of the other party counsel.

N/A

20. During the last five years, if your practice was greater than 50% personal injury, workers' compensation or professional malpractice, what percentage of your work was in representation of plaintiffs or defendants?

N/A

21. List and describe the five most significant cases which you personally litigated giving the case style, number, court and judge, the date of the case, the names, e-mail addresses, and telephone numbers of the other attorneys involved, 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.

(1) *Shurtleff v. City of Boston*, No. 20-1800, 142 S. Ct. 1583 (May 2, 2022) ("Breyer, J., delivered the opinion of the Court, in which Roberts, C. J., and Sotomayor, Kagan, Kavanaugh, and Barrett, JJ., joined. Kavanaugh, J., filed a concurring opinion. Alito, J., filed an opinion concurring in the judgment, in which Thomas and Gorsuch, JJ., joined. Gorsuch, J., filed an opinion concurring in the judgment, in which Thomas, J., joined."), *rev'g* No. 20-1158, 986 F.3d 78 (1st Cir. Jan. 22, 2021) (Selya, Lipez, Lynch, JJ.), *aff'g* No. 1:18-cv-11417-DJC, 613 F. Supp. 3d 528 (D. Mass Feb. 4, 2020) (Casper, J.).

I represented the plaintiffs, Hal Shurtleff and his Christian civic organization Camp Constitution, in a constitutional challenge to the City of Boston's policy disallowing religious flags in the public forum the City opened for flag-raising ceremonies on its City Hall flagpoles. The City had denied Camp Constitution's request to raise a Christian flag in a flag-raising ceremony to celebrate the historical civic contributions of Boston's Christian community. The district court denied the plaintiffs' motion for preliminary injunction, and the First Circuit affirmed, classifying the raising of private flags by private parties on the City's flagpoles as the City's "government speech," even though the City had designated the flagpoles as one of the City's public forums. After discovery revealed that, before the City had denied Camp Constitution's request, the City had approved 284 flag-raising requests with no denials, the district court nonetheless denied summary judgment for the plaintiffs and granted summary judgment for the City, and the First Circuit affirmed again. The Supreme Court reversed in a 9–0 decision, concluding in the majority opinion that the private flag raisings were not the City's "government speech," and that the exclusion of Camp Constitution's Christian flag was unconstitutional viewpoint discrimination. I handled all district court proceedings and all writing at the

district and appellate levels, including in the Supreme Court. (*See* writing sample (2), Question 22, *infra*, and attached.)

Shurtleff is significant because it halted the First Circuit's advancement of the government speech doctrine in a formulation that threatened to swallow forum analysis and enable governments to censor protected speech. The majority opinion is significant also because it tacitly retired the notorious *Lemon* test, by ignoring it altogether, even though the test and its concepts had featured heavily in the lower courts and in the City's rationale for denying Camp Constitution's request. *See Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2427 (2022) ("In fact, just this Term [in *Shurtleff*] the Court unanimously rejected a city's attempt to censor religious speech based on *Lemon* and the endorsement test."). Thus, *Shurtleff* is a bulwark ruling, sealing the full measure of First Amendment protection for private religious speech sometimes disfavored by the government.

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(2) *Parsons v. City of Jacksonville*, No. 1D18-0284, 295 So. 3d 892 (Fla. 1st DCA May 1, 2020) (Kelsey, Roberts, Winsor, Wolf, JJ. (Judge Wolf concurred in the result only, having been assigned to the panel after Judge Winsor's appointment to the federal bench)) (appeal from No. 16-2017-CA-001263-XXXX-MA, Fla. Fourth Jud. Cir. Ct., Duval Cnty. (Weatherby, J.)). Clients: John Parsons, Liberty Ambulance Service, Inc., Robert Assaf, Diamond D Ranch, Inc., Michael Griffin.

I represented the plaintiffs, three Jacksonville citizens and two of their businesses, in a challenge to the enactment of Jacksonville's so-called "Human Rights Ordinance" (HRO), purporting to amend multiple nondiscrimination provisions of the City's Ordinance Code. Although each of the plaintiffs had religious liberty objections to the HRO, the legal challenge centered on the City's failure to publish or otherwise give proper notice to the public of any portion of the twenty-eight sections and subsections of the Ordinance Code purportedly amended by the HRO, in direct violation of the Florida Municipal Home Rule Powers Act. The City moved to dismiss, arguing that the plaintiffs did not have standing to challenge the statutory notice and amendatory language violations, and that the plaintiffs' claims were moot in any event because the City had "recodified" the entire Ordinance Code, curing all defects, shortly after the plaintiffs filed suit. The circuit court granted dismissal for lack of standing (Dec. 21, 2017). The First District reversed, holding both that the plaintiffs had standing and that their claims were not mooted by the City's recodification. I handled all writing and argument in the trial and appellate courts.

The case is significant because it firmly established that a Florida city remains accountable to both its citizens and acts of the Legislature when enacting ordinances under its broad home rule powers. Also, the First District's opinion—employing textualist canons of statutory construction, and sound reasoning from precedent applying cognate provisions of the Florida Constitution to Florida statutory enactments—should instill both the litigants and the public with confidence in the court's ability to check municipalities and the Legislature when they stray from their prescribed powers under the law.

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(3) (a) *Vazzo v. City of Tampa*, No. 8:17-cv-2896-T-02AAS, 415 F. Supp. 3d 1087 (M.D. Fla. Oct. 4, 2019) (Jung, J.), *aff'd*, No. 19-14387, 2023 WL 1466603 (11th Cir. Feb. 2, 2023) (Rosenbaum, Lagoa, Ed Carnes, JJ.). (Also case (3), Question 16, *supra*.) Clients: Robert L. Vazzo, LMFT, David H. Pickup, LMFT (voluntarily dismissed Nov. 20, 2018), Soli Deo Gloria International, Inc. D/B/A New Hearts Outreach Tampa Bay.

(b) *Otto v. City of Boca Raton*, No. 19-10604, 981 F.3d 854 (11th Cir. Nov. 20, 2020) (Grant, Lagoa, JJ.; Martin, J., dissenting), *rev'g* No. 18-CV-80771-ROSENBERG/REINHART, 353 F. Supp. 3d 1237 (S.D. Fla. Feb. 3, 2019) (Rosenberg, J.), *reh'g denied*, 41 F.4th 1271 (11th Cir. Jul 20, 2022) (William Pryor, C.J., Newsom, Branch, Grant, Luck, Lagoa, Brasher, JJ.; Wilson, Jordan, Rosenbaum, Jill Pryor, JJ., dissenting). (Also case (5), Question 16 and case (1), Question 17, *supra*.) Clients: Robert W. Otto, Ph.D., LMFT, Julie H. Hamilton, Ph.D., LMFT.

I treat these two cases together for significance because they involve the same constitutional challenges brought by licensed mental health counselors against nearly identical municipal ordinances banning sexual orientation change efforts (SOCE) counseling for minors, politically (i.e., not clinically) known as "conversion therapy." And, while *Vazzo* was resolved by the district court's summary judgment striking the ordinance on implied preemption grounds, the Eleventh Circuit affirmed the judgment on the authority of its decision in *Otto*, in which it held the ordinances unconstitutional content- and viewpoint-based restrictions on speech. In both cases I was the primary writer in the district court and the Eleventh Circuit, and I shared responsibility for courtroom proceedings in the district court.

The cases are significant for at least two reasons. First, the Eleventh Circuit's *Otto* decision was the first federal appellate decision to hold ordinances banning SOCE counseling for minors unconstitutional after the Supreme Court's decision in *National Institute of Family & Life Advocates v. Becerra* abrogated prior circuit decisions upholding similar counseling bans by treating "'professional speech' as a separate category of speech that is subject to different rules." 585 U.S. 755, 767 (2018). Applying strict scrutiny to the ordinances as content-based regulations of speech, the Eleventh Circuit engaged with the record evidence and held that the county and city could not justify the speech restrictions. The subsequent decisions of the Ninth and Tenth Circuits reaching the opposite conclusion, *Tingley v. Ferguson*, 47 F.4th 1055 (9th Cir. 2022), and *Chiles v. Salazar*, 116 F.4th 1178 (10th Cir. 2024), created a circuit split, and the Supreme Court has granted certiorari in *Chiles*, 145 S. Ct. 1328 (2025).

Second, the *Vazzo* case is significant because, on a full record, Judge Jung observed the principle of constitutional avoidance and struck the Tampa ordinance on the plaintiffs' alternative grounds of implied preemption. Despite Tampa's broad municipal home rule powers, Judge Jung held that the punishment of licensed mental health counselors, for counseling, was impliedly preempted to the State of Florida given the state's pervasive regulation of the field. And even though the Eleventh Circuit affirmed Judge Jung's judgment on alternative First Amendment grounds, Judge Jung's holding could have major

implications for municipal regulations throughout the state regardless of whether or how the Supreme Court assesses the Eleventh Circuit's *Otto* holding in *Chiles*.

(For contact information of all involved attorneys, see cases (3) and (5), Question 16, *supra*).

(4) *Maryville Baptist Church, Inc. v. Beshear*, Nos. 20-5427, 20-5465, 957 F.3d 610 (6th Cir. May 2, 2020) (granting injunction pending appeal), 977 F.3d 561 (6th Cir. Oct. 19, 2020) (dismissing appeal No. 20-5427 as moot). Clients: Maryville Baptist Church, Inc., Dr. Jack Roberts

I represented a Kentucky church and its pastor in constitutional challenges to the Kentucky Governor's COVID-19 executive orders extensively restricting when, where, and how Kentuckians could exercise their liberties, including gathering for religious worship according to conscience, while exempting myriad businesses and non-religious activities from gathering restrictions. The Kentucky State Police were dispatched to the church's 2020 Easter Sunday service, where indoor congregants were distanced and outdoor congregants listening by loudspeaker were in or next to their cars (also distanced), and the police issued criminal citations to all attendees for violating the Governor's orders. The plaintiffs appealed the district court's denial of a preliminary injunction, and the Sixth Circuit issued an injunction pending appeal in a published order, finding the plaintiffs were likely to succeed on the merits of their free exercise challenges to the Governor's orders. The case was eventually mooted by legislation restricting the Governor's emergency powers under which the subject orders were issued. I was the primary writer in the district court and the Sixth Circuit.

The Sixth Circuit's order is significant because it was the first federal appellate decision to enjoin a state governor's discriminatory COVID-19 lockdown orders on free exercise grounds. Together with a resulting district court preliminary injunction order, the Sixth Circuit's order secured forty Sunday worship services from the threat of criminal and other sanctions until the Governor's orders were ultimately rescinded. The case also contributed to a series of decisions upholding free exercise rights against discriminatory executive orders, including decisions of the United States Supreme Court.

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(5) *Ex parte State ex rel. Alabama Policy Institute*, No. 1140460, 200 So. 3d 495 (Ala. 2015) (Stuart, Bolin, Parker, Murdock, Wise, Bryan, JJ.; Main, J., concurring in part and in the result; Shaw, J., dissenting). Clients: Alabama Policy Institute, Alabama Citizens Action Program

I represented two Alabama public interest organizations as relators, on behalf of the State, in an emergency petition to the Supreme Court of Alabama for a writ of mandamus ordering Alabama probate judges to perform their ministerial duties to comply with Alabama marriage licensing laws. Probate judges are the state officials responsible for issuing marriage licenses in Alabama, but in the months preceding the United States Supreme Court's *Obergefell* decision, an Alabama federal district court declared the state's marriage laws unconstitutional and enjoined the Alabama Attorney General from enforcing them. The Chief Justice of the Alabama Supreme Court, in his supervisory role over the state judiciary, issued an administrative order stating that the federal injunction did not bind Alabama probate judges (none of whom was a party to the federal case), and that Alabama marriage laws still bound them. When several probate judges disregarded the Chief Justice's order and began issuing marriage licenses to same-sex couples, in violation of Alabama law, the relators filed their emergency mandamus petition. The Alabama Supreme Court (7–1, with the Chief Justice recused) granted the petition and issued the writ enjoining all probate judges from issuing marriage licenses contrary to Alabama law. I was the primary writer on the petition and related briefing.

The case is significant because the court upheld and strengthened a fundamental principle of our federalist system, under which state courts and lower federal courts do not review and are not bound by each other's decisions on the constitutionality of state laws. Thus, the court clarified, probate judges were still bound by Alabama law and their state judicial superiors even if they agreed with the federal court decision or misapprehended that they were bound by it. The writ restored the proper boundaries between the coordinate state and federal court systems until the United States Supreme Court issued its *Obergefell* decision.

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22. Attach at least two, but no more than three, examples of legal writing which you personally wrote. If you have not personally written any legal documents recently, you may attach a writing sample for which you had substantial responsibility. Please describe your degree of involvement in preparing the writing you attached.

(1) Opinion, *State v. Washington*, 403 So. 3d 465 (Fla. 6th DCA 2025) (*see* significant case (1), Question 26(iv), *infra*). I wrote the opinion in its entirety with light editing by colleagues.

(2) Brief for the Petitioners, filed November 15, 2021 in *Shurtleff v. City of Boston*, Sup. Ct. No. 20-1800 (*see* significant case (1), Question 21, *supra*). I wrote the brief in its entirety with light editing by colleagues.

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE

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

Judge of the District Court of Appeal, Sixth Appellate District, State of Florida. September 2023 to present. Retained in office in General Election, November 5, 2024.

24. If you have previously submitted a questionnaire or application to this or any other judicial nominating commission, please give the name(s) of the commission, the approximate date(s) of each submission, and indicate if your name was certified to the Governor's Office for consideration.

Sixth District Court of Appeal Judicial Nominating Commission

Application for Nomination to the Sixth District Court of Appeal,
May 30, 2023. Not certified.
Renewed, July 11, 2023. Certified.

Supreme Court Judicial Nominating Commission

Application for Nomination to the Florida Supreme Court,
April 17, 2023. Not certified.

Fourth Judicial Circuit Judicial Nominating Commission

Application for Nomination to the Duval County Court,
December 1, 2011. Not certified.

Application for Nomination to the Fourth Judicial Circuit Court,
September 13, 2012. Not certified.

25. List any prior quasi-judicial service, including the agency or entity, dates of service, position(s) held, and a brief description of the issues you heard.

N/A

26. If you have prior judicial or quasi-judicial experience, please list the following information:

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

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(ii) the approximate number and nature of the cases you handled during your tenure;

During my tenure as a Judge of the Sixth District Court of Appeal, from September 2025 to the present, I have handled approximately 700 appellate and original jurisdiction cases as a panelist. The nature of the cases handled includes administrative, civil, criminal, family, guardianship, juvenile, and probate cases.

(iii) the citations of any published opinions; and

16205 Captiva Drive, LLC v. Levinson, 418 So. 3d 751 (Fla. 6th DCA 2025)

Arway v. Progressive American Insurance Co., 411 So. 3d 445 (Fla. 6th DCA 2024)

Avery v. State, 403 So. 3d 480 (Fla. 6th DCA 2025) (per curiam)

Beneschott v. Toptal, LLC, Nos. 6D2023-3769, 6D2023-3789, 50 Fla. L. Weekly D901, 2025 WL 1131733 (Fla. 6th DCA 2025)

Burney v. State, 418 So. 3d 713 (Fla. 6th DCA 2025)

Castillo v. Aldahondo, 416 So. 3d 362 (Fla. 6th DCA 2025)

Citizens Property Insurance Corp. v. Borges, 413 So. 3d 834 (Fla. 6th DCA 2024)

Fuentes v. Yuhi Landholdings, LLC, 387 So. 3d 421 (Fla. 6th DCA 2024) (per curiam)

Guss v. 3217 Corrine, LLC, 415 So. 3d 846 (Fla. 6th DCA 2025)

Harris v. Gilzean, 397 So. 3d 134 (Fla. 6th DCA 2024) (per curiam)

Interest of J.F., 386 So. 3d 1040 (Fla. 6th DCA 2024)

Interst of N.S.B., 406 So. 3d 400 (Fla. 6th DCA 2025)

J.E.J. v. S.A.B., 416 So. 3d 1186 (Fla. 6th DCA 2025)

J.N.S. v. State, No. 6D2024-0309, 50 Fla. L. Weekly D2642, 2025 WL 3559996 (6th DCA Dec. 12, 2024)

Johnson v. Wolter, No. 6D2024-0812, 50 Fla. L. Weekly D2598, 2025 WL 3492871 (Fla. 6th DCA Dec. 5, 2025)

Jones v. State, 413 So. 3d 839 (Fla. 6th DCA 2024)

Maso v. Security First Insurance Co., No. 6D23-1315, 48 Fla. L. Weekly D2362, 2023 WL 8656773 (Fla. 6th DCA Dec. 15, 2023) (per curiam)

Mesa-Rodriguez v. State, 420 So. 3d 662 (Fla. 6th DCA 2025)

Neu v. State, No. 6D2024-0677, 50 Fla. L. Weekly D1997, 2025 WL 2552675 (Fla. 6th DCA Sept. 5, 2025)

Progressive Specialty Insurance Co. v. Florida Hospital Ocala, Inc., 395 So. 3d 643 (Fla. 6th DCA 2024)

State v. Herard, 419 So. 3d 258 (Fla. 6th DCA 2025)

State v. Washington, 403 So. 3d 465 (Fla. 6th DCA 2025)

Vazquez-Torres v. State, 415 So. 3d 340 (Fla. 6th DCA 2025)

(iv) descriptions of the five most significant cases you have tried or heard, identifying the citation or style, attorneys involved, dates of the case, and the reason you believe these cases to be significant.

(1) *State v. Washington*, 403 So. 3d 465 (Fla. 6th DCA 2025) (Gannam, J. (*see* writing sample (1), Question 22, *supra*, and attached.)).

The State appealed the trial court's dismissal of an information filed by the Office of Statewide Prosecution (OSP) against Peter Washington, Jr., charging him with a single count of illegal voting in the November 2020 General Election. We affirmed because Washington's alleged offense occurred in only one judicial circuit, and the OSP did not have jurisdiction to prosecute Washington for the offense under article IV, section 4 of the Florida Constitution or the 2022 version of section 16.56 of the Florida Statutes. We did not consider the OSP's jurisdiction under the 2023 amendment to section 16.56, expanding OSP jurisdiction to prosecute voting crimes, because the issue was not preserved.

This case is significant because the opinion contributes a novel, first-principles interpretation of an amendment to the Florida Constitution and its implementing statute creating the OSP and establishing its jurisdiction, and certified conflict with the Third and Fourth Districts' interpretations. *See State v. Miller*, 394 So. 3d 164 (Fla. 3d DCA 2024); *State v. Hubbard*, 392 So. 3d 1067 (Fla. 4th DCA 2024). The Florida Supreme Court has granted review of the Fourth District's conflicting decision, *Hubbard v. State*, No. SC2024-1522, 2025 WL 79096 (Fla. Jan. 13, 2025), and the Second District has taken our Court's side of the split, *Hart v. State*, No. 2D2023-0493, 2025 WL 3119056 (Fla. 2d DCA Nov. 7, 2025).

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Attorney for Appellee:
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(2) *J.E.J. v. S.A.B.*, 416 So. 3d 1186 (Fla. 6th DCA 2025) (Gannam, J.).

A father appealed from a final paternity judgment awarding child support to the mother of their two children. Because the trial court erred in counting all of the father's pass-through income from his limited liability company

(LLC) as gross income in calculating the child support award, we reversed the award and remanded for recalculation.

This case is significant because the opinion extended Florida Supreme Court precedent establishing rules for calculating child support on S corporation pass-through income, *Zold v. Zold*, 911 So. 2d 1222 (Fla. 2005), to the father's LLC pass-through income. The opinion also contributed a first-principles interpretation of the child support statutes to count LLC distributions for payment of owners' income taxes as gross income for child support purposes, certifying conflict with Second and Fourth District opinions excluding such distributions from gross income. *See Bair v. Bair*, 214 So. 3d 750 (Fla. 2d DCA 2017); *McHugh v. McHugh*, 702 So. 2d 639 (Fla. 4th DCA 1997).

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Attorney for Appellee:
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(3) *State v. Herard*, 419 So. 3d 258 (Fla. 6th DCA 2025) (Gannam, J.).

The State of Florida appealed the dismissal of an information charging Nyya Jahnai Herard with carrying a concealed firearm without a license under the 2022 version of section 790.01, Florida Statutes. The trial court dismissed the information after retroactively applying the 2023 amendment to the concealed carry statute, which redefined the crime to require the State to prove not only the carrying of a concealed firearm without a license, but also ineligibility for a license. We reversed because it was error to apply the 2023 amendment retroactively under the Florida statutory savings clause, section 775.022, enacted in 2019 following Florida voters' amendment of Florida's constitutional savings clause, article X, section 9, in the 2018 General Election.

This case is significant because the opinion contributes a first-principles interpretation, and first-time application, of the statutory savings clause to prohibit retroactive application of the 2023 amendment to pending prosecutions for violation of the concealed carry statute. The opinion also resolved five other pending appeals in our Court with the same issue. *See State v. Velazquezacevedo*, 421 So. 3d 449 (Fla. 6th DCA 2025); *State v. Wilson*, 421 So. 3d 450, 451 (Fla. 6th DCA 2025); *State v. McIntosh*, 421 So. 3d 450 (Fla. 6th DCA 2025); *State v. Jones*, 421 So. 3d 451 (Fla. 6th DCA 2025); *State v. Morgan*, 421 So. 3d 452 (Fla. 6th DCA 2025).

Attorneys for Appellant:
James Uthmeier, Attorney General, Tallahassee
Richard A. Pallas, Jr., Assistant Attorney General, Daytona Beach

Attorneys for Appellee:
Melissa Vickers, Public Defender, Joshua Sinclair, Assistant Public Defender, Orlando

(4) *Castillo v. Aldahondo*, 416 So. 3d 362 (Fla. 6th DCA 2025) (Gannam, J.).

Yolani Castillo and Radames Antonio Camacho Aldahondo shared a home that Camacho owned. Castillo obtained a temporary domestic violence injunction against Camacho in the circuit court, which awarded Castillo temporary, exclusive possession of the home, but Camacho filed a county court eviction action to obtain possession of the home. Castillo appealed the county court's final judgment granting Camacho possession while the circuit court injunction was in effect, based on the county court's conclusion that it had exclusive jurisdiction over eviction matters. We reversed because the county court did not have jurisdiction to award possession to Camacho contrary to the circuit court's domestic violence injunction.

This case is significant because the opinion contributes a first-principles interpretation of the constitutional and statutory provisions establishing the respective jurisdictions of circuit and county courts and resolves, as a matter of first impression, an apparent conflict between county court jurisdiction over landlord actions for possession of real property and circuit court jurisdiction over statutory domestic violence injunction actions seeking temporary possession of real property.

Attorney for Appellant:
Adam H. Sudbury, Apellie Legal, Orlando

Appellee: pro se

(5) *Progressive Specialty Insurance Co. v. Florida Hospital Ocala, Inc.*, 395 So. 3d 643 (Fla. 6th DCA 2024) (Gannam, J.)

Progressive Specialty Insurance Company appealed the entry of summary judgment for Florida Hospital Ocala, Inc., as assignee of Progressive's insured. The trial court interpreted the out-of-state coverage provision of the insured's Maryland car insurance policy to increase the policy's $2,500 PIP coverage limit to conform to Florida PIP requirements. We reversed the judgment and remanded for entry of judgment for Progressive because the text of the policy's out-of-state coverage provision was not triggered by facts in the summary judgment record or Florida compulsory insurance laws, and

thus Progressive was not liable for payment of PIP benefits beyond the $2,500 Maryland policy limits.

This case is significant because the opinion contributes a first-principles interpretation of a common type of out-of-state coverage provision in a nonresident's car insurance policy, which required interpretation of several lengthy and interconnected Florida statutes on car registration and compulsory insurance.

Attorneys for Appellant:
Michael C. Clarke, Joye B. Walford, Kubicki Draper, P.A., Tampa

Attorneys for Appellee:
Chad A. Barr, Dalton L. Gray, Law Office of Chad Barr, P.A., Altamonte Springs

27. Provide citations and a brief summary of all of your orders or opinions where your decision was reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, attach copies of the opinions.

N/A

28. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, attach copies of the opinions.

Castillo v. Aldahondo, 416 So. 3d 362 (Fla. 6th DCA 2025) (extent of circuit court jurisdiction over statutory cause of action for domestic violence injunction seeking temporary possession of real property)

Neu v. State, No. 6D2024-0677, 50 Fla. L. Weekly D1997, 2025 WL 2552675 (Fla. 6th DCA Sept. 5, 2025) (double jeopardy under federal and state constitutions)

State v. Herard, 419 So. 3d 258 (Fla. 6th DCA 2025) (retroactivity of amended criminal statute under Florida constitutional and statutory savings clauses)

State v. Washington, 403 So. 3d 465 (Fla. 6th DCA 2025) (establishment and jurisdiction of Office of Statewide Prosecution under Florida Constitution)

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

No.

30. Have you ever held an attorney in contempt? If so, for each instance state the name of the attorney, case style for the matter in question, approximate date and describe the circumstances.

No.

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

No.

NON-LEGAL BUSINESS INVOLVEMENT

32. 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

33. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, explain and provide dates. If you received any compensation of any kind outside the practice of law during this time, please list the amount of compensation received.

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.

There are no types or classifications of cases or litigants for which I, as a general proposition, believe it would be difficult to sit as the presiding judge. I have never recused myself from a case assigned to me based on any type or classification of the case or its litigants. I have recused myself only from cases assigned to me in which my impartiality might reasonably be questioned because of my personal relationship with a party's lawyer.

PROFESSIONAL ACCOMPLISHMENTS AND OTHER ACTIVITIES

35. List the titles, publishers, and dates of any books, articles, reports, letters to the editor, editorial pieces, or other published materials you have written or edited, including materials published only on the Internet. Attach a copy of each listed or provide a URL at which a copy can be accessed.

Roger K. Gannam & Philip Wemhoff, Guest column: HRO is an assault on religious, personal liberties, Jacksonville.com | The Florida Times-Union (Feb. 9, 2017, 5:15 PM), https://www.jacksonville.com/story/opinion/columns/mike-clark/2017/02/09/guest-column-hro-assault-religious-personal-liberties/15742090007/

Roger K. Gannam & Philip Wemhoff, *Guest column: HRO is a major threat to small business*, Jacksonville.com | The Florida Times-Union (Feb. 7, 2017, 5:37 PM), https://www.jacksonville.com/story/opinion/columns/mike-clark/2017/02/07/guest-column-hro-major-threat-small-business/15741834007/

Roger K. Gannam, *Guest column: LGBT people in Jacksonville do not need a Human Rights Ordinance*, Jacksonville.com | The Florida Times-Union (Dec. 8, 2015, 2:36 PM), https://www.jacksonville.com/story/opinion/columns/mike-clark/2015/12/08/guest-column-lgbt-people-jacksonville-do-not-need-human-rights/15691490007/

Roger K. Gannam, *Point of view: Negative impact of anti-discrimination bill is extensive*, Jacksonville.com | The Florida Times-Union (July 16, 2012, 12:01 AM), https://www.jacksonville.com/story/opinion/letters/2012/07/16/point-view-negative-impact-anti-discrimination-bill/15860818007/

Daily Record Staff, *Lawyer Snapshot*, Jacksonville Daily Record (Apr. 27, 2009, 12:00 PM), https://www.jaxdailyrecord.com/news/2009/apr/27/lawyer-snapshot-67/ (I wrote content for feature at request of Daily Record staff.)

Henry G. Bachara, Jr. & Roger K. Gannam, *Government's Right to Waive Minor Deviations*, in *Public Contract Code and Competitive Public Bidding in Florida* § X (Lorman Education Services, 2004) (CLE seminar teaching materials; no copy retained or available)

Henry G. Bachara, Jr. & Roger K. Gannam, *Undertaking Direct Legal Action in a Bid Protest*, in *Public Contract Code and Competitive Public Bidding in Florida* § XI (Lorman Education Services, 2004) (CLE seminar teaching materials; no copy retained or available)

In re Lumsden, 242 B.R. 71 (Bankr. M.D. Fla. 1999) (Funk, J.) (authored opinion as judicial extern in last semester of law school under supervision of Judge Funk and law clerk)

In re Glass, 240 B.R. 782 (Bankr. M.D. Fla. 1999) (Proctor, C.J.) (authored opinion as judicial extern in last semester of law school under supervision of Chief Judge Proctor and law clerk)

36. List any reports, memoranda or policy statements you prepared or contributed to the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. Provide the name of the entity, the date published, and a summary of the document. To the extent you have the document, please attach a copy or provide a URL at which a copy can be accessed.

N/A

37. List any speeches or talks you have delivered, including commencement speeches, remarks, interviews, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place they were delivered, the sponsor of the presentation, and a summary of the presentation. If there are any readily available press reports, a transcript or recording, please attach a copy or provide a URL at which a copy can be accessed.

Faith and Law Panel, FAMU College of Law Christian Legal Society, November 3, 2025, Orlando, FL. Panel discussion with Q&A on faith influence in practice of law. Co-panelists: Melissa A. Bryan (HAWM Law PLLC), Ashley E. Culpepper (Ninth Circuit State Attorney's Office), Christiana Richardson (Cru), John Stemberger (Liberty Counsel), Professor Eurilynne A. Williams (FAMU College of Law). Moderator: Samela Pynas (JD candidate, Christian Legal Society President, FAMU College of Law).

Lunch and Learn with Inspiration, Catholic Lawyers Guild of Central Florida, October 6, 2025, Orlando, FL. Biographical interview by Judge Brian S. Sandor (Ninth Judicial Circuit) followed by Q&A.

Central Florida Christian Legal Society luncheon, April 16, 2025, Orlando, FL. Biographical interview by A. Jay Fowinkle (Weiss & Barnett) followed by Q&A.

Spring 2025 Panel, Barry University School of Law Christian Legal Society, March 21, 2025, Orlando, FL. Panel discussion with Q&A on faith influence in practice of law. Co-panelists: Ashley D. Baillargeon (Baillargeon Law Firm), Judge Denise Kim Beamer (Ninth Judicial Circuit), Deborah Catalano (Liberty Counsel), Joel A. Montilla (The Montilla Law Firm, P. A.), Barbara Perez (The Law Offices of Barbara Perez, PLLC).

Separation of powers presentation, November 1, 2024, Fort Myers, FL. Sponsor: Sixth District Court of Appeal. Presentation to South Fort Myers High School students on enactment, interpretation, and enforcement of Florida Ban on Texting While Driving Law to demonstrate separation of powers principles in promotion of Spring 2025 Fort Myers Law Week.

Judicial Panel - Statutory Interpretation for Civil Practitioners, Florida Liability Claims Conference, June 6, 2024, Orlando, FL. Sponsor: Florida Defense Lawyers Association. Panel discussion with Q&A on statutory interpretation.

Co-panelists: Judge Jared E. Smith (Sixth District Court of Appeal), Judge J. Logan Murphy (Thirteenth Judicial Circuit). Moderator: Matthew J. Lavisky (Butler Weihmuller Katz Craig LLP).

Jacksonville Christian Legal Society luncheon, May 14, 2024, Jacksonville, FL. Remarks on my path to judicial service.

2024 Law Week Awards and Luncheon, May 3, 2024, Fort Myers, FL. Sponsor: Lee County Bar Association. Remarks on state of the Sixth District Court of Appeal.

Defending the Family in a Postmodern Society, May 26, 2023, FPEA Florida Homeschool Convention, Orlando, FL. Panel discussion on defending objective truth against relativistic cultural pressures. Co-panelists: Keith Flaugh (Florida Citizens Alliance), Karen Jaroch (Heritage Action for America), Rebekah Ricks (Florida Moms for America), Patti Sullivan (Parental Rights Florida). Host–Moderator: Randy Osborne (Florida Eagle Forum).

Trail Life meeting, October 25, 2022, Maitland, FL. Presented to weekly Trail Life meeting of K–5 boys on respect for Constitution, laws, and other authorities using example of Liberty Counsel *Shurtleff v. City of Boston* Supreme Court case victory.

Flags and our Forefathers, October 17, 2022, Legal Judg(e)ments Podcast, Boston, MA. Discussion of Supreme Court First Amendment case *Shurtleff v. City of Boston* involving city's flag-raising program with host and Boston lawyer Bob Stetson.

Religious Freedom Plenary Panel, October 7, 2022, Christian Legal Society National Conference, Newport Beach, CA. Discussion of religious freedom cases of 2021–22 Supreme Court term by lawyers involved in the cases. Co-panelists: Michael Bindas (Institute for Justice), John Bursch (Alliance Defending Freedom), Jeff Mateer (First Liberty Institute), Eric Rassbach (The Becket Fund for Religious Liberty), Walter Weber (American Center for Law and Justice).

Faith & Freedom Forum, October 6, 2022, Jacksonville, FL. Sponsors: Ginger Soud, Alex Dew, Geoff Youngblood, Dr. Chuck Travis, Lindsey Brock, Dr. Carmen Martinez, Mat Nemeth, David Eure, Rev. Terry Gore. Presentation to pastors and ministry leaders on principles and laws of Christian political engagement and Q&A with co-presenter Florida State Senator Clay Yarborough.

Values Action Team Coalition Meeting, May 17, 2022 (Zoom conference). Presentation on Liberty Counsel victory in *Shurtleff v. City of Boston* Supreme Court case.

Save a Generation Tour, April 27, 2022, Riverview, FL. Sponsor: Robyn Openshaw. Presented overview of Liberty Counsel litigation of religious objections to governmental and employer COVID-19 vaccine mandates to supporters of medical freedom movement.

Save a Generation Tour, April 23, 2022, St. Augustine, FL. Sponsor: Robyn Openshaw. Presented overview of Liberty Counsel litigation of religious objections to governmental and employer COVID-19 vaccine mandates to supporters of medical freedom movement.

Taking Back America's Children Summit, February 12, 2022, Orlando, FL. Sponsor: Proclaiming Justice to the Nations. Q&A panel discussion on parental rights of speech, petition, and assembly in connection with education of children.

Child Evangelism Fellowship banquet, November 6, 2021, Longwood, FL. Presented to Child Evangelism Fellowship Good News Clubs volunteers and donors on principled responses to cultural challenges in ministry to public school students.

Independence Day and the Pursuit of Happiness, July 4, 2021, Orlando North Church, Altamonte Springs, FL. Delivered sermon at Sunday morning worship service providing a Christian perspective on the right to the pursuit of Happiness in the Declaration of Independence.

Commencement speech, May 15, 2021, Home Education Resources and Information (H.E.R.I.) Graduation Ceremony, Jacksonville, FL. Address to graduating high school students of Christian homeschooling cooperative regarding preserving and living out faith.

Florida Republican Assembly Orange County Chapter, April 19, 2021, Kissimmee, FL. Presentation on principled conservative approaches to advancing religious freedom, the sanctity of human life, and the family using examples from Liberty Counsel cases.

Northwest Orange Republican Women Federated general meeting, February 18, 2021, Apopka, FL. Presentation on principled conservative responses to cultural challenges using examples from Liberty Counsel cases.

FCA Leadership Summit, September 19, 2020, Daytona Beach, FL. Presentation to student leaders of Volusia and Flagler County Fellowship of Christian

Athletes (FCA) huddles on student rights of religious free exercise and expression in public schools.

How New Discrimination Rulings Affect Religious Entities, July 30, 2020, South Florida Bible College & Theological Seminary, Deerfield Beach, FL (Zoom seminar). Presentation to pastors and non-profit ministry leaders on religious liberty implications of Supreme Court decisions in *Bostock v. Clayton County* and *Our Lady of Guadalupe School v. Morrissey-Berru*.

Legal Update: 'Fairness for All' and Other Trojan Horses for Christian Counselors, FACCT Annual Conference, June 6, 2020, Melbourne, FL. Presentation to attendees of Federal Association of Christian Counselors and Therapists (FACCT) annual conference on threat to free speech of mental health counselors and clients posed by so-called "Fairness for All" compromises on governmental speech restrictions.

Daily Devotion: Longing, April 14, 2020, Orlando North Church, Altamonte Springs, FL (Facebook video post). One in a series of daily devotional videos posted by church during COVID-19 lockdown, reflecting on spiritual desire to resume in-person worship services.

Video recording: https://fb.watch/kQwkSKGTzD/

Knowing God Through Fasting and Feasting, July 21, 2019, Orlando North Church, Altamonte Springs, FL. Delivered sermon at Sunday morning worship service on deepening relationship with God through practices of fasting and feasting.

Video recording: https://youtu.be/4Bi3BF45wkg

Knowing God Through the Lord's Prayer, July 14, 2019, Orlando North Church, Altamonte Springs, FL. Delivered sermon at Sunday morning worship service on deepening relationship with God through the Lord's Prayer.

Video recording: https://youtu.be/zUoxua_uw7k

FACCT Annual Conference, June 8, 2019, Groveland, FL. Presentation to attendees of Federal Association of Christian Counselors and Therapists (FACCT) annual conference on threat to free speech of mental health counselors and clients posed by so-called "conversion therapy" bans.

Brevard County Ronald Reagan Club meeting, February 25, 2019, Melbourne, FL. Presentation on implications of New York "Reproductive Health Act" for pro-life legal efforts around the country.

Transgenderism in Christian Higher Education: Tensions between Civil and Religious Liberties, February 22, 2019, Fred Gray Civil Rights Symposium,

Faulkner University Thomas Goode Jones School of Law, Montgomery, AL. Co-presenter with Birmingham, AL attorney Cynthia Lamar-Hart at annual civil rights symposium hosted by Black Law Student Association. Discussion of key concepts, scientific findings, Christian perspectives, and current litigation regarding students' identifying as transgender in educational settings.

Go and Build: Your Section of the Wall, February 10, 2019, Orlando North Church, Altamonte Springs, FL. Delivered sermon at Sunday morning worship service on fulfilling the Great Commission in common settings through example of Nehemiah's rebuilding the wall of Jerusalem.

Video recording: https://youtu.be/lew2Zagzkj8

FCA Leadership Summit, September 27, 2018, Longwood, FL. Presentation to student leaders of Seminole County Fellowship of Christian Athletes (FCA) huddles on student rights of religious free exercise and expression in public schools.

The Resurrection and Your Section, April 1, 2018, Southside United Methodist Church, Jacksonville, FL. Delivered message at annual Men's Easter Breakfast on fulfilling the Great Commission in common settings through example of Nehemiah's rebuilding the wall of Jerusalem.

Teach-In, November 14, 2017, Lyman High School, Longwood, FL. Presented adapted lesson from the Justice Teaching program to class of high school students as part of annual *Teach-In* program.

Mass Media & Politics Classes, November 2, 2017, Professor Mark Logas, University of Central Florida, Orlando, FL. Presented to undergraduate standard and honors classes on media treatment of religious liberty issues using examples from Liberty Counsel cases.

Sound the Call, October 20, 2017, Leesburg, FL. Panelist for plenary session of conference for staff and volunteer advocates of pro-life pregnancy care centers and clinics and other ministries discussing legal challenges facing pro-life ministries.

FCA Leadership Summit, October 19, 2017, Longwood, FL. Presentation to student leaders of Seminole County Fellowship of Christian Athletes (FCA) huddles on student rights of religious free exercise and expression in public schools.

FCA Leadership Summit, August 26, 2017, Orlando, FL. Presentation to student leaders of Orange County Fellowship of Christian Athletes (FCA)

huddles on student rights of religious free exercise and expression in public schools.

Child Evangelism Fellowship Teacher's Overview, August 19, 2017, Longwood, FL. Presented to coordinators of Child Evangelism Fellowship Good News Clubs in local public elementary schools on equal access rights and religious free exercise and speech rights of public school students and teachers.

Jacksonville Christian Legal Society luncheon, May 18, 2017, Jacksonville, FL. Presentation on responding to calling to practice religious liberty law.

Mass Media & Politics Classes, November 15, 2016, Professor Mark Logas, University of Central Florida. Presented to undergraduate standard and honors classes on media treatment of religious liberty issues using examples from Liberty Counsel cases.

Missions conference, November 12, 2016, Grace Presbyterian Church, Ocala, FL. Presented to missions conference on responding to local and national threats to religious liberty using examples from Liberty Counsel cases.

Introduction to Legal Theory Class, October 11, 2016, Professor Timothy Welch, Southeastern University, Lakeland, FL. Presented to undergraduate legal studies class on Christian calling to practice law.

FCA Leadership Summit, September 17, 2016, Christ Community Church Daytona Beach, Daytona Beach, FL. Presentation to student leaders of Volusia and Flagler County Fellowship of Christian Athletes (FCA) huddles on student rights of religious free exercise and expression in public schools.

Pastors' conference, August 8, 2016, First Coast Baptist Church, Jacksonville, FL. Presented to pastors' conference on responding to local and national threats to religious liberty using examples from Liberty Counsel cases.

Combined Sunday School classes, August 7, 2016, First Coast Baptist Church, Jacksonville, FL. Presented to church's combined Sunday School classes on responding to local and national threats to religious liberty using examples from Liberty Counsel cases.

Pastors' conference, April 26, 2016, Deerfield Beach, FL. Sponsor: South Florida Bible College & Theological Seminary. Presented to pastors' conference on responding to local and national threats to religious liberty using examples from Liberty Counsel cases.

Your Section of the Wall—Rebuilding a Crumbling Culture, April 16, 2016, Iron Sharpens Iron Men's Conference, Albany, NY. Presentation to Christian

men's conference breakout session on responding to local and national threats to religious liberty using examples from Liberty Counsel cases.

Audio recording: https://www.dropbox.com/s/wjf9rm45285kp1l/Your%20Section%20Of%20The%20Wall%20-%20Rebuilding%20A%20Crumbling%20Culture%2C%20Roger%20Gannam.mp3?dl=0

God's Not Dead 2, March 30, 2016, Jacksonville, FL. Sponsor: First Coast Baptist Church, Jacksonville, FL. Presentation to assembled church youth groups, after screening of film *God's Not Dead 2*, on responding to local and national threats to religious liberty.

Palm Bay NEON meeting, March 14, 2016, Risen Savior Lutheran Church, Port St. Lucie, FL. Sponsor: Richard Spellman. Presentation to community group on responding to local and national threats to religious liberty using examples from Liberty Counsel cases.

Pastors' lunch, March 14, 2016, Peace Lutheran Church, Palm Bay, FL. Sponsor: Richard Spellman. Presentation to local pastors on responding to local and national threats to religious liberty using examples from Liberty Counsel cases.

Mission: America, March 9, 2016, Faith Community Church of Leesburg, Leesburg, FL. Presentation to annual missions conference on responding to local and national threats to religious liberty using examples from Liberty Counsel cases.

Jacksonville Christian Legal Society luncheon, February 18, 2016, Jacksonville, FL. Presentation on responding to threats to religious liberty from proposed Jacksonville "Human Rights Ordinance."

Community Conversations: Understanding the Law and Its Effects on Business, December 15, 2015, Jacksonville, FL. Selected by Jacksonville Mayor to provide testimony as panelist and First Amendment legal expert on infringements of religious speech and free exercise caused by amendment of nondiscrimination ordinances to add categories of sexual orientation and gender identity.

Press: *LGBT Law Debate: 'Both sides just so dug in'*, https://www.jacksonville.com/story/news/2015/12/16/lgbt-law-debate-both-sides-just-so-dug/15692734007/

Community Conversations: Religious Freedoms, Thoughts and Beliefs, December 3, 2015, Jacksonville, FL. Selected by Jacksonville Mayor to provide testimony as panelist and First Amendment legal expert on infringements of religious speech and free exercise caused by amendment of

nondiscrimination ordinances to add categories of sexual orientation and gender identity.

Press: *Community meeting on LGBT law is more civil Thursday night; religious liberty discussed*, https://www.jacksonville.com/story/news/2015/12/03/community-meeting-lgbt-law-more-civil-thursday-night-religious-liberty/15690997007/

Community Conversations, November 17, 2015, Jacksonville, FL. Selected by Jacksonville Mayor to provide testimony as panelist and First Amendment legal expert on infringements of religious speech and free exercise caused by amendment of nondiscrimination ordinances to add categories of sexual orientation and gender identity.

Press: *First of 3 meetings on LGBT anti-discrimination laws draws 400, sharp exchanges*, https://www.jacksonville.com/story/news/2015/11/17/first-3-meetings-lgbt-anti-discrimination-laws-draws-400-sharp-exchanges/15688882007/; *After a Defeat in Houston, the Fight for Gay Rights Shifts to Jacksonville*, https://www.nytimes.com/2015/11/29/us/after-a-defeat-in-houston-the-fight-for-gay-rights-shifts-to-jacksonville.html?searchResultPosition=1

reGeneration 2015, October 16, 2015, G.A. Repple & Company Annual Conference, Winter Park, FL. Presentation to annual conference of Christian financial services company on responding to local and national threats to religious liberty using examples from Liberty Counsel cases.

Night of Prayer, July 30, 2015, Bronson First Baptist Church, Bronson, FL. Address to prayer assembly on responding to local and national threats to religious liberty using examples from Liberty Counsel cases.

Commencement speech, May 30, 2015, Masters Academy, Vero Beach, FL. Address to graduating high school class of Christian school regarding preserving and living out faith.

Pastors' conference, March 12, 2015, Vero Beach, FL. Sponsor: Senior Pastor Greg Sempsrott, First Church of God, Vero Beach, FL. Presentation and Q&A on legal status of Florida marriage laws and application to churches.

Civil Discourse, October 30, 2014, Jacksonville, FL. Sponsors: University of North Florida, WJCT, The Florida Times-Union. Panelist for discussion of defeated 2012 amendment of Jacksonville nondiscrimination ordinances to add categories of sexual orientation and gender identity.

Press: *Panel discusses Human Rights Ordinance for Jacksonville at UNF*, https://www.jacksonville.com/story/news/2014/10/31/panel-discusses-human-rights-ordinance-jacksonville-unf/15785544007/

Legislative testimony, March-June 2014, Atlantic Beach, FL. Testimony before Atlantic Beach City Commission as First Amendment legal expert on infringements of religious speech and free exercise caused by amendment of nondiscrimination ordinances to add categories of sexual orientation and gender identity.

First Amendment Debate: Separation of Church and State, September 2013, The First Coast Tiger Bay Club, Jacksonville, FL. Debate with Rev. Harry Parrott, Jr. (Americans United for Separation of Church and State) regarding Supreme Court legislative prayer case *Town of Greece v. Galloway*.

Legislative testimony, May–August, 2012, Jacksonville, FL. Testimony before Jacksonville City Council (committees and full council) as First Amendment legal expert on infringements of religious speech and free exercise caused by amendment of nondiscrimination ordinances to add categories of sexual orientation and gender identity.

Legislative testimony, March 1, 2012, Green Cove Springs, FL. Testimony before Clay County, Florida School Board as First Amendment legal expert regarding permissible prayer on public elementary school campuses.

Press: *Clay school board hears from legal scholars on flag pole prayer*, https://www.jacksonville.com/story/lifestyle/faith/2012/03/02/clay-school-board-hears-legal-scholars-flag-pole-prayer/15873944007/

Politics & the Pulpit, November 2008, Florida Family Policy Council/High Impact Leadership Coalition Pastor's Conference: God's Design for Marriage, Jacksonville, FL. Presentation on permissible political activities for churches and pastors under federal law.

Integrating the Practice of Law with a Christian Worldview, November 2006, Jacksonville, FL. Presentation to meeting of the Florida Coastal School of Law Christian Legal Society on principles and challenges of integrating Christian faith and worldview with the practice of law.

The Greatest Threat to Religious Freedom Today, November 2006, Jacksonville, FL. Sponsor: Civitan Club of South Jacksonville. Presentation on local and national threats to religious liberty using legal case examples.

Religious Diversity in the Practice of Law, February 2006, Florida Coastal School of Law. Panel discussion regarding integration of diverse faiths

within the practice of law. Co-panelists: Seamus Hassan (The Becket Fund for Religious Liberty), Rehan N. Khawaja (Muslim Jacksonville, FL attorney).

Note: From August 2014 to August 2023, when I practiced public interest law at Liberty Counsel, I fulfilled approximately 300 media interview requests regarding legal cases and related cultural–legal issues, ranging from short telephone interviews for quotes or soundbites to live and recorded video appearances. There are no readily available copies or electronic links to copies of any reports, transcripts, or recordings of these interviews.

38. Have you ever taught a course at an institution of higher education or a bar association? If so, provide the course title, a description of the course subject matter, the institution at which you taught, and the dates of teaching. If you have a syllabus for each course, please provide.

No.

39. List any fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement. Include the date received and the presenting entity or organization.

Florida Super Lawyers *Rising Star*, 2012, 2013

Alliance Defending Freedom *Honor Corps*, 2008 (awarded for completing 450 hours of pro bono legal service in religious liberty matters)

Phi Theta Kappa Honor Society, Florida Community College at Jacksonville, *Member*, Fall 1991 to Spring 1993

40. Do you have a Martindale-Hubbell rating? If so, what is it and when was it earned?

I received a BV Peer Review Rating on October 25, 2008. At that time, I had been practicing for fewer than ten years, and BV was the highest rating available for an attorney practicing for fewer than ten years. I have not requested or received a new rating since then.

41. List all bar associations, legal, and judicial-related committees of which you are or have been a member. For each, please provide dates of membership or participation. Also, for each indicate any office you have held and the dates of office.

Florida Supreme Court Committee on Standard Jury Instructions in Civil Cases, *Member*, term beginning January 1, 2026

Florida Bar Appellate Practice Section, *Member* since 2024

Florida Bar Public Interest Law Section, *Member*, 2014 to 2024

Collier County Bar Association, *Member* since 2025

Orange County Bar Association, *Member* since 2023

Jacksonville Bar Association, *Member*, 2000 to 2014

American Bar Association, *Member*, 2000 to 2011

42. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in the previous question to which you belong, or to which you have belonged since graduating law school. For each, please provide dates of membership or participation and indicate any office you have held and the dates of office.

Florida Supreme Court Historical Society, *Member* since 2024

Orlando North Church, Altamonte Springs, Florida,
Member, since 2014; *Elder*, 2017 to 2024

The Alliance for Therapeutic Choice and Scientific Integrity,
Director, 2023

The Federalist Society, *Member* since 2020

Orlando Sigma Chi Alumni Chapter, *Member* since 2020

Florida Family Policy Council, *Special Counsel*, 2012 to 2023

Pacific Justice Institute, *Affiliate Attorney*, 2012 to 2023

Alliance Defending Freedom, *Allied Attorney*, 2005 to 2023

Christian Legal Society, *Member* 2003 to 2014;
Director, Jacksonville Chapter, 2007 to 2010;
President, Jacksonville Chapter, 2007

Jacksonville Alliance of Christian Voters, *Director*, 2013 to 2014

Barrington Oaks Owners Association, *Director*, 2007 to 2014;
President, 2009 to 2011

University of North Florida Pre-Law Advisory Board, *Member*, 2000 to 2014

Southside United Methodist Church (Jacksonville, Florida), *Member*, 2000 to 2013; *Staff Parish Relations Committee*, 2005 to 2008 (*Chair*, 2008); *Natural Church Development Committee*, 2007; *Inspiring Worship Committee*, 2010 to 2012; *Long Range Planning Committee*, 2012

Second Harvest North Florida JETSET, Jacksonville, Florida,
Member, 2009 to 2012; *Chairman*, 2012

Republican Executive Committee of Duval County, *Member*, 2009

CHILD Cancer Fund, Jacksonville, Florida, *Director*, 2003 to 2008

43. Do you now or have you ever belonged to a 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 (other than a church, synagogue, mosque or other religious institution), national origin, or sex (other than an educational institution, fraternity or sorority)? If so, state 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.

From 2003 to 2014 I was a member of the Christian Legal Society (CLS). CLS is a non-denominational Christian membership association for lawyers, judges, law students, and others, and restricts membership to persons who accept the CLS Statement of Faith, available at https://www.christianlegalsociety.org/who-we-serve/#statement_of_faith (last visited December 6, 2025). CLS officers must also subscribe to the CLS Community Life Statement, available at https://www.christianlegalsociety.org/community-life-statement/ (last visited December 6, 2025), and officers and members alike can be suspended or expelled from membership in CLS for conduct that undermines the Statement of Faith or Community Life Statement. All CLS events are open to non-members, but membership is required to hold any office. Since 2014 I have attended CLS events as a non-member, which I intend to continue if appointed to the Supreme Court of Florida.

44. Please describe any significant pro bono legal work you have done in the past 10 years, giving dates of service.

All of my Liberty Counsel work from August 2014 to August 2023 was pro bono.

Prior to joining Liberty Counsel, starting in July 2007, I represented pro bono the Christian men's fraternity Beta Upsilon Chi and its local chapter at the University of Florida, challenging the university's unconstitutional policy prohibiting the fraternity from receiving official recognition if it restricted its membership to students sharing its Christian beliefs. I had completed over 200 hours of pro bono work on the case when it resolved in July 2015.

45. Please describe any hobbies or other vocational interests.

I enjoy hiking, travel to historic sites, and the Jacksonville Jaguars.

46. Please state whether you have served or currently serve in the military, including your dates of service, branch, highest rank, and type of discharge.

I have not served in the military.

47. Please provide links to all social media and blog accounts you currently maintain, including, but not limited to, Facebook, Twitter, LinkedIn, and Instagram.

Facebook: https://www.facebook.com/roger.gannam

Instagram: https://www.instagram.com/rkgannam/

LinkedIn: https://www.linkedin.com/in/rogergannam/

Nextdoor: https://nextdoor.com/profile/01N7rNTrrSCnxw6sn/

X: https://x.com/RogerGannam

FAMILY BACKGROUND

48. Please state your current marital status. If you are currently married, please list your spouse's name, current occupation, including employer, and the date of the marriage. If you have ever been divorced, please state for each former spouse their name, current address, current telephone number, the date and place of the divorce and court and case number information.

I have been married to Joy Abraham Gannam since December 20, 1997, and have never been divorced. Joy is self-employed, doing business as Joyful Helper.

49. If you have children, please list their names and ages. If your children are over 18 years of age, please list their current occupation, residential address, and a current telephone number.

Son: Preston Karam Gannam, 25. Graphic designer. [redacted]

Daughter: Bella Caroline Gannam, 20. Full-time student at [redacted]

CRIMINAL AND MISCELLANEOUS ACTIONS

50. Have you ever been convicted of a felony or misdemeanor, including adjudications of guilt withheld? If so, please list and provide the charges, case style, date of conviction, and terms of any sentence imposed, including whether you have completed those terms.

No.

51. Have you ever pled nolo contendere or guilty to a crime which is a felony or misdemeanor, including adjudications of guilt withheld? If so, please list and provide the charges, case style, date of conviction, and terms of any sentence imposed, including whether you have completed those terms.

No.

52. Have you ever been arrested, regardless of whether charges were filed? If so, please list and provide sufficient details surrounding the arrest, the approximate date and jurisdiction.

No.

53. Have you ever been a party to a lawsuit, either as the plaintiff, defendant, petitioner, or respondent? If so, please supply the case style, jurisdiction/county in which the lawsuit was filed, case number, your status in the case, and describe the nature and disposition of the matter.

Rayon Payne v. Lisa T. Munyon, et al., No. 6:25-cv-00615-WWB-LHP, United States District Court, Middle District of Florida, Orlando Division.

Rayon Payne, a "journalist and podcast host," filed this "federal civil rights action arising from systemic constitutional violations across Florida and California courts, involving judicial misconduct, denial of due process, abuse of process, and obstruction of justice" on April 9, 2025. The amended complaint names as defendants five Florida Supreme Court justices, ten Florida District Court of Appeal judges (including me), seven Florida and California trial court judges, one clerk of court, eighteen attorneys, eight law firms, and thirteen other parties. Payne alleges I, in my "individual capacity, denied [his] writs in critical cases involving summary judgment and improper dismissals" and demands from me $4 million in compensatory damages and $6 million in punitive damages. I have not been served with any pleading or other paper, and Payne's claims against me have no merit in any event.

Diwakar Nagula and First Coast Pain Management, LLC v. Robert [sic] *K. Gannam and Lindell & Farson, P.A.*, No. 16-2014-CA-007959-XXXX-MA, Fourth Judicial Circuit Court of Florida, in and for Duval County.

The plaintiffs, Dr. Diwakar Nagula and his medical practice, sued my former law firm and me claiming malpractice in our representation of the plaintiffs in the purchase of another medical practice from the estate of its former owner. The plaintiffs alleged my firm and I failed to discover a liability of the purchased medical practice prior to the purchase. The case was meritless because Dr. Nagula was well aware of the assets and liabilities of the purchased practice, having worked in the practice prior to the death of its owner with full access to its books and records, and he had also accepted that the estate was selling the practice "as-is" with no representations or warranties.

The case did not progress after the defendants' answer and was dismissed for failure to prosecute in January 2020.

54. To your knowledge, has there ever been a complaint made or filed alleging malpractice as a result of action or inaction on your part?

Yes. *See* answer to Question 53, *supra.*

55. To the extent you are aware, have you or your professional liability carrier ever settled a claim against you for professional malpractice? If so, give particulars, including the name of the client(s), approximate dates, nature of the claims, the disposition and any amounts involved.

No.

56. 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, provide the particulars of each finding or investigation.

No.

57. To your knowledge, within the last ten years, have any of your current or former co-workers, subordinates, supervisors, customers, clients, or the like, ever filed a formal complaint or accusation of misconduct including, but not limited to, any allegations involving sexual harassment, creating a hostile work environment or conditions, or discriminatory behavior against you with any regulatory or investigatory agency or with your employer? If so, please state the date of complaint or accusation, specifics surrounding the complaint or accusation, and the resolution or disposition.

No.

58. 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.

59. Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you, this includes any corporation or business entity that you were involved with? If so, please provide the case style, case number, approximate date of disposition, and any relevant details surrounding the bankruptcy.

No.

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

No.

61. Please explain whether you have complied with all legally required tax return filings. To the extent you have ever had to pay a tax penalty or a tax lien was filed against you, please explain giving the date, the amounts, disposition, and current status.

I have timely complied with all legally required tax return filings. I incurred de minimis estimated tax penalties, resulting from employer bonus payments from which no taxes were withheld, in tax years 2015 ($26), 2016 ($36), 2017 ($50),

2018 ($38), 2020 ($40), 2021 ($84), 2022 ($257), and 2023 ($160). In each year I paid the penalty with my timely filed tax return.

HEALTH

62. Are you currently addicted to or dependent upon the use of narcotics, drugs, or alcohol?

No.

63. 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? 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.

No.

64. 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 two or three nights, experiencing periods of hyperactivity, spending money profusely with extremely poor judgment, suffering 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. If yes, please explain.

No.

65. 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? If yes please explain the limitation or impairment and any treatment, program or counseling sought or prescribed.

No.

66. 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, provide full details as to court, date, and circumstances.

No.

67. 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 or State law provisions.)

No.

68. 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 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.

69. 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.

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

No.

SUPPLEMENTAL INFORMATION

71. Describe any additional education or experiences you have which could assist you in holding judicial office.

Many experiences in my life and career have shaped my perspective and assisted me in holding judicial office. I have been inspired since childhood by my great grandfather, Karam Gannam, a Lebanese immigrant and self-made businessman, who passed a legacy of hard work down to me through my grandfather and father. I grew up in a Navy family, spending three years overseas before middle school. I worked full time as an undergraduate to finance 100% of my education expenses. As a lawyer, I had the opportunity to litigate for the protection of our most cherished constitutional liberties, across the nation and in its highest courts. But no experience has shaped my perspective as much as my son's cancer diagnosis and subsequent treatment beginning in May 2003.

Preston was diagnosed with leukemia at age 2. My wife and I were immediately thrust into an intense new world of doctors, drugs, and procedures, where every decision and test result had the feel of life and death. It was a time of extreme reordering of priorities. But steadily, during his 30 months of treatment, the intensity decreased, and the prognosis improved, until he emerged from treatment in December 2005, fully in remission. Today he is 25, healthy, a college graduate, a husband, a father-to-be, and a constant reminder of the blessings in our lives.

My experience with Preston's cancer has given me at least two valuable perspectives that have aided me as a district judge and that, I believe, will aid me if I am privileged to hold the office of Justice of the Supreme Court of Florida. The first comes from having to make weighty decisions under pressure, decisions about his treatment and exposure to the world outside the hospital where his life was at stake. Careful consideration of all information and maintaining composure under duress were essential to making the right decisions and generating confidence in them. As a district judge, I have drawn on this experience to make right decisions when the stakes are at their highest.

The second perspective comes from understanding that our doctors and other caregivers had many other patients in their care, many of whom had cancers worse than Preston's. But they understood that Preston's treatment and care were the biggest concerns for *us*, and always gave us their best. As a district judge, I have always understood the importance of giving every case my best.

72. Explain the particular contribution you believe your selection would bring to this position and provide any additional information you feel would be helpful to the Commission and Governor in evaluating your application.

My desire to be a judge comes from my passions for the rule of law and serving the public. I hope the information presented in this application demonstrates the pursuit of these passions both in my prior law practice and in my current judicial service. Several people who know me well, and whom I trust for honest counsel, affirmed my decision to seek a nomination to the Sixth District Court of Appeal, and support my seeking a nomination to the Supreme Court of Florida. I hope to have the opportunity to demonstrate to the Commission and Governor DeSantis my ability, character, and temperament for higher judicial office.

It is no doubt clear from my application that much of my prior public service and legal advocacy has a distinctively Christian bent. My public interest litigation in constitutional religious liberty cases was personally rewarding because it integrated my faith and my passion for the rule of law, which are central aspects of my life and vocation. But my faith-based associations have never required or tempted me to advance legal positions that are not supported by the law. As an advocate, I never sought to use the courts to misappropriate rights for my clients not provided to them by law. To the contrary, the constitutional rights I sought to vindicate for my clients are rights that inure to all citizens, regardless of religious belief. To be sure, it is my faith in God that makes my oath to support the Constitution of the United States and the Constitution of the State of Florida a solemn vow as opposed to a mere statement of principle.

If entrusted with the office of justice, I would bring the same solemn commitment to upholding the rule of law as I have brought to the office of district judge. My judicial service would continue to be marked by faithful observance of the constitutional duties and boundaries on the judicial role, a textualist commitment to interpreting laws as written, and clarity of reason and writing. These pledges are not only necessary to preserving our system of constitutionally limited government, but also foundational to maintaining public trust in the judiciary.

REFERENCES

73. List the names, addresses, e-mail addresses and telephone numbers of ten persons who are in a position to comment on your qualifications for a judicial position and of whom inquiry may be made by the Commission and the Governor.

The Honorable Meredith L. Sasso — sassom@flcourts.org
Supreme Court Building — [redacted]
500 South Duval Street
Tallahassee, FL 32399-6556

The Honorable Paetra T. Brownlee — brownleep@flcourts.org
811 East Main Street — [redacted]
Lakeland, FL 33801

The Honorable Joshua A. Mize — mizej@flcourts.org
811 East Main Street — [redacted]
Lakeland, FL 33801

The Honorable Mary Alice Nardella — nardellam@flcourts.org
811 East Main Street — [redacted]
Lakeland, FL 33801

The Honorable Clay Yarborough — yarborough.clay@flsenate.gov
308 Senate Building — [redacted]
404 South Monroe Street
Tallahassee, FL 32399-1100

The Honorable Sam Garrison — sam.garrison@flhouse.gov
422 The Capitol — [redacted]
402 South Monroe Street
Tallahassee, FL 32399-1300

Jeffrey M. Aaron, Esq. — jeff.aaron@downsaaron.com
DownsAaron PLLC — (407) 349-3949
200 South Orange Avenue, Suite 2250
Orlando, FL 32801

Kevin C. Frein, Esq.
U.S. Attorney's Office
300 North Hogan Street, Suite 700
Jacksonville, FL 32202-4204
kevin.frein@usdoj.gov
[redacted]

Dale Tedder
Southside Methodist Church
3120 Hendricks Ave.
Jacksonville, FL 32207
daletedder@yahoo.com
(904) 451-3754

Anthony Zebouni, Esq.
Lindell & Zebouni, P.A.
12276 San Jose Boulevard, Suite 126
Jacksonville, FL 32223-8630
azebouni@lindellfarson.com
(904) 228-6262

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 17th day of December, 2025.

Roger K. Gannam
Printed Name

Signature

State of Florida
County of Seminole

Sworn to (or affirmed) and subscribed before me by means of

☐physical presence OR ☐online notarization
this 17th day of December, 2025

By Roger Gannam
☐Personally known ✓
☐Produced ID___
Type of Identification _____

NOTARY PUBLIC STATE OF FLORIDA

TESSA LAMBE
Commission # HH 216585
Expires March 22, 2026

Signature Notary Public

Tessa Lambe
Printed name of Notary Public

(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: $0.00

Last Three Years: $0.00 $91,168.64 $145,000.00

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: $0.00

Last Three Years: $0.00 $91,168.64 $145,000.00

3. State the gross amount of income or loses 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.

Judge of the District Court of Appeal, Sixth Appellate District, State of Florida

Current Year-To-Date: $202,518.72

Last Three Years: $206,504.28 $66,167.41 $0.00

4. State the amount 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.

Judge of the District Court of Appeal, Sixth Appellate District, State of Florida

Current Year-To-Date: $202,518.72

Last Three Years: $206,504.28 $66,167.41 $0.00

5. 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.

Judge of the District Court of Appeal, Sixth Appellate District, State of Florida

Current Year-To-Date: $202,518.72

Last Three Years: $206,504.28 $66,167.41 $0.00

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, 2024 was $205,715.33.

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 $61,645.00

ASSETS INDIVIDUALLY VALUED AT OVER $1,000:

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
Bank accounts (Chase)	$17,280.66
IRA cash account (Equitable)	$4,596.83
DIVO AMPLIFY CWP ENHANCED DIVIDEND INCOME ETF	$17,163.52
BFGIX BARON FOCUSED GROWTH INSTL CL	$6,178.04
GIUSX GUGGENHEIM CORE BOND INSTL CL	$6,646.41
RWJ INVESCO S&P SMALLCAP 600 REV ETF	$3,523.52
SPGP INVESCO S&P 500 GARP ETF	$16,675.92
IWY ISHARES RUSSELL TOP 200 GROWTH ETF	$29,408.75
CALF PACER U S SMALL CAP CASH COWS 100 ETF	$11,618.64
COWZ PACER U S CASH COWS 100 ETF	$25,246.56
ECOW PACER EMERGING MARKETS CASH COWS 100 ETF	$6,230.61
ICOW PACER DEVELOPED MARKETS INTL CASH COWS 100 ETF	$6,013.14
SCHD SCHWAB U S DIVIDEND EQUITY ETF	$25,407.60
SMH VANECK SEMICONDUCTOR ETF	$3,632.55
TNUIX 1290 DIVERSIFIED BOND CL I	$9,640.82
Invesco Growth College Portfolio A	$1,427.12
FRS Pension	$8,600.00

PART C - LIABILITIES

LIABILITIES IN EXCESS OF $1,000 (See instructions on page 4): NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
Florida Credit Union, PO Box 5549, Gainesville, FL 32627-5549	$ 31,059.35

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE: NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY

PART D - INCOME

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

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

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

NAME OF SOURCE OF INCOME EXCEEDING $1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
State of Florida	200 E Gaines St, Tallahassee, FL 32399-0356	$ 206,504.28

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 BUSINESS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE

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

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTTITY			
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.

SIGNATURE

STATE OF FLORIDA

COUNTY OF Seminole

Sworn to (or affirmed) and subscribed before me this 17th day of Dec., 2025 by Roger Gannam

(Signature of Notary Public—State of Florida)

Tessa Lambe

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

Personally Known ✓ *OR* Produced Identification _____

Type of Identification Produced _____

NOTARY PUBLIC STATE OF FLORIDA
TESSA LAMBE
Commission # HH 216585
Expires March 22, 2026

JUDICIAL APPLICATION DATA RECORD

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

(Please Type or Print)

Date: December 17, 2025

JNC Submitting To: Supreme Court Judicial Nominating Commission

Name (please print): Roger K. Gannam

Current Occupation: Judge

Telephone Number: [redacted] Attorney No.: 240450

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.

Roger K. Gannam
Printed Name of Applicant

Signature of Applicant

Date: December 17, 2025

SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 6D2023-2104
Lower Tribunal No. 2022-CF-009611-A-O

STATE OF FLORIDA,

Appellant,

v.

PETER WASHINGTON, JR.,

Appellee.

Appeal from the Circuit Court for Orange County.
Jenifer M. Harris, Judge.

February 21, 2025

GANNAM, J.

The State appeals the trial court's dismissal of an information filed by the Office of Statewide Prosecution (OSP) against Peter Washington, Jr., charging him with a single count of illegal voting in the November 2020 General Election. We affirm because Washington's alleged offense occurred only in the Ninth Judicial Circuit, and the OSP did not have jurisdiction to prosecute Washington for the offense under article IV, section 4 of the Florida Constitution or section 16.56 of the Florida Statutes (2022).

Two of our sister courts reached the opposite result on nearly identical facts: *State v. Miller*, 394 So. 3d 164 (Fla. 3d DCA 2024), and *State v. Hubbard*, 392 So. 3d 1067 (Fla. 4th DCA 2024), *review granted*, No. SC2024-1522, 2025 WL 79096 (Fla. Jan. 13, 2025). As shown below, our interpretation of the disputed constitutional and statutory provisions leads us to certify conflict with *Miller* and *Hubbard*.

I. The Office of Statewide Prosecution

The OSP's existence and authority derive from a 1986 amendment to the Florida Constitution, along with implementing legislation that became effective upon voters' approval of the amendment.[1] The constitutional amendment created the new statewide prosecutor office and defined its jurisdiction:

> There is created in the office of the attorney general the position of statewide prosecutor. The statewide prosecutor shall have concurrent jurisdiction with the state attorneys to prosecute violations of criminal laws *occurring or having occurred, in two or more judicial circuits as part of a related transaction*, or when any such offense *is affecting or has affected two or more judicial circuits as provided by general law.*

Art. IV, § 4(b), Fla. Const. [hereinafter the "**OSP Clause**"] (emphasis added).

[1] *See* Fla. HJR 386 (1985) at 2220–22 (proposed amendments to art. IV, § 4 & art. V., § 17, Fla. Const.); Ch. 85-179, § 1, at 1295–96, Laws of Fla. (codified at § 16.56, Fla. Stat. (1985)).

The implementing legislation, effective upon approval of the amendment, added a new section 16.56 to the Florida Statutes, creating the OSP by name and defining subject matter and other conditional limits on the office's prosecutorial authority:

> 16.56 Office of Statewide Prosecution. —
>
> (1) There is created in the Department of Legal Affairs an Office of Statewide Prosecution. . . . The office may:
>
> (a) Investigate and prosecute the offenses of bribery, burglary, criminal fraud, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, and robbery; of crimes involving narcotic or other dangerous drugs; of any violation of the provisions of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act; of any violation of the provisions of the Florida Anti–Fencing Act; of any violation of the provisions of the Florida Antitrust Act of 1980, as amended; or of any attempt, solicitation, or conspiracy to commit any of the crimes specifically enumerated above. The office shall have such power only when any such offense *is occurring, or has occurred, in two or more judicial circuits as part of a related transaction*, or when any such offense *is connected with an organized criminal conspiracy affecting two or more judicial circuits*.

§ 16.56, Fla. Stat. (1985) [hereinafter the "**OSP Statute**"] (emphasis added).

The OSP Statute has been amended several times since its 1985 enactment. At the time Washington was charged with illegal voting in August 2022, the

enumerated crimes had been expanded to include any crime involving "voter registration" or "voting." § 16.56(1)(a)13., Fla. Stat. (2022).

II. The Washington Prosecution

In 1996, Washington was convicted of attempted sexual battery, making him ineligible to vote under article VI, section 4 of the Florida Constitution. In 2019, Washington registered to vote in Orange County, Florida, in the Ninth Judicial Circuit, and subsequently voted in Orange County in the November 2020 General Election. The General Election ballot included statewide and federal offices and proposed amendments to the Florida Constitution.

The OSP filed a one-count information charging Washington with voting by unqualified elector in violation of section 104.15, Florida Statutes (2020). Although it is undisputed that Washington cast his ballot solely in Orange County, the information alleged that Washington, "in the Ninth and Second Judicial Circuits of Florida, to-wit Orange and Leon Counties, . . . did willfully vote in an election knowing that he is not a qualified elector" and that "said offense occurred in two or more judicial circuits in the State of Florida as part of a related transaction or said offense was connected with an organized criminal conspiracy affecting two or more judicial circuits in the State of Florida."

Washington moved to dismiss the information on the grounds that the OSP lacked authority to prosecute him under the OSP Clause and the OSP Statute because

his allegedly illegal voting did not occur in multiple circuits or affect multiple circuits as part of a conspiracy. Prior to the hearing on the motion to dismiss, the parties stipulated that the Orange County Supervisor of Elections and Orange County Tax Collector electronically transmitted Washington's voter registration information to the Florida Department of State in Leon County, in the Second Judicial Circuit, and that when Washington voted in Orange County, the Supervisor of Elections electronically transmitted his votes to the Department of State's Division of Elections in Leon County for counting. The parties also stipulated, however, that Washington himself did not enter the Second Circuit or transmit any information to the Second Circuit in connection with his registration or voting in Orange County, and that Washington's voting did not involve a criminal conspiracy. The trial court granted Washington's motion to dismiss, ruling that the OSP "does not have the statutory authority to prosecute this matter" because "[a]ll of [Washington's] alleged actions occurred in Orange County."

III. Analysis

A. Questions Presented and Standard of Review

On appeal, the State seeks reversal of the trial court's dismissal order, arguing the court erred in its conclusion that Washington's allegedly illegal voting in Orange County did not occur in multiple circuits as part of a related transaction. But the State also seeks remand, irrespective of the merits of the trial court's dismissal, so

the OSP can amend the information to include its new, expanded authority to prosecute voting offenses that merely affect multiple circuits (with no conspiracy) under a 2023 amendment to the OSP Statute that became effective two days after dismissal of the information. Thus, the questions before us are whether the trial court erred in dismissing the OSP's information for lack of authority under the law existing at the time of his alleged voting offense, and whether we should remand in any event for the OSP to amend its information to add its new prosecutorial authority under a law that became effective two days after dismissal. Both are questions of law we review de novo. *See State v. Tacher*, 84 So. 3d 1131, 1132 (Fla. 3d DCA 2012) ("We review a trial court's order on a motion to dismiss de novo where, as here, it concerns a question of law.").

Answering these questions requires our interpretation of the sources and limits of the OSP's power in the OSP Clause and the OSP Statute. In our opinion, no durable standards for interpreting the governing texts have emerged from the case precedent addressing the OSP's jurisdiction. Without any authoritative interpretation by the Florida Supreme Court or our own district, we undertake our interpretive work according to first principles. *See CED Cap. Holdings 2000 EB, LLC v. CTCW-Berkshire Club, LLC*, 363 So. 3d 192, 195 (Fla. 6th DCA 2023).

Florida courts "follow the supremacy-of-text principle—namely, the principle that the words of a governing text are of paramount concern, and what they convey,

in their context, is what the text means." *Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942, 946 (Fla. 2020) (cleaned up) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012)). Thus, we interpret Florida's constitution and statutes according to the plain meaning of their text, looking to "all the textual and structural clues that bear on the meaning of a disputed text" and using the traditional interpretive canons for guidance where helpful. *Conage v. United States*, 346 So. 3d 594, 598 (Fla. 2022) (cleaned up).

B. Interpreting the OSP Clause and the OSP Statute

In deciding the first question before us—whether the OSP had authority to prosecute Washington's alleged voting crime as having "occurred" in multiple circuits "as part of a related transaction"—we must decide whether we are interpreting the "occurred" and "related transaction" language in the OSP Clause in the Florida Constitution, the similar language in the OSP Statute, or both—and whether it matters. *Compare* Art. IV, § 4(b), Fla. Const. ("occurring or having occurred, in two or more judicial circuits as part of a related transaction"), *with* § 16.56(1)(a), Fla. Stat. (2022) ("occurring, or has occurred, in two or more judicial circuits as part of a related transaction"). Answering these questions requires us to deal with an interpretive hitch not addressed in prior cases: the OSP Clause's jurisdictional grant is partially self-executing and partially dependent on the OSP Statute.

The OSP Clause created the OSP. Art. IV, § 4(b), Fla. Const. ("There is created . . . the position of statewide prosecutor."). And the OSP Clause gives jurisdiction to the office, concurrent with the state attorneys of the judicial circuits, to prosecute two types of criminal violations: (1) offenses "occurring" in multiple circuits "as part of a related transaction" (multi-circuit "**occurrence jurisdiction**"), and (2) offenses "affecting" multiple circuits "as provided by general law" (multi-circuit "**effects jurisdiction**"). *Id.* The OSP Clause occurrence jurisdiction is self-executing because it does not depend on legislative enactment. *See Fla. Hosp. Waterman, Inc. v. Buster*, 984 So. 2d 478, 485–86 (Fla. 2008) ("'[A] constitutional provision should be construed to be self-executing [when] the provision lays down a sufficient rule by means of which the . . . purpose which it . . . is intended to accomplish may be determined . . . without the aid of legislative enactment.'" (quoting *Gray v. Bryant*, 125 So. 2d 846, 851 (Fla. 1960))). The potentially far broader effects jurisdiction, however, expressly depends on legislation. Art IV, § 4(b), Fla. Const. ("affecting . . . two or more judicial circuits *as provided by general law*" (emphasis added)).[2]

[2] The postpositive modifier "as provided by general law" in article IV, section 4(b), only modifies the phrase "when any such offense is affecting or has affected two or more judicial circuits." This effects phrase is the modifier's nearest reasonable referent because, by punctuation and structure, the phrase is not grammatically parallel to the preceding occurrence phrase, "violations of criminal laws occurring or having occurred, in two or more judicial circuits as part of a related

Consistent with the OSP Clause's grant of legislative authority to define the OSP's effects jurisdiction, the original OSP Statute defined and limited effects jurisdiction by subject matter—e.g., "offenses of bribery, burglary, criminal fraud, [etc.]"—and further limited it to any such offense "connected with an organized criminal conspiracy" affecting multiple circuits. § 16.56(1), Fla. Stat. (1985). But the OSP Statute also purported to define and limit the OSP's occurrence jurisdiction by the same subject matter, even though the OSP Clause enshrined the OSP's occurrence jurisdiction in the Florida Constitution without subject matter limitations. *Id.* And, while the OSP Clause enshrined creation of the OSP in the constitution, the OSP Statute also purported to create the OSP. *See* § 16.56(1), Fla. Stat. (1985) ("There is *created* . . . an Office of Statewide Prosecution. . . . The office *may . . . [i]nvestigate and prosecute* . . . ." (emphasis added)).

To the extent there is any conflict between the seemingly duplicative creating and jurisdictional language in the OSP Clause and the OSP Statute, the constitutional provision must prevail over the subordinate statutory enactment. *See Fla. Hosp. Waterman*, 984 So. 2d at 494.[3] But any such conflict does not matter *in this case*

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transaction." *See Reading Law* at 152–53 ("Nearest-Reasonable-Referent Canon"); *id.* at 161–66 ("Punctuation Canon").

[3] Any incongruity between the OSP Clause and OSP Statute may be attributable to the fluidity of the legislative process. Late in the 1985 legislative session that birthed the OSP Clause as a proposed constitutional amendment, and

because Washington's alleged voting crime is within the subject matter limitations of the OSP Statute. *See* § 16.56(1)(a)13., Fla. Stat. (2022) ("Any crime involving voter registration, voting . . . ."). Thus, whether the OSP's prosecution of Washington is governed by the self-executing occurrence jurisdiction of the OSP Clause or the subject-limited occurrence jurisdiction of the OSP Statute, our analysis is the same—either way, we must determine whether Washington's alleged voting offense occurred in multiple circuits as part of a related transaction.[4]

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the OSP Statute to implement it, the draft OSP Clause would have given the Legislature authority to create the OSP and define its jurisdiction, and the draft OSP Statute did both. *See* Fla. S. Jour. 374–76 (Reg. Sess. 1985). By the time of enactment, however, the OSP Clause had been amended to make the OSP's creation and its occurrence jurisdiction self-executing, with no corresponding change to the enacted OSP Statute. *See* Fla. HJR 386 (1985) at 2221 (codified at art. IV, § 4(b), Fla. Const.); Ch. 85-179, § 1, at 1295–96, Laws of Fla. (codified at § 16.56(1)(a), Fla. Stat. (1985)). A contemporary law review article suggests that the last-minute elevation of the OSP's creation and occurrence jurisdiction from statutory enactment to self-executing constitutional provision was a compromise among the competing interests of the Governor's Commission on the Statewide Prosecution Function, the Florida Prosecuting Attorneys Association, and the House and Senate Conference Committee. *See* R. Scott Palmer & Barbara M. Linthicum, *The Statewide Prosecutor: A New Weapon against Organized Crime*, 13 Fla. St. U. L. Rev. 653, 676–80 (1985).

[4] Offenses occurring in multiple circuits are necessarily a subset of offenses affecting multiple circuits. Thus, the OSP Statute's occurrence jurisdiction language can be read, instead, as an additional limitation on the OSP Statute's effects jurisdiction, along with the conspiracy limitation. This reading would comport with the OSP Clause's grant of legislative authority to define effects jurisdiction and minimize conflict (though not redundancy) with the OSP Clause's self-executing occurrence jurisdiction.

C. Interpreting Occurrence Jurisdiction

1. Where a crime occurs

Where does a crime occur for purposes of OSP prosecutorial jurisdiction? Neither "occurring" nor "occurred" are defined in the OSP Clause or OSP Statute or in any authoritative decision of the Florida Supreme Court. "When a contested term is undefined in statute or by our cases, we presume that the term bears its ordinary meaning at the time of enactment, taking into consideration the context in which the word appears." *Conage*, 346 So. 3d at 599. "And we typically look to dictionaries for the best evidence of that ordinary meaning," *id.*, which evidence includes both "legal and non-legal dictionary definitions," *Gov't Emps. Ins. Co. v. Macedo*, 228 So. 3d 1111, 1113 (Fla. 2017). Thus, we begin with the ordinary meaning of "occur" according to contemporary dictionary definitions.

At the time of enactment and in the context of the OSP Clause and OSP Statute, the ordinary meaning of "occur" was "[t]o present itself in the course of events; to happen, befall, take place as an event or incident." *Occur*, *Oxford English Dictionary* (2d ed. 1989). The contemporary legal dictionary definition is similar: "To happen; to meet one's eye; to be found or met with; to present itself; to appear; hence to befall in due course; to take place; to arise." *Occur*, *Black's Law Dictionary* 1080 (6th ed. 1990). Thus, a crime occurs where it happens or takes place.

But how do we decide where a crime happens or takes place to determine whether it occurred in multiple judicial circuits? Where a crime occurs, for prosecution purposes, is a concept the Legislature has authoritatively developed in the criminal venue statutes. *See* Ch. 910, Fla. Stat. Under these statutes, where a crime occurs determines where it can be prosecuted and tried. And where a crime can be prosecuted and tried determines the jurisdiction of the respective circuits' state attorneys to prosecute that crime because the Florida Constitution and Statutes provide that the prosecutorial jurisdiction of each circuit's state attorney is limited by the boundaries of the circuit. *See* Art. V, § 17, Fla. Const. ("[T]he state attorney shall be the prosecuting officer of all trial courts in that circuit."); § 27.02, Fla. Stat. (1985) ("The state attorney shall appear in the circuit and county courts within his judicial circuit and prosecute or defend on behalf of the state all suits, applications, or motions, civil or criminal . . . ."); *Barnes v. State*, 743 So. 2d 1105, 1112 (Fla. 4th DCA 1999) ("[S]ection 27.02 plainly limits a State Attorney's authority to represent the state to criminal prosecutions in the county and circuit courts within the judicial circuit in which the State Attorney holds office.").

The general rule of venue for criminal cases is that "criminal prosecutions shall be tried in the county where the offense was committed." § 910.03(1), Fla. Stat. (1985). But "[i]f the acts constituting one offense are committed in two or more counties, the offender may be tried in any county in which any of the acts *occurred*."

§ 910.05, Fla. Stat. (1985) (emphasis added). These statutes tell us that, for prosecution purposes, an offense occurs where the acts constituting the offense are committed, and if the acts constituting the offense are committed in two counties, then the offense occurred in both. Obviously, if those two counties are in different circuits, then the offense occurred in both circuits. Thus, the permissible venues for prosecuting and trying a crime, which are based on where the crime occurred, determine which state attorneys have jurisdiction to prosecute the crime. If a crime occurs in two circuits, then it can be prosecuted and tried by the state attorney of either circuit. *See* § 910.05, Fla. Stat. (1985).

We are reminded here that the OSP's prosecutorial jurisdiction is always concurrent with the jurisdiction of the circuits' state attorneys. *See* Art. IV, § 4(b), Fla. Const. ("The statewide prosecutor shall have concurrent jurisdiction with the state attorneys to prosecute . . . ."); § 16.56(3), Fla. Stat. (1985) ("The statewide prosecutor may [exercise listed powers] and exercise such other powers as by law are granted to state attorneys."). And nothing in the text of the OSP Clause or OSP Statute creates new crimes or alters the venue statutes for purposes of the OSP's concurrent prosecutorial jurisdiction. Thus, the OSP may elect to prosecute a crime meeting its jurisdictional conditions in any circuit where the circuit's state attorney could prosecute it, and may not prosecute a crime in a circuit where no state attorney has authority to prosecute it. Given this significance of where a crime occurs for

purposes of determining the *limits* of the OSP's concurrent prosecutorial jurisdiction, the same where-a-crime-occurs concepts, in our view, are equally applicable in determining the *conditions* of the OSP's prosecutorial jurisdiction.

In accordance with the plain meaning of "occur" as used in the OSP Clause and OSP Statute, as illuminated by the criminal venue statutes determining prosecutorial jurisdiction, a crime occurs where the acts constituting the offense are committed, and if the acts constituting the offense are committed in two or more circuits, then the crime occurred in all of them.[5]

2. When a crime is part of a related transaction

Having established that a crime occurs where the acts constituting the crime are committed, the next question is, when is a crime "part of a related transaction?" Again, we turn to contemporary dictionary definitions, starting with the word "transact," which meant, in its most modern, ordinary sense, "To carry through,

[5] In future cases with different facts, other criminal venue statutes may point to where a crime occurs for purposes of OSP jurisdiction, as may other considerations. *See*, *e.g.*, § 910.04 (principal liability) (*see* note 6, *infra*); § 910.13 (accessory after the fact); § 910.14 (kidnapping). *Compare also* Ch. 2007-143, § 2, Laws of Fla. (codified at § 16.56(1)(b), Fla. Stat. (2023)) (amending OSP Statute to provide that any of statute's enumerated crimes "facilitated by or connected to the use of the Internet. . . . is a crime occurring in every judicial circuit within the state"), *with* Ch. 2001-99, § 2, Laws of Fla. (codified at § 910.15(b), Fla. Stat. (2023)) (amending criminal venue statute for communication systems crimes to add, "For purposes of this section, if a communication is made by or made available through the use of the Internet, the communication was made in every county within the state").

perform (an action, etc.); to manage (an affair); now *esp*[*ecially*] to carry on, conduct, do (business)." *Transact*, *Oxford English Dictionary* (2d ed. 1989). The legal dictionary definition is similar: "To undertake negotiations; to carry on business; to have dealings . . . ." *Transact*, *Black's Law Dictionary* 1496 (6th ed. 1990). From there we consider the word "transaction," which ordinarily meant, "That which is or has been transacted; an affair in course of settlement or already settled; a piece of business . . . ." *Transaction*, *Oxford English Dictionary* (2d ed. 1989). And again, the legal dictionary definition is similar: "Act of transacting or conducting any business; between two or more persons; negotiation; that which is done; an affair. An act, agreement, or several acts or agreements between or among parties whereby a cause of action or alteration of legal rights occur." *Transaction*, *Black's Law Dictionary* 1496 (6th ed. 1990). *Black's* continues, "It must therefore consist of an act or agreement, or several acts or agreements having some connection with each other, in which more than one person is concerned . . . ." *Id.*

An essential sense of "transaction" emerging from these definitions is joint venture or undertaking—i.e., a business or other dealing involving two or more persons. We must next ask, to what must the "related transaction" be "related?" In context, the plain meaning of the OSP Clause is that the offense to be prosecuted by the OSP must occur "as part of" a joint undertaking of two or more persons "related" to the offense. Thus, the offense must be part of the joint undertaking, and there must

otherwise be some "conne[ct]ion, correspondence, or association" between the offense and the undertaking. *See Relation, Oxford English Dictionary* (2d ed. 1989); *Related*, *id.*; *Related*, *Black's Law Dictionary* (6th ed. 1990) ("Connected in some way; having relationship to or with something else . . . ."). So understood, the OSP's occurrence jurisdiction depends on a multi-circuit offense ("occurring" in multiple circuits) that is also part of a multi-person venture or undertaking connected to the offense ("part of a related transaction").[6]

D. Applying Occurrence Jurisdiction

Applying these standards to Washington's alleged crime of unauthorized voting, we must conclude the OSP had no jurisdiction to prosecute Washington because his offense occurred in only one circuit. The OSP charged Washington

[6] The venue statute covering principal liability provides an illustration of how the multi-circuit, multi-person conditions of OSP occurrence jurisdiction might be satisfied. Section 777.011, Florida Statutes (2023), provides that any person who "commits any criminal offense" and any person who "aids, abets, counsels, hires, or otherwise procures such offense to be committed" are both "principals in the first degree" who can be prosecuted for the offense, even if the aiding, abetting, or procuring principal "is not actually or constructively present at the commission of such offense" by the other principal. The venue statutes incorporate these concepts in section 910.04, which provides, "If a person in one county aids, abets, or procures the commission of an offense in another county, the person may be tried in either county." This suggests, though we do not decide in this case, that if a principal in one circuit aids, abets, or procures the commission of a crime by another principal in another circuit, the crime occurred in both circuits for purposes of prosecutorial jurisdiction, and the crime was part of a related transaction between the two principals.

under section 104.15, Florida Statutes, which provides, "Whoever, knowing he or she is not a qualified elector, willfully *votes* at any election is guilty of a felony of the third degree . . . ." (emphasis added). However we formulate the elements of this crime, there is only one act—voting. The rest of the elements comprise knowledge and intent. Thus, the sole act constituting Washington's alleged crime of unauthorized voting was his voting, and it occurred solely in Orange County. No act constituting the offense occurred in Leon County or anywhere else.

Because Washington's alleged offense occurred in only one circuit, we do not have to decide whether it was also part of a related transaction. *Cf. Carbajal v. State*, 75 So. 3d 258, 262 (Fla. 2011) ("Carbajal is correct that if his criminal activity in Florida actually occurred in only Lee County, Florida, the OSP was not authorized to prosecute charges arising from that conduct."). But saying what a related transaction *is*, above, helps us spot what it *isn't*, here. The State argues for a much broader interpretation of "related transaction" to support OSP jurisdiction. According to the State, "Washington's crime happened 'as part of' a multi-circuit related transaction: his scheme to vote illegally in the 2020 election." The "scheme" comprised Washington's illegally registering to vote and illegally voting, which the State deems a multi-circuit "related transaction" because his registration would not have been effective without the Department of State's verification of his registration information in the Second Circuit (Leon County).

The State's argument, however, rearranges the text of the OSP Clause and OSP Statute to make it mean something different from what it says. Instead of showing how Washington's charged offense of illegal voting occurred in multiple circuits *and* was part of a related transaction, the State combines Washington's single-circuit offense of illegal voting with the uncharged single-circuit offense of illegal voter registration, and adds the transmission of Washington's voter registration information by one government official in Orange County to another in Leon County, to compose a "related transaction" that occurred in multiple circuits. But a "related transaction" occurring in multiple circuits is not what the text of the OSP Clause or OSP Statute requires. Thus, whatever the effect of Washington's alleged illegal registration and the transmission of his information between government officials, those acts did not make the charged offense of illegal voting occur in multiple circuits.

The State relies heavily on the Fifth District's opinion in *King v. State*, 790 So. 2d 477 (Fla. 5th DCA 2001), to support its loose interpretation of the OSP's occurrence jurisdiction under the OSP Clause and OSP Statute. And to be sure, the *King* court's broad interpretation of the OSP provisions gives the State some support:

> Does it mean that the charged offense must actually have occurred in two or more judicial circuits *and* be part of a related transaction, or does it mean that an offense which is local in nature is to be considered as having roots in more than one judicial circuit if it is related to a criminal activity which involves or involved multiple judicial

> circuits? The policy behind both provisions seems to be to authorize the statewide prosecutor to pursue criminal enterprises that operate across judicial borders and to prosecute those related offenses, even otherwise local offenses, in any county in which the criminal enterprise operates or has operated.

790 So. 2d at 479. But the *King* court's expressly policy-driven approach does not square with the supremacy-of-text principle validated by the Florida Supreme Court in *Ham*. *See* 308 So. 3d at 946. Even in the Fifth District, the approach does not appear to remain viable post-*Ham*. *See, e.g.*, *Buechel v. Shim*, 340 So. 3d 507, 511 (Fla. 5th DCA 2021) ("Any public policy considerations raised by [the statute] are for the legislative branch, not a court." (citing Art. II, § 3, Fla. Const.)), *opinion approved of*, 339 So. 3d 315 (Fla. 2022) ("[W]hen determining the meaning of a statute, courts do not reach policy considerations where the statute's meaning is clear."). *Ham* requires us to stop after answering the *King* court's first question—yes, the occurrence jurisdiction text of the OSP Clause and OSP Statute "[d]oes . . . mean that the charged offense must actually have occurred in two or more judicial circuits *and* be part of a related transaction." *King*, 790 So. 2d at 479.

E. Interpreting and Applying Effects Jurisdiction

Having agreed with the trial court's dismissal of the information against Washington for lack of occurrence jurisdiction, we are left to decide whether we can nonetheless reverse and remand for the OSP to amend the information with the

OSP's expanded effects jurisdiction, which became effective after the trial court's dismissal. For the reasons below, we cannot.

On February 15, 2023—two days after dismissal of the information against Washington—an amendment to the OSP Statute became effective, giving election-related crimes their own provision in the statute and expanding the OSP's statutory authority to prosecute them. Ch. 2023-2, § 1, Laws of Fla. (codified at § 16.56(1)(c), Fla. Stat. (2023)). The new provision enumerates several election-related crimes within the OSP's statutory authority, including the authority to "[i]nvestigate and prosecute any crime involving . . . [v]oting in an election in which a candidate for a federal or state office is on the ballot . . . ." § 16.56(1)(c), Fla. Stat. (2023). Prior to the amendment, the OSP's statutory jurisdiction was limited to enumerated crimes occurring in multiple circuits as part of a related transaction (mirroring the OSP Clause's language) or connected with a criminal conspiracy affecting multiple circuits. § 16.56(1)(a), Fla. Stat. (2022). As amended, the conspiracy condition is removed for the newly enumerated election crimes, so the OSP can prosecute them if they merely affect multiple circuits. § 16.56(1)(c), Fla. Stat. (2023). Thus, for these election crimes, the Legislature has expanded the OSP's statutory effects jurisdiction to the limit of that allowed by the constitutional OSP Clause.[7] Art. IV, § 4(b), Fla.

[7] The 2023 amendment's expansion of the OSP's statutory effects jurisdiction to the constitutional limit appears to swallow the alternative multi-circuit occurrence

Const. ("when any such offense is affecting or has affected two or more judicial circuits as provided by general law").

The OSP did not ask the trial court for leave to amend the information or otherwise submit the issue of the OSP's newly expanded jurisdiction to the trial court for decision prior to appealing the dismissal order to this court. Thus, the State did not preserve the issue for our review. *See* § 924.051(1)(b), (3), Fla. Stat. (2023); *Sparre v. State*, 289 So. 3d 839, 848 (Fla. 2019) ("To preserve an issue for appellate review, a litigant must present the issue to the trial court in a timely, specific manner and obtain a ruling.").

True, the OSP could not have raised its amended effects jurisdiction in the trial court prior to dismissal of the information because the amendment did not take effect until two days later. Thus, the State is correct that filing a motion for rehearing after the dismissal would have been inappropriate under Florida Rule of Criminal Procedure 3.192 ("A motion for rehearing . . . shall not present issues not previously raised in the proceeding.") But the rule expressly does not prohibit a motion for

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limitation, which facially still applies to the new election crimes provision. *See* § 16.56(1)(c), Fla. Stat. (2023) ("The office shall have such power only when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is affecting, or has affected, two or more judicial circuits.") As noted above (*see* note 4, *supra*), offenses affecting multiple circuits—i.e., the new limit—necessarily include offenses occurring in multiple circuits.

reconsideration: "Nothing in this rule precludes the trial court from exercising its inherent authority to reconsider a ruling while the court has jurisdiction of the case." *Id.* Thus, the OSP could have raised its newly expanded effects jurisdiction in the trial court by motion for reconsideration, or leave to amend, before its fifteen-day appeal deadline. *See* Fla. R. App. P. 9.140(c)(2). And if the trial court had not ruled on the motion before the appeal deadline, the OSP could have appealed the dismissal order and then moved this Court to relinquish jurisdiction long enough for the trial court to rule. *See* Fla. R. App. P. 9.600(b). The OSP could have preserved the issue, and its failure to do so precludes our review.

IV. Conflicts

A. Conflict with *State v. Miller*

As we said at the beginning, our holding conflicts with the Third District's 2-1 decision in *State v. Miller*, 394 So. 3d 164 (Fla. 3d DCA 2024), the facts of which are nearly identical to the present case. In *Miller*, the Third District reversed the dismissal of an OSP information charging Ronald Lee Miller with one count of illegal voter registration and one count of illegal voting. *Id.* at 166. The OSP and Miller stipulated that Miller registered to vote and voted in Miami-Dade County, in the Eleventh Judicial Circuit, and that Miller's voter registration information and votes were transmitted electronically to Leon County, in the Second Judicial Circuit. *Id.* at 166–67. The OSP also stipulated that Miller himself never entered the Second

Circuit or transmitted any information to the Second Circuit and acknowledged Miller's registration and voting did not involve a conspiracy. *Id.* at 167. The trial court granted Miller's motion to dismiss the information, ruling the OSP lacked jurisdiction because Miller's alleged acts only occurred in Miami-Dade County. *Id.*

On appeal, the Third District considered whether the alleged registration and voting crimes were "offenses which occurred in two or more judicial circuits as part of a related transaction," *id.* (cleaned up), the conditions triggering what we have labeled occurrence jurisdiction. (*See* pt. III.B, *supra*.) The *Miller* majority concluded it did not matter that Miller only acted in one county because the transmissions of Miller's voter registration and voting information between Miami-Dade County and Leon County were "transactions that occurred in multiple jurisdictions [that] were not only related, but . . . were also required acts before Miller got his voter registration and proceeded to vote." *Id.* at 169. The majority also concluded, "It makes no difference based on the statutory language whether Miller himself communicated or affirmatively acted in concert with anyone outside of Miami-Dade County." *Id.* at 168–69. "In other words, while Miller himself acted only in one jurisdiction, the chain of events that led to the consummation of the crime necessarily occurred in two or more jurisdictions." *Id.* at 169 n.4. Ultimately, the majority reasoned, because the processing of voter registrations and votes by local and state officials was both reasonably foreseeable by Miller and required for him to vote, the

chain of events met the definition of an offense occurring in two or more judicial circuits as part of a related transaction. *Id.* at 170 & n.6.

In our view, the *Miller* majority incorrectly treated Miller's alleged offenses as having occurred in multiple circuits based solely on the fact that his registration and voting information was transmitted between government officials in two circuits. The *Miller* majority mistakenly concluded Miller's alleged offenses occurred in multiple circuits because "transactions" between government officials, subsequent to Miller's acts of registering and voting, occurred in multiple circuits. As we show above, an offense occurs for prosecution purposes where the acts constituting the offense are committed. (*See* pt. III.C.1, *supra*.) Thus, we agree with Judge Scales, the dissenter in *Miller*, that "based on the statute's plain text, for the OSP to have statutory prosecutorial authority, the voting offense must *both* 'occur in two or more judicial circuits' *and* the occurrences must be 'part of a related transaction.'" *Id.* at 171 (Scales, J., dissenting). "Put another way, unless the 'offense' has 'occurred in two or more judicial circuits,' the OSP has no authority, and we do not reach the issue of whether the occurrences in multiple judicial circuits were a part of a related transaction." *Id.*

We also disagree with the *Miller* court's grafting onto Miller's alleged offenses the subsequent and independent multi-circuit acts of government officials, based on the conclusion that the subsequent acts were reasonably foreseeable by

Miller. *Id.* at 169–70. In support of this imputation, the majority cited *Pereira v. United States*, 347 U.S. 1, 8–9 (1954). *Id.* at 169. In *Pereira*, the Supreme Court upheld a mail fraud conviction where mailing a fraudulently obtained check was an element of the crime. *Pereira*, 347 U.S. at 8–9. The Court explained that, even though the defendant did not mail the check himself, he caused the mailing of the check by the bank where he deposited it because he knew or could reasonably foresee that the bank would mail the check in the usual course of business. *Id.* In *Miller*, however, the defendant completed all elements of the charged crimes—falsely affirming a voter registration and willfully voting without authorization—in one circuit. There was no additional element of either crime that Miller could cause to be completed by government officials, whether knowingly or with reasonable foresight. Thus, *Pereira* does not support counting as Miller's offenses the subsequent acts of government officials that did not constitute any element of the charged offenses.

We certify conflict with *Miller* to the extent it held the OSP had jurisdiction to prosecute, as an offense occurring in multiple circuits as part of a related transaction, Miller's allegedly illegal voting in one judicial circuit followed by a government official's transmission of Miller's voting information to a government official in another circuit.

B. Conflict with *State v. Hubbard*

Our second conflict case is the Fourth District's 2-1 decision in *State v. Hubbard*, 392 So. 3d 1067 (Fla. 4th DCA 2024), *review granted*, No. SC2024-1522, 2025 WL 79096 (Fla. Jan. 13, 2025), reversing the dismissal of illegal registration and voting charges against Terry Hubbard. The *Hubbard* majority concluded the OSP had both occurrence and newly expanded effects jurisdiction (as we have labeled them) to prosecute Hubbard's alleged voting crimes. As in *Miller*, the OSP charged Hubbard "with providing false affirmation in connection with an application for voter registration in violation of section 104.011(1), and voting by an unqualified elector in violation of section 104.15." 392 So. 3d at 1069. As in *Miller* and the instant case, the OSP stipulated that Hubbard filed his false voter registration and cast his unauthorized vote in Broward County, county officials subsequently transmitted Hubbard's registration and voting information to state officials in Leon County, Hubbard did not enter or transmit any information to Leon County, and Hubbard's registration and voting were not part of a conspiracy. *Id.* at 1069–70. Also as in *Miller* and the instant case, the trial court dismissed the information against Hubbard because "the 'OSP does not have jurisdiction to investigate and prosecute the Defendant as part of a related transaction in two or more judicial circuits.'" *Id.* at 1070.

On appeal, the Fourth District first decided that the OSP's expanded statutory effects jurisdiction under the 2023 OSP Statute amendment applied to the Hubbard prosecution and appeal because the amendment was procedural, not substantive. *Id.* at 1072. Then, in deciding whether the OSP had either occurrence or effects jurisdiction (as we have labeled them) to prosecute Hubbard, the Fourth District appeared to hold that the OSP had both. *Id.* at 1072–73. After recounting that "Hubbard submitted his voter application in Broward County, with knowledge that the application would be sent to the Department of State in Leon County for verification," and "then voted in Broward County in an election that included candidates for state and federal offices," which "vote was submitted to Leon County," the *Hubbard* court concluded, "Not only did these actions occur in both Broward and Leon County, but voter fraud impacts the public's confidence in elections throughout the state," and, "Naturally, the result of those elections [for statewide and federal offices] impacts voters throughout the state." *Id.* at 1073. Accordingly, the court held that "submitting a fraudulent voter registration in Broward County is an act which requires subsequent involvement of the Secretary of State in Leon County. So too does voting in an election in Broward County. As a result, the OSP had the authority to charge Hubbard with these crimes." *Id.*

To the extent the *Hubbard* court held the OSP had occurrence jurisdiction to prosecute Hubbard for casting an illegal vote in Broward County based on Broward

County officials' subsequent transmission of his voting information to state officials in Leon County, we disagree with the holding and certify conflict for the same reasons we disagreed with *Miller*. (*See* pt. IV.A, *supra*.) Here, we agree with the conclusion of Judge May in her *Hubbard* dissent: "That, short and simple, is a single-circuit offense. To view it otherwise, as the OSP requests, is to expand the OSP's reach beyond its constitutional and statutory limits." 392 So. 3d at 1075 (May, J., dissenting). We do not certify conflict, however, with the *Hubbard* court's holding that the OSP had effects jurisdiction to prosecute Hubbard under the 2023 OSP Statute amendment because the OSP did not preserve that issue in the present case.[8] (*See* pt. III.E, *supra*.)

V. Conclusion

The trial court correctly dismissed the information against Washington because the OSP did not have authority, under the OSP Clause or OSP Statute, to prosecute Washington for the alleged crime of unauthorized voting that occurred in

[8] In her *Hubbard* dissent, Judge May argues that the 2023 OSP Statute amendment should not have applied to Hubbard because the OSP did not raise the amendment in the trial court prior to dismissal of the information, though on appeal the State unsuccessfully asked the Fourth District to relinquish jurisdiction to allow the OSP to raise the issue in the trial court. 392 So. 3d at 1073–74 & n.2 (May, J., dissenting). But the *Hubbard* majority did not expressly rule on the preservation issue or otherwise detail the procedural facts that would inform such a ruling, so we are unable to determine whether our decision on preservation is in conflict.

only one judicial circuit. On this point, we certify direct conflict with *Miller* and *Hubbard*.

AFFIRMED. CONFLICT CERTIFIED.

WOZNIAK, J., and BALLOU, T.S., Associate Judge, concur.

James Uthmeier, Attorney General, and Jeffrey Paul DeSousa, Chief Deputy Solicitor General, and Alison E. Preston, Deputy Solicitor General, Tallahassee, for Appellant.

Roger L. Weeden, Orlando, for Appellee.

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Alejandro Moreno, Miami, Amicus Curiae for The Association of Prosecuting Attorneys i/s/o Appellee.

Freddy Funes, of Toth Funes P.A., Miami, and Quinn Yeargain, of Widener University Commonwealth Law School, Harrisburg, Pennsylvania, and James C. Dugan, Pro Hac Vice, of Willkie Farr & Gallagher, New York, New York, Amicus Curiae for the State Constitutional Law Scholars G. Alan Tarr, Robert F. Williams, and Quinn Yeargain i/s/o Appellee.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF TIMELY FILED

No. 20-1800

IN THE

Supreme Court of the United States

HAROLD SHURTLEFF, ET AL.,

Petitioners,

V.

CITY OF BOSTON, MASSACHUSETTS, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF FOR THE PETITIONERS

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QUESTIONS PRESENTED

"[T]he [City] seeks to accommodate *all applicants* seeking to take advantage of the City of Boston's *public forums*."[1]

The City of Boston designated its City Hall Flag Poles as one of several "public forums" for "all applicants," and encourages private groups to hold flag raising events at the Flag Poles "to foster diversity and build and strengthen connections among Boston's many communities." Over the course of twelve years prior to the denial of Camp Constitution's application that gave rise to this litigation, the City approved 284 such flag raisings by private organizations, with zero denials, allowing them to temporarily raise their flags on the City Hall Flag Poles for the limited duration of their events. But when Camp Constitution applied to raise a flag during its flag raising event to celebrate the civic contributions of Boston's Christian community, during the week of the national recognition of Constitution Day and Citizenship Day, the City denied the request without viewing the proposed flag solely because it was called "Christian" *on the application*.

The questions presented are:

1. Whether the First Circuit's failure to apply this Court's forum doctrine to the First Amendment challenge of a private religious organization that was denied access to briefly display its flag on a city

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[1] *See* p. 7, *infra*.

flagpole, pursuant to a city practice and policy expressly designating the flagpole a public forum open to all applicants, with hundreds of approvals and no denials, conflicts with this Court's precedents holding that speech restrictions based on religious viewpoint or content violate the First Amendment or are otherwise subject to strict scrutiny and that the Establishment Clause is not a defense to censorship of private speech in a public forum open to all applicants.

2. Whether the First Circuit's classifying as government speech the brief display of a private religious organization's flag on a city flagpole, pursuant to a city practice and policy expressly designating the flagpole a public forum open to all applicants, with hundreds of approvals and no denials, unconstitutionally expands the government speech doctrine, in direct conflict with this Court's decisions in *Matal v. Tam*, 137 S. Ct. 1744 (2017), *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200 (2015), and *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009).

3. Whether the First Circuit's finding that the requirement for perfunctory city approval of a proposed brief display of a private religious organization's flag on a city flagpole, pursuant to a city practice and policy expressly designating the flagpole a public forum open to all applicants with hundreds of approvals and no denials, transforms the religious organization's private speech into government speech, conflicts with this Court's precedent in *Matal v. Tam*, 137 S. Ct. 1744 (2017), and Circuit Court precedents in *New Hope Family*

Servs., Inc. v. Poole, 966 F.3d 145 (2d Cir. 2020), *Wandering Dago, Inc. v. Destito*, 879 F.3d 20 (2d Cir. 2018), *Eagle Point Educ. Ass'n/SOBC/OEA v. Jackson Cnty. Sch. Dist. No. 9*, 880 F.3d 1097 (9th Cir. 2018), and *Robb v. Hungerbeeler*, 370 F.3d 735 (8th Cir. 2004).

PARTIES

Petitioners, Harold Shurtleff and Camp Constitution, were the plaintiffs–appellants in the court below. Respondents, the City of Boston and Robert Melvin, in his official capacity as Commissioner of the City of Boston Property Management Department, were the defendants–appellees in the court below.[2]

CORPORATE DISCLOSURE STATEMENT

Petitioner Shurtleff is an individual, and Petitioner Camp Constitution is an unincorporated association and public charitable trust. Neither Petitioner has a parent corporation or publicly held stock owner.

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[2] Petitioners originally sued Gregory T. Rooney, in his official capacity as Commissioner of Property Management, but Respondent Robert Melvin is Rooney's successor in office and automatically substituted for Rooney herein. *See* S. Ct. R. 35.3.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Other Authorities

OPINIONS AND ORDERS BELOW

The First Circuit's opinion is reported at 986 F.3d 78 and reprinted in the Appendix to the Petition for Writ of Certiorari ("Petition Appendix") at 1a–40a. The district court's order has not yet been published in the Federal Supplement, but is reported at 2020 WL 555248 and reprinted at Pet. App. 41a–59a. The First Circuit's prior opinion is reported at 928 F.3d 166 and reprinted at Pet. App. 60a–82a. Prior orders of the district court are reported at 385 F. Supp. 3d 109 and 337 F. Supp. 3d 66, and reprinted at Pet. App. 83a–102a and Pet. App. 103a–127a.

JURISDICTION

The First Circuit entered its opinion and judgment on January 22, 2021. The Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides, in relevant part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech . . . ." U.S. Const. amend. I.

The Fourteenth Amendment to the United States Constitution provides, in relevant part, that "No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor

deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV.

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

A. Camp Constitution's Flag Raising Request.

Petitioner Camp Constitution is an all-volunteer association formed in 2009, offering classes and workshops on subjects such as U.S. History, the U.S. Constitution, and current events. (Pet. App. 129a.) Petitioner Harold Shurtleff is the founder and Director of Camp Constitution. (*Id.*) Camp Constitution's mission is to enhance understanding of the country's Judeo-Christian heritage, the American heritage of courage and ingenuity, the genius of the United States Constitution, and free enterprise. (*Id.*)

In connection with the September 17, 2017 observance of Constitution Day and Citizenship Day, Camp Constitution[3] desired to commemorate the historical civic and social contributions of the Christian community to the City of Boston, the Commonwealth of Massachusetts, religious tolerance, the Rule of Law, and the U.S. Constitution, by hosting an event at Boston's City Hall Plaza to feature "short speeches by some local

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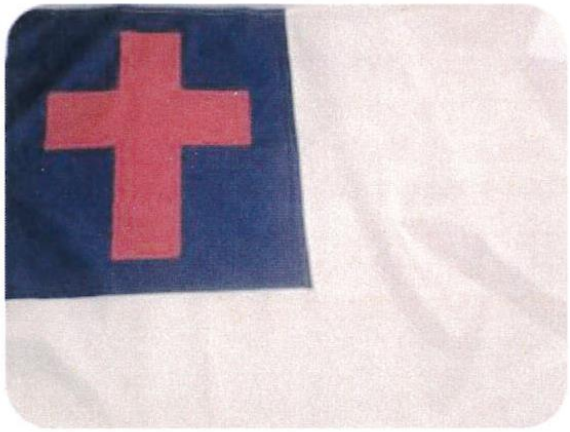
[3] Unless otherwise indicated, Petitioners are referred to collectively herein as "Camp Constitution," and Respondents as the "City" or "Boston."

clergy focusing on Boston's history" and "to raise the Christian Flag" on one of Boston's City Hall Flag Poles. (Pet. App. 130a–132a.) On July 28, 2017, Shurtleff telephoned and e-mailed Lisa Menino,[4] the City's senior special events official, seeking approval for the flag raising event. (Pet. App. 131a–132a.)

Shurtleff's e-mail included a picture of the proposed flag:

This is the flag:



Hal Shurtleff
Director, Camp Constitution

(*Id.*) Menino requested approval from Gregory T. Rooney, Commissioner of the City of Boston

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[4] Lisa Lamberti's name was legally changed to Menino prior to July 2017. (Pet. App. 131a n.2.)

Property Management Department,[5] which she expected to receive. (Pet. App. 132a, 151a.)

B. The City's Flag Raising Approvals Under Its Policies and Practices Designating the City Hall Flag Poles a Public Forum.

The City has designated some its properties to be available to private persons and groups for events, including Faneuil Hall, Samuel Adams Park, City Hall Plaza, City Hall Lobby, City Hall Flag Poles, and North Stage. (Pet. App. 132a–133a.) The City Hall Flag Poles comprise three flag poles on City Hall Plaza, near the entrance to City Hall, as shown here:

(Pet. App. 141a, 161a.) The City generally raises the American Flag and the POW/MIA flag on one pole,

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[5] Although succeeded in office by Respondent Melvin (*see* note 2, *supra*), Rooney was Commissioner of Property Management at all material times. (Pet. App. 130a.)

the Commonwealth of Massachusetts flag on the second pole, and the City of Boston flag on the third. (Pet. App. 141a–142a.) But the City regularly allows private groups to raise their own flags on the third flagpole in connection with their flag raising events. (Pet. App. 142a–143a.) The City of Boston website states the City's goals for flag raising events:

> *We commemorate flags from **many** countries and **communities** at Boston City Hall Plaza during the year.*
>
> We want to create an environment in the City where **everyone feels included**, and is treated with respect. We also want to raise awareness in Greater Boston and beyond about the many countries and cultures around the world. Our goal is to **foster diversity and build and strengthen connections among Boston's many communities**.

(Pet. App. 143a (bold emphasis added).)

The City posts on its website written policies and an application process for use of its public fora. (Pet. App. 133a–135a.) The online policies provide, in part: "You need our permission if you want to hold a public event at certain properties near City Hall. These locations include . . . the City Hall Flag Poles . . . ." (*Id.*) The policies also provide content-neutral reasons for denying an application, including incompleteness, capacity to contract, unpaid debt to the City, illegality, danger to health or safety, and misrepresentations or prior malfeasance. (*Id.*)

The website allows completion of an application online, or by fax or mail using a printable application form titled, "Property and Construction Management Department City Hall and Faneuil Hall Event Application." (Pet. App. 135a–136a.) The printable application identifies the City Hall Flag Poles as one of several public forum options:

Property and Construction Management Department
City Hall and Faneuil Hall Event Application
Boston City Hall, Rm. 811
Boston MA, 02201
Phone: 617-635-4100 Fax: 617-635 -3250

Name of Contact Person:_____

Billing Address: _____

Telephone Number: (_____)-_____

E-Mail Address: _____

Name of Event:_____

Event Date (s):_____

Event Start Time:_____ **a.m./ p.m. Event End Time:**_____ **a.m./ p.m.**

Set-up Date(s): _____

Set-up Start Time:_____ **a.m./ p.m. Break-down Time:**_____ **a.m./ p.m.**

Location:

Faneuil Hall ☐	**Samuel Adams Park ☐**	**City Hall Plaza ☐**
City Hall Lobby ☐	**City Hall Flag Poles ☐**	**North Stage☐**

(*Id.*)

The application also incorporates "Guidelines for any Person or Group Requesting the Use of Faneuil Hall, Sam Adams Park, City Hall Plaza, City Hall Lobby, North Stage or the City Hall Flag Poles," stating that the "application applies to any public event proposed to take place at [*inter* alia] the City Hall Flag Poles." (Pet. App. 136a (emphasis added).) The guidelines further provide, in part:

> Where possible, the Office of Property and Construction Management seeks to accommodate **all applicants** seeking to take advantage of the City of Boston's **public forums**. To maximize efficient use of these **forums** and ensure the safety and convenience of the applicants and the general public, access to these **forums** must be regulated.

(Pet. App. 136a–140a (emphasis added).) The form promises a response within ten days and provides eleven possible reasons for denial of a request (similar to the online policies), such as schedule conflict, illegality, danger to health or safety, misrepresentations or prior malfeasance, and various procedural defects. (*Id.*; *see* Pet. App. 133a–135a.) Prior to October 2018, the City had no other written policies for use of the City's public forums. (Pet. App. 140a.)

The City's Property Management Department receives and processes all applications for public events on City properties, including flag raising events at the City Hall Flag Poles, through the same system. (Pet. App. 140a.) The Commissioner has

final say over approvals for all events. (Pet. App. 141a.)

For the twelve years preceding Camp Constitution's request, from June 2005 through June 2017, the City approved **284 flag raising events, with no record of a denial.** (Pet. App. 142a–143a, 149a–150a, 173a–190a.) During the one-year period immediately preceding Camp Constitution's request the City approved **39 private flag raisings—averaging more than three per month**. (Pet. App. 142a–143a.)

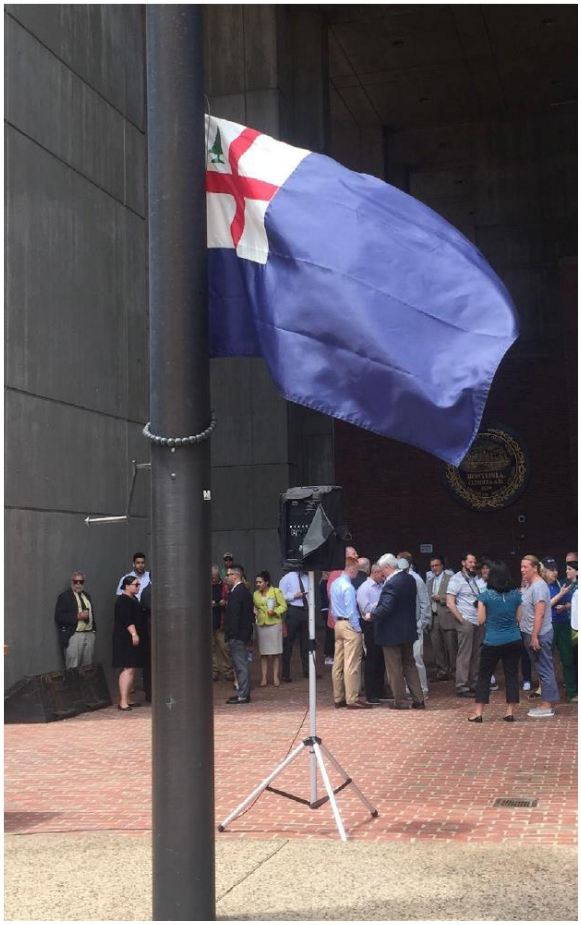
Approved flag raisings have included ethnic and other cultural celebrations, the arrival of foreign dignitaries, the commemoration of independence or other historic events in other countries, and the celebration of certain causes such as "gay pride." (Pet. App. 142a–143a, 173a–187a.) And, while it would be illegal for the City itself to "display[] the flag or emblem of a foreign country upon the outside of a . . . city . . . building ," Mass. Gen. Laws ch. 264, § 8, the City has approved private flag raisings for celebrations of the countries of Albania, Brazil, Ethiopia, Italy, Panama, Peru, Portugal, Puerto Rico, Mexico, as well as China, Cuba, and Turkey, and for the flags of the private Chinese Progressive Association, National Juneteenth Observance Foundation, Bunker Hill Association, and Boston Pride. (*Id.*)

The City has allowed flags on the City Hall Flag Poles that contain religious language and symbols. (Pet. App. 143a–146a.) For example, the City of Boston flag, which is usually raised on one of the

Flag Poles, depicts the City Seal, containing the inscription "SICUT PATRIBUS, SIT DEUS NOBIS" which means "God be with us as he was with our fathers":

(Pet. App. 143a–144a.) The Turkish flag, which the City has approved at least thirteen times, in 2005, 2006, and 2009–2019, depicts the star and crescent of the Islamic Ottoman Empire:

(Pet. App. 144a–145a.) And for at least three years (2016–2018) the City allowed the Bunker Hill Association to raise the Bunker Hill Flag to commemorate the Revolutionary War Battle of Bunker Hill and Bunker Hill Day. (Pet. App. 145a–146a.) The Bunker Hill Flag, which is virtually identical to the "Christian flag" except for the reverse color scheme and the pine tree, contains a red cross against a white field on a blue flag, as shown here:

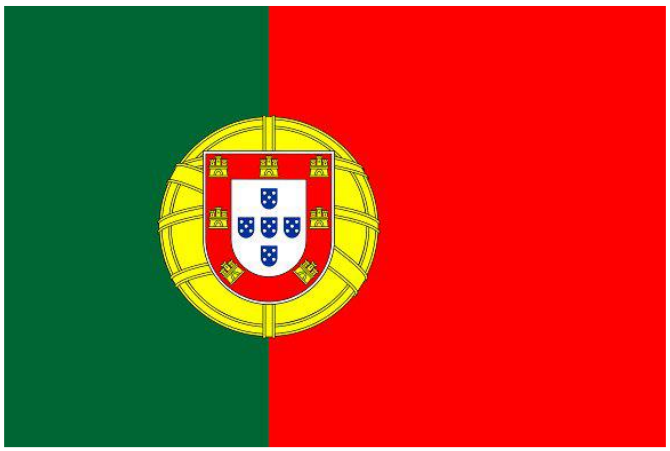


(*Id.*)

The City partnered with a promoter to schedule events on City Hall Plaza, including events approved through the Department of Property Management application process. (Pet. App. 146a–147a.) The schedules for flag raisings and other events were featured on the partner website. (*Id.*) For example, Commissioner Rooney approved a June 2017 Portuguese Flag Raising Ceremony, involving the raising of the Portuguese flag on the City Hall Flag Poles. (Pet. App. 147a–149a.) The partner website posted the organizer's descriptions of the flag's distinctively religious imagery and the ceremony:

> The dots inside the blue shields represent the five wounds of Christ when crucified. Counting the dots and doubling those five in the center, there are thirty dots that represents the coins Judas received for having betrayed Christ. . . .
>
> . . . .
>
> Come and join us in honoring the flag of Portugal in what represents the official recognition of the Portuguese community's presence and importance in the State of Massachusetts. Your presence is of key importance to pay this solemn homage to Portugal and the Portuguese emigrant community with grandeur.

(*Id.*) As described above, the Portuguese flag appears as follows:



(*Id.*)

At the time of Camp Constitution's request in July 2017, the City had no specific written policies for handling flag raising applications, and Rooney had never denied a flag raising application. (Pet. App. 149a–150a.) The Department "never really had a lot of discussion prior to [Camp Constitution's] request related to flag raisings in any way." (*Id.*) According to Rooney, "[f]or the most part, [the City] will allow any event" to take place on City Hall Plaza. (Pet. App. 149a.)

It was Rooney's usual practice not to see a proposed flag before approving a flag raising event, and Rooney never requested to review or change a flag in connection with approval. (Pet. App. 150a.) The City does not require any applicant to give possession or ownership of its flag to the City as a condition for approval. (*Id.*) Rooney has no

knowledge of any person believing Boston has endorsed any organization or subject matter as a result of approving a flag raising event. (*Id.*)

C. The City's Denial of Camp Constitution's Application to Use the City Hall Flag Poles Forum.

Rooney was "concerned about" Camp Constitution's request because he considered it "related to a religious flag." (Pet. App. 150a–151a.) Rooney "didn't know whether or not it was appropriate to put a religious flag on a public building, so [he] wanted to inquire a little bit more." (*Id.*) After "a couple of weeks" he consulted with the City's law department for guidance "[d]ue to the fact that the flag in question *was described as* a religious flag." (Pet. App. 151a (emphasis added).)

In the meantime, Menino updated Shurtleff, "I am just waiting for the approval from my bosses I just sent them another e-mail." (*Id.*) Three weeks after Camp Constitution's request, Shurtleff sent another e-mail inquiry, prompting Menino to e-mail Rooney, "has there been any decision made on Christian flag raising[?]" (*Id.*) Rooney replied, "The Law Department is reviewing our flag raising protocols. Do we have a complete list of organizations that have held flag raisings on the Plaza in recent years?" (*Id.*)

Rooney ultimately decided to deny Camp Constitution's request because "we didn't have a past practice of allowing religious flags, and we weren't going to allow this flag raising." (Pet. App.

152a.) On August 25, 2017, Rooney e-mailed Menino, "Please let them know that the request has been denied. Thanks." (*Id.*) Rooney had no intention of providing an explanation for the denial to Menino or Camp Constitution. (*Id.*) Rooney did not create any record memorializing his reasons for denial. (*Id.*)

On September 5, 2017—more than five weeks after Camp Constitution's request—Menino e-mailed Shurtleff that the request was denied. (*Id.*) Shurtleff requested a reason, prompting Rooney to advise the Boston Mayor's press office and other officials that he would prefer the Law Department, not Menino, to draft a response to Camp Constitution's request for a reason. (Pet. App. 152a–153a.)

On September 8, 2017, Rooney e-mailed Shurtleff an explanation for the denial:

> I am writing to you in response to your inquiry as to the reason for denying your request to raise the "Christian Flag". The City of Boston maintains a policy and practice of respectfully refraining from flying non-secular flags on the City Hall flagpoles. This policy and practice is consistent with well-established First Amendment jurisprudence prohibiting a local government from "respecting an establishment of religion." This policy and practice is also consistent with City's legal authority to choose how a limited

> government resource, like the City Hall flagpoles, is used.
>
> According to the above policy and practice, the City of Boston has respectfully denied the request of Camp Constitution to fly on a City Hall flagpole the "Christian" flag, as it is identified in the request, which displays a red Latin cross against a blue square bordered on three sides by a white field.
>
> The City would be willing to consider a request to fly a non-religious flag, should your organization elect to offer one.

(Pet. App. 153–154a.)

Where Rooney referred to Boston's "policy and practice of respectfully refraining from flying non-secular flags on the City Hall flagpoles," he "was referring to past practice" because "up to this point, there had not been any formal written policy regarding flying non-secular flags on the flagpoles." (Pet. App. 154a–155a.) By "non-secular" Rooney meant "a religious flag that was promoting a specific religion." (*Id.*) Rooney did not mean he "had determined that the city had declined to fly non-secular or religious flags in the past," but meant that he "had no record of ever having one had been approved." (*Id.*) Rooney did not work from any formal definition of "non-secular" or "religious" when he denied Camp Constitution's request. (Pet. App. 155a.)

Rooney admitted that excluding "religious" flags serves no goal or purpose of the City in allowing flag raising events on the City Hall Flag Poles, except "concern for the so-called separation of church and state or the constitution's establishment clause." (Pet. App. 157a.) Rooney was concerned Camp Constitution's flag "was a flag that was promoting a specific religion" and "didn't think that it was in the city's best interest to necessarily have that flag flying above City Hall." His concern was not with the flag *itself*, but that on the application it was *called* a "Christian flag." Rooney would not have been concerned if the same flag was called "the Camp Constitution flag" because then "it would have been the flag of the organization and not a religious symbol." (Pet. App. 155a.)

Rooney's concern with allowing the Christian flag was not based on the visual appearance of the flag ("a red cross on a blue field on a white flag"). If Camp Constitution had not called it the "Christian" flag on the application, Rooney would have treated it no differently from the Bunker Hill flag ("a red cross on a white field on a blue flag") which he had approved. (Pet. App. 156a.) Rooney did not consider the Bunker Hill flag a "religious" flag, despite its depiction of a red cross, because "it's to commemorate the Battle of Bunker Hill." (*Id.*) If the Bunker Hill flag had been presented to Rooney as "the Christian flag or a Christian flag, then [Rooney] would . . . have had the same concerns that [he] had about Camp Constitution's flag." (*Id.*)

Rooney would not have been concerned about approving the Portuguese flag raising, had he

known about the religious content of its flag, because Portugal is a "sovereign nation." (Pet. App. 156a.) Rooney, however, would weigh and think differently of a request to raise the Vatican flag "because of the fact that although it's a sovereign nation, it's also the Catholic church . . . ."[6] (Pet. App. 156a–157a.) Rooney does not know whether the text of the Boston City Seal on the City's flag, translated, "God be with us as he was with our fathers," is a religious statement. (Pet. App. 160a.)

On September 13, 2017, Shurtleff submitted to the City a new, written City Hall and Faneuil Hall Event Application, requesting use of City Hall Plaza and the City Hall Flag Poles for the event "Camp Constitution Christian Flag Raising," and proposing dates of October 19, 2017 or October 26, 2017. (Pet. App. 157a–158a.) Shurtleff described the event as follows:

> Celebrate and recognize the contributions Boston's Christian community has made to our city's cultural diversity, intellectual capital and economic growth. The Christian flag is an important symbol of our country's Judeo-Christian heritage. During the flag raising at the City Hall Plaza, Boston recognizes our Nation's

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[6] The City previously had allowed the Vatican flag to be raised over Boston Common, alongside the United States and Massachusetts flags, in connection with the 1979 visit to Boston of Pope John Paul II, four years prior to diplomatic recognition of the Vatican by the United States. (Pet. App. 156a–157a.)

> heritage and the civic accomplishments and social contributions of the Christian community to the Commonwealth of Massachusetts, religious tolerance, the Rule of Law, and the U.S. Constitution, which together gave our Nation an unprecedented history of growth and prosperity. The event program includes a speech by Rev. Steve Craft . . . on the need for racial reconciliation, a speech by Pastor William Levi, formerly of the Sudan, on the blessings of religious freedom in the U.S. and an historical overview of Boston by Hal Shurtleff . . . .

(*Id.*)

On September 14, Camp Constitution's counsel sent a letter to the Boston Mayor, with copies to Rooney and others, enclosing the new Application and requesting approval on or before September 27, 2017. (Pet. App. 158a.) The City did not respond to either the new application or counsel's letter. (*Id.*) Only Rooney could have reconsidered Camp Constitution's new request, but Rooney did not respond because the first request "was asked and answered." (*Id.*)

D. The City's Subsequent Written Flag Raising Policy.

In October 2018, after litigation commenced in July, the City committed its past policy and practice to a written Flag Raising Policy. (Pet. App. 159a.) The new Policy does not require the City to handle

requests differently from how they were handled when Camp Constitution submitted its request in July of 2017. (*Id.*) Under the new policy, as in July 2017, the Commissioner of Property Management has final approval authority for all flag raising requests, "such decision to be made in the City's sole and complete discretion." (*Id.*)

The written Policy incorporates seven Flag Raising Rules. (*Id.*) If an application for a flag raising event satisfies all seven of the Flag Raising Rules, the Flag Raising Policy still reserves to the Commissioner "sole and complete discretion" to deny the application for a reason not reflected in the Flag Raising Rules. (*Id.*) The Flag Raising Policy also reserves to the Commissioner the discretion to approve a flag application even if it does not meet one or more of the Flag Raising Rules. (*Id.*)

The first Rule provides, "At no time will the City of Boston display flags deemed to be inappropriate or offensive in nature or those supporting discrimination, prejudice, or religious movements." (Pet. App. 160a.) Whether a flag is deemed "inappropriate or offensive in nature," supporting "discrimination" or "prejudice," or supporting "religious movements" is a determination to be made at the Commissioner's discretion, and there are no separate guidelines or criteria for the Commissioner to use to make any such determination. (*Id.*)

II. PROCEDURAL HISTORY

Camp Constitution commenced this action on July 6, 2018, suing the City for preliminary and permanent injunctive relief, declaratory relief, and damages, on the grounds that the City's denial of Camp Constitution's flag raising request violated Camp Constitution's right to free speech under the First Amendment, as well as the Establishment Clause of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment.[7] (Pet. App. 46a–48a.) Camp Constitution also moved for a preliminary injunction, which the district court denied. (Pet. App. 103a.) The First Circuit affirmed the denial. (Pet. App. 60a.)

After discovery the parties filed cross motions for summary judgment. (Pet. App. 47a.) Following a hearing the district court denied summary judgment for Camp Constitution and granted summary judgment for the City. (Pet. App. 41a–59a.)

The First Circuit affirmed, holding that notwithstanding the City's express policy designating the City Hall Flag Poles a public forum for the private speech of all comers, and its practice of never denying any private request to raise a flag during the twelve years prior to the instant denial, the City was justified in denying Camp Constitution's flag under this Court's government speech cases in *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009), and *Walker v. Texas Div., Sons*

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[7] Camp Constitution also pleaded the City's violations of the cognate provisions of the Massachusetts Constitution.

of Confederate Veterans, Inc., 576 U.S. 200 (2015). (Pet. App. 1a.) The First Circuit ignored the express public forum policy and the unbroken history of approvals, and instead created a new "three-part *Summum/Walker* test." (Pet. App. 16a.)

SUMMARY OF THE ARGUMENT

1. The City of Boston violated the First Amendment by excluding Camp Constitution's speech from the City's designated public forum solely because of the religious viewpoint and content of the speech.

The City intentionally designated one of its City Hall Flag Poles a public forum for flag raising events by private actors, as evidenced by the City's express written policies designating the Flag Poles among its "public forums" for "all applicants," and by its unbroken practice of approving 284 flag raisings over twelve years with no denials. But when Camp Constitution applied to raise a flag in connection with its own one-hour flag raising event, the City denied the application because the flag was called "Christian" on the application, citing the Establishment Clause as a justification after the fact.

Under this Court's forum doctrine, in a designated public forum, speech restrictions based on viewpoint are unconstitutional, and restrictions based on content are unconstitutional unless they satisfy strict scrutiny. The City's exclusion of Camp Constitution's flag from the City Hall Flag Poles forum solely because the flag was called "Christian"

is unconstitutional viewpoint discrimination, and is also an unconstitutional content-based speech restriction because it cannot satisfy strict scrutiny. The Establishment Clause provides no compelling interest or other grounds to justify Boston's censorship of Camp Constitution's private religious speech in the City's designated public forum.

2. The private flag raisings on the City Hall Flag Poles pursuant to Boston's "public forums" for "all applicants" policy and practice are private speech, protected by the First Amendment, and not Boston's government speech.

The First Circuit below distorted this Court's holdings in *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009), and *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200 (2015), to create a rigid, "three-part *Summum/Walker* test," under which the court concluded the private flag raisings on the City Hall Flag Poles are Boston's government speech, freeing Boston to censor flags based on religious viewpoint and content. The First Circuit's test, however, overly focused on the traditional uses of other government flag poles and disregarded Boston's express policies and longstanding practices evidencing the City's intent to designate its Flag Poles a public forum for private flag raisings. The First Circuit test is incompatible with, and does considerable damage to, this Court's forum doctrine—particularly the designated and nonpublic forum categories—by creating an almost irrebuttable presumption that government property traditionally used for government speech can only be used for government speech, and that even a

neutral, minimal application requirement to access government property transforms private speech into government speech, no matter how clearly a government's actual policy and practice evidence its intent to designate the property a public forum for private speech.

ARGUMENT

I. THE CITY OF BOSTON, BY WRITTEN POLICY AND LONGSTANDING PRACTICE, INTENTIONALLY CREATED A DESIGNATED PUBLIC FORUM FOR PRIVATE SPEECH ON ONE OF ITS CITY HALL FLAG POLES OPEN TO ALL COMERS TO TEMPORARILY RAISE THEIR FLAGS.

This Court recognized decades ago that flags are expressive for governments and private actors alike: "The use of an emblem or flag to symbolize some system, idea, institution, or personality, is a short cut from mind to mind. Causes and nations, political parties, lodges and ecclesiastical groups seek to knit the loyalty of their followings to a flag or banner, a color or design." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 632 (1943). Thus, as a private actor, Camp Constitution engages in speech protected by the First Amendment when it flies its flag. Camp Constitution sought the City's approval to fly its flag on one of the City Hall Flag Poles, for Camp Constitution's own flag raising event, pursuant to the City's "public forums" for "all applicants" policy. Under this Court's forum doctrine, determining the constitutionality of the

City's exclusion of Camp Constitution's flag from the Flag Poles forum requires proper characterization of the forum based on the access sought by Camp Constitution. *See Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 801 (1985). As used for displaying the private flags of all comers during their flag raising events, the City Hall Flag Poles are a *designated* public forum.

A. Camp Constitution's Challenge of the City's Policy Excluding Camp Constitution's Flag Requires the Court to Determine Whether the City Intended to Designate the City Hall Flag Poles a Public Forum.

When the government excludes from its own property private speech protected by the First Amendment, this Court's precedents require a forum analysis for assessing the constitutionality of the speech restriction. *Minn. Voters All. v. Mansky*, 138 S. Ct. 1876, 1885 (2018). "The forum doctrine has been applied in situations in which government-owned property or a government program was capable of accommodating a large number of public speakers without defeating the essential function of the land or the program." *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 478 (2009). The Court uses the forum analysis "as a means of determining when the Government's interest in limiting the use of its property to its intended purpose outweighs the interest of those wishing to use the property for other purposes." *Cornelius*, 473 U.S. at 800.

Under the forum doctrine, a court "must identify the nature of the forum, because the extent to which the Government may limit access depends on whether the forum is public or nonpublic." *Cornelius*, 473 U.S. at 797. Then the court "must assess whether the justifications for exclusion from the relevant forum satisfy the requisite standard." *Id.*

The forum doctrine generally recognizes traditional public forums, designated public forums, and nonpublic forums, each with its own "requisite standard" for regulating access:

> In a traditional public forum—parks, streets, sidewalks, and the like—the government may impose reasonable time, place, and manner restrictions on private speech, but restrictions based on content must satisfy strict scrutiny, and those based on viewpoint are prohibited. *The same standards apply in designated public forums*—spaces that have not traditionally been regarded as a public forum but which the government has intentionally opened up for that purpose. In a nonpublic forum, on the other hand—a space that is not by tradition or designation a forum for public communication—the government has much more flexibility to craft rules limiting speech. The government may reserve such a forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is

> reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view.

Minn. Voters All., 138 S. Ct. at 1885 (cleaned up) (emphasis added).

A *designated* public forum exists where "government property that has not traditionally been regarded as a public forum is intentionally opened up for that purpose." *Summum*, 555 U.S. at 469 (cleaned up). Thus, "[a] public forum may be created by government designation of a place or channel of communication for use by the public at large for speech or assembly, for use by certain speakers, or for the discussion of certain subjects." *Cornelius*, 473 U.S. at 802. Courts look to the "policy and practice of the government to ascertain whether it intended to designate a place not traditionally open to assembly and debate as a public forum," as well as "the nature of the property and its compatibility with expressive activity." *Id.* Under these well-settled principles, the City's express, written policies and documented practices demonstrate that the City intentionally opened a public forum for private flag raisings on one of the City Hall Flag Poles.

B. By Written Policies and Longstanding Practices Over Twelve Years, Boston Intentionally Designated One of Its City Hall Flag Poles a Public Forum for Private Individuals and Groups to Temporarily Raise Their Own Flags for Their Own Events and Allowed 284 Private Flag Raisings With No Denials.

The City's official written policies demonstrate it has intentionally designated several City-owned venues to be public forums for expressive activities and events, including the City Hall Flag Poles. (App. 132a–133a.) The City's printable application guidelines for using the venues—*i.e.,* "the Use of Faneuil Hall, Sam Adams Park, City Hall Plaza, City Hall Lobby, North Stage or the **City Hall Flag Poles**"—document that the City "seeks to accommodate *all applicants* seeking to take advantage of the City of Boston's *public forums*." (App. 136a–140a (emphasis added).) Both the City's online and printable applications expressly identify the City Hall Flag Poles as a separate and distinct public forum for events (App. 135a–136a), and the City's website for scheduling flag raising events documents the City's intentionally open policy "to create an environment in the City where everyone feels included" and "to foster diversity and build and strengthen connections among Boston's many communities." (App. 143a.) This explicit identification of the City Hall Flag Poles as one of Boston's "public forums" for "all applicants" demonstrates the City has intentionally opened the Flag Poles for protected private expression through

flag raising events. *See Ark. Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 677 (1998) ("To create a forum of this type, the government must intend to make the property generally available to a class of speakers." (cleaned up)); *Int'l Soc. for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678 (1992) ("property that the State has opened for expressive activity by part or all of the public"). Thus, by both name and range of expression permitted, the City has intentionally designated the City Hall Flag Poles a public forum.

In addition to its written policy designating the Flag Poles among its "public forums" for "all applicants," the documented practices of the City pursuant to that policy confirm the City's intent. *See Cornelius*, 473 U.S. at 802. The undisputed factual record shows the City's acceptance of all flag raising applications, consistent with its stated "all applicants" intention: During the twelve years preceding its denial of Camp Constitution's flag raising request, the City *approved 284 flag raising events at the Flag Poles with no record of a denial*. (App. 136a–140a, 142a–143a, 149a–150a, 173a–187a.) And in the year immediately preceding Camp Constitution's denial, *the City approved 39 flag raising events—averaging more than three per month*. (*Id.*) This history and frequency of flag raising events with no denials (prior to Camp Constitution's request) also demonstrate that the Flag Poles are compatible with expressive activity, *see Cornelius*, 473 U.S. at 802, and are "capable of accommodating a large number of public speakers without defeating the essential function of the [Flag Poles]." *Summum*, 555 U.S. at 478. Thus, the City's

express policies and documented practices establish that the City intended to open a designated public forum for flag raisings on the City Hall Flag Poles.

C. Boston's Most Recent 2018 Flag Raising Policy Upholds Its Prior Policies and Practices Intentionally Designating the City Hall Flag Poles One of "the City of Boston's public forums" Open to "all applicants" for Private Flag Raisings.

At the time of Camp Constitution's application in 2017, Boston's written policies applicable to flag raisings comprised the City's printable application form and guidelines for "all applicants" using the City's "public forums" (expressly including the Flag Poles), the City's online application and guidelines for all events on the City's properties (also expressly including the Flag Poles), and the City's flag raising purpose statement: "We commemorate flags from many countries and communities at Boston City Hall Plaza during the year. . . . Our goal is to foster diversity and build and strengthen connections among Boston's many communities." (Pet. App. 132–140, 143.) The City's October 2018 Flag Raising Policy was the first written policy directed specifically to flag raisings, but it merely documented policies already in effect, though "'updated to address other concerns.'" (Pet. App. 159a.) Specifically, after the City adopted the 2018 Flag Raising Policy, the City still followed the policies reflected in its printable application form and guidelines identifying the Flag Poles as one of "the City of Boston's public forums" for "all

applicants." (R. 58-2 at 4.[8]) Thus, the 2018 Flag Raising Policy upheld the "public forums" for "all applicants" policy covering flag raisings on the City Hall Flag Poles, as historically applied to the 284 flag raising approvals with no denials during the twelve years preceding Camp Constitution's application.

* * *

Under the Court's forum doctrine, Camp Constitution's flag is speech protected by the First Amendment, and the constitutionality of Boston's exclusion of the flag from the City's Flag Poles forum depends on "the nature of the forum" and whether the City's "justifications for exclusion satisfy the requisite standard." *Cornelius*, 473 U.S. at 797. The Flag Poles—as regularly and frequently used by private actors to raise their own flags for their own events—are a designated public forum, and the City's exclusion of Camp Constitution's flag is unconstitutional under the requisite standard.[9]

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[8] In interrogatory answers, the City testified, through Rooney: "[T]he City states that it follows the policies stated on its website . . . as well as those stated on its written Event Application (Doc 1-8)." (R. 58-2 at 4.) The Event Application states the "public forums" for "all applicants" policy. (Pet. App. 135a–136a.)

[9] Discussion of the First Circuit's disregard of the forum doctrine, and improper invocation and expansion of the government speech doctrine, follows in Part III, *infra*.

II. THE CITY'S CENSORSHIP OF CAMP CONSTITUTION'S PRIVATE RELIGIOUS SPEECH IN THE CITY'S DESIGNATED PUBLIC FORUM VIOLATES THE FIRST AMENDMENT.

The City's intentional designation of its Flag Poles as a public forum for private flag raisings is clearly evidenced by its written policies and longstanding practices. The written policies describe "Boston's public forums" open to "all applicants" to include the City Hall Flag Poles. (Pet. App. 135a–136a.) Access only required applicants to meet neutral administrative criteria (date availability, health and safety, etc.). (Pet. App. 133a–135a.)

On the purposes of the flag raising forum, the policies state:

> We want to create an environment in the City where everyone feels included, and is treated with respect. We also want to raise awareness in Greater Boston and beyond about the many countries and cultures around the world. Our goal is to foster diversity and build and strengthen connections among Boston's many communities.

(Pet. App. 143a.)

Camp Constitution's proposed event and flag raising in observance of Constitution Day and Citizenship Day satisfied the administrative criteria and comfortably fit within the otherwise permitted

subject matters of the purpose statement. Camp Constitution desired to commemorate the historical civic and social contributions of the Christian community to the City of Boston and the Commonwealth of Massachusetts, religious tolerance, the Rule of Law, and the U.S. Constitution, by hosting an event at City Hall Plaza to feature "short speeches by some local clergy focusing on Boston's history" and "to raise the Christian Flag" on one of the Flag Poles. (Pet. App. 130a–132a.) The event and the flag raising aimed to recognize the Judeo-Christian heritage and community of Boston and the Commonwealth. (*Id.*)

The City has never contested that Camp Constitution's application satisfied all requirements and fit the permitted subject matters of the forum. Rather, it is indisputable that the City denied the private flag raising solely because the application used the word "Christian" before the word "Flag," resulting in the first censorship of a private flag raising application after twelve years with no denials. This admitted reason for censoring the flag is unconstitutional because it is not viewpoint neutral, and also because it was a content-based restriction unsupported by a compelling interest or narrow tailoring. Furthermore, the unbridled discretion vested in the Commissioner is an unconstitutional prior restraint.

A. The City Unconstitutionally Discriminated Against Camp Constitution's Christian Viewpoint Because of the Word "Christian" in the Application.

Because the City's explicit policies designate the City Hall Flag Poles a "public forum" for private expression (Pts. I.B, C, *supra*), the City's restrictions on speech in that forum are subject to the same level of First Amendment scrutiny applicable to traditional public forums. *See Summum*, 555 U.S. at 479. In a designated public forum, "restrictions based on content must satisfy strict scrutiny, and those based on viewpoint are prohibited." *Minn. Voters All.*, 138 S. Ct. at 1885.

Religion is a viewpoint on multiple subjects, and exclusion of all religious speech on otherwise permissible subjects is unconstitutional viewpoint discrimination. *See, e.g.*, *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 112, n.4 (2001) ("Religion is the viewpoint from which ideas are conveyed. . . . [W]e see no reason to treat the Club's use of religion as something other than a viewpoint merely because of any evangelical message it conveys."); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 831 (1995) ("[V]iewpoint discrimination is the proper way to interpret the University's objections to [religion as a subject matter]."); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 393–94 (1993) (holding exclusion of religious speech from forum is viewpoint discrimination); *cf. Archdiocese of Washington v. Washington Metro. Area Transit Auth.*, 140 S. Ct.

1198, 1199 (2020) (statement of Gorsuch, J.) ("[O]nce the government allows a subject to be discussed, it cannot silence religious views on that topic.").

The City's reason for denying Camp Constitution's flag raising event was precisely and only because the City deemed the flag objectionable, because it was *called* a "Christian Flag" on the application (Pet. App. 150a–151a, 153a–156a), even though Camp Constitution's purpose—to commemorate the contributions of one of Boston's diverse communities to the City and the Commonwealth—otherwise fit perfectly with the City's permitted subject matters according to the City's purposes for allowing flag raisings. (App. 130a–131a, 143a.) The flag's *appearance* was not objectionable to Rooney, but the flag's *description* as "Christian" *on the application* triggered the denial. (App. 155a–156a.) If the flag had not been described as "Christian," Rooney would have approved it. (*Id.*) Because viewpoint discrimination is prohibited in a designated public forum, *Minn. Voters All.*, 138 S. Ct. at 1885, the City's exclusion of Camp Constitution's flag for its Christian viewpoint was unconstitutional.

B. The City's Content-Based Restriction on Camp Constitution's Private Speech Is Subject To, and Fails, Strict Scrutiny.

1. The City bears the burden of satisfying strict scrutiny.

Even if the City's exclusion of Camp Constitution's flag from the designated Flag Poles forum was not viewpoint discriminatory, the City's restriction of Camp Constitution's religious speech was content based. "Content-based laws—those that target speech on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling government interests." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Strict scrutiny is "the most demanding test known to constitutional law," *City of Boerne v. Flores*, 521 US. 507, 534 (1997), which government restrictions rarely survive. *See Burson v. Freeman*, 504 U.S. 191, 200 (1992).

The City's sole reason for denying Camp Constitution's flag raising was because the City deemed the message communicated by Camp Constitution's flag to be religious. (App. 150a–151a, 153a–156a.) "Regulation of the subject matter of messages, though not as obnoxious as viewpoint-based regulations, is also an objectionable form of content-based regulation." *Hill v. Colorado*, 530 U.S. 703, 721 (2000). Even if Camp Constitution's request was not denied based on the Christian viewpoint of its flag raising event (which it was; *see* Part II.A,

supra), it undoubtedly was denied based on the religious "subject matter" of its flag, which is a content-based restriction on speech that is presumptively unconstitutional and subject to strict scrutiny. *See Reed*, 576 U.S. at 163.

It is the City's burden to prove narrow tailoring under strict scrutiny. *See McCullen v. Coakley*, 573 U.S. 464, 495 (2014). However, the City has never argued its censorship of Camp Constitution's flag was narrowly tailored. Instead, City relied solely on the Establishment Clause to justify its decision. As the case progressed, the City added the government speech defense, which fares no better. The City's policies and actions are not narrowly tailored.

2. The City's Establishment Clause justification is not a compelling interest in a public forum open to all applicants.

The City's ostensible interest in avoiding an Establishment Clause violation provides no compelling interest justifying its censoring private religious speech in a public forum otherwise open to all comers. As this Court wrote, "[i]t does not violate the Establishment Clause for a public university to grant access to its facilities on a religion-neutral basis to a wide spectrum of student groups, including groups that use meeting rooms for sectarian activities . . . ." *Rosenberger*, 515 U.S. at 842; *see also Good News Club*, 533 U.S. at 114–15. The same is true of Boston's designated Flag Poles forum that has been made generally available to a wide spectrum of private organizations expressing

private messages associated with their private events. "[T]here is a crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." *Bd. of Educ. of Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 250 (1990).

Moreover, "a significant factor in upholding governmental programs in the face of an Establishment Clause attack is their *neutrality* towards religion." *Rosenberger*, 515 U.S. at 839 (emphasis added). Such a "guarantee of neutrality is respected, not offended, when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse." *Id.*

The Establishment Clause provides no justification for suppressing the religious content of Camp Constitution's speech in a forum that is available to similarly situated private speakers expressing content from non-religious perspectives. *See id.* (noting this Court has "rejected the position that the Establishment Clause even justifies, much less requires, a refusal to extend free speech rights to religious speakers who participate in broad-reaching governmental programs neutral in design"). The City Hall Flag Poles are available to a broad range of speakers on a variety of topics, as at least 284 applications were approved without any denial before Camp Constitution's application. (Pet. App. 142a–143a, 149a.) Thus, the City's pretextual interest in avoiding an Establishment Clause

violation by granting equal access to Camp Constitution on a neutral basis is not compelling, or even legitimate.

3. The City's censorship of Camp Constitution's religious speech is not the least restrictive means of serving any legitimate government interest.

Even if the City could articulate a compelling interest for excluding religious speech, the City's forum policy and actions still fail strict scrutiny because they are not narrowly tailored. "It is not enough to show that the Government's ends are compelling; the means must be carefully tailored to achieve those ends." *Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989). "Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." *NAACP v. Button*, 371 U.S. 415, 433 (1963). Total prohibitions on constitutionally protected speech are substantially broader than any conceivable government interest could justify. *See Bd. of Airport Comm'rs of City of L.A. v. Jews for Jesus, Inc.*, 482 U.S. 569, 574 (1987).

A narrowly tailored regulation of speech is one that achieves the government's interest "without unnecessarily interfering with First Amendment freedoms." *Sable Commc'ns*, 492 U.S. at 126. By prohibiting all "non-secular" speech (Pet. App. 153a–156a), the City's policies and practices completely prohibit and unnecessarily interfere with the speech of religious organizations. Such policies are not

narrowly tailored and therefore cannot pass strict scrutiny.

C. Even if the City Hall Flag Poles Are a Limited Public Forum, the City's Exclusion of Camp Constitution Was Unconstitutional Because neither Viewpoint Neutral nor Reasonable.

Even if the alternative nonpublic forum analysis applied, under which "the government has much more flexibility to craft rules limiting speech," *Minn. Voters All.*, 138 S. Ct. at 1885, the First Amendment still demands that restrictions on speech be reasonable in light of the forum's purposes, and viewpoint neutral. *See Lamb's Chapel*, 508 U.S. at 392. The City's exclusion of Camp Constitution from the Flag Poles forum was neither, and is therefore unconstitutional.

Indeed, the City's discrimination against Camp Constitution's Christian viewpoint (*see* Pt. II.A, *supra*) ends the inquiry. *See Good News Club*, 533 U.S. at 107 ("Because the restriction is viewpoint discriminatory, we need not decide whether it is unreasonable in light of the purposes served by the forum."); *Lamb's Chapel*, 508 U.S. at 393 n.6 (same).

Nor was the exclusion reasonable in light of the flag raising forum's express purposes: to "*commemorate flags from many . . . communities*," "to create an environment in the City where everyone feels included, and is treated with respect," and "to foster diversity and build and strengthen connections among Boston's many communities."

(Pet. App. 143a.) The City did not act reasonably in excluding Camp Constitution's commemoration of the contributions of Boston's Christian community, based solely on its flag being called "Christian."

D. The City's Flag Raising Policy Vesting the Commissioner with Unbridled Discretion to Approve or Deny Private Flag Raisings Is an Unconstitutional Prior Restraint.

The City's standard-less policies and practices amount to an unconstitutional prior restraint that vests unbridled discretion in a City official to determine whether speech can be excluded as "non-secular" despite meeting all criteria for use of the City's designated public forums.[10] "Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity." *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963) (citing cases).

"[I]n the area of free expression a licensing statute placing unbridled discretion in the hands of a government official or agency constitutes a prior restraint." *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 757 (1988). And "a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license must contain narrow, objective, and definite standards to guide the

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[10] Camp Constitution raised this prior restraint argument in both appeals below, but the City never responded to it, and therefore conceded it. (*See* 18-1898 C.A. Reply Br. 23–24; 20-1158 C.A. Reply Br. 26–27.)

licensing authority." *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 131 (1992) (cleaned up).

Prior to October 2018, the City had no written policies specifically applicable to flag raising events at the Flag Poles public forum. (Pet. App. 140a, 154a–155a, 159a.) From 2005 to 2017, the City's written policies governed all its designated public forums collectively, which included the Flag Poles. (Pet. App. 133a–140a.) Then, after the litigation began, in 2018 the City memorialized in a written policy what it had always practiced, which is to grant unbridled discretion to the Commissioner to approve or deny flag raising requests regardless of compliance with stated criteria. (Pet. App. 159a–160a.)

As unwritten, the anti-religion policy and practice the Commissioner ostensibly used to deny Camp Constitution's application (Pet. App. 154a–155a) never could have provided the requisite standards to appropriately cabin the discretion of Boston officials. *See Niemotko v. Maryland*, 340 U.S. 268, 271 (1951). The purported anti-religion policy was not listed in the written guidelines provided to all applicants seeking to use the City's public forums (Pet. App. 133a–140a), nor was the anti-religion rationale for denial documented in any record prior to Camp Constitution's demanding a reason for the denial (Pet. App. 152a–153a). And the October 2018 written memorialization of the City's flag raising policies and practices did not cure its unconstitutionality, for the written policy codified the very unbridled discretion rendering the flag

raising regulation unconstitutional. (Pet. App. 159a–160a.)

III. THE CITY'S ESTABLISHMENT CLAUSE AND GOVERNMENT SPEECH DEFENSES ARE NOT SUPPORTED BY THIS COURT'S PRECEDENTS.

Though accepted by the First Circuit, the City's Establishment Clause and government speech defenses fail under this Court's precedents. The Establishment Clause is not concerned with private flag raisings on the City Hall Flag Poles because those flags are not government speech. The First Circuit ignored the relevant facts that distinguish the privately-owned flags temporarily raised by private actors in Boston's public forum from the permanent monuments owned, maintained, and displayed by the city in *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009), and the license plates designed, printed, issued, owned, and branded by Texas in *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200 (2015). Furthermore, the rigid government speech test minted by the First Circuit definitionally hobbles and does significant damage to this Court's public forum doctrine.

A. The Establishment Clause Cannot Justify Boston's Censorship of Private Religious Speech in a Public Forum.

Commissioner Rooney admitted that excluding "religious" flags served no goal or purpose of the City

except "concern for the so-called separation of church and state or the constitution's establishment clause." (Pet. App. 157a.) Despite his ostensible fear of violating the Establishment Clause, however, Rooney did not work from any formal definition of "religious" when he denied Camp Constitution's request; nor did he even look at Camp Constitution's flag. (Pet. App. 153a–156a.) In any event, as shown in Part II.B.2, *supra*, the City cannot invoke the Establishment Clause as a defense to its censorship of private religious speech in a public forum the City created and gave access to based on neutral criteria. "[T]here is a crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." *Mergens*, 496 U.S. at 250. Because the private flag raisings the City allowed on the Flag Poles forum it created are not government speech (*see infra* Parts III.B, C), the City had no legitimate Establishment Clause concern, let alone justification for excluding Camp Constitution's flag from the Flag Poles forum.

B. Acceptance of Boston's Contrived Government Speech Defense Would Unconstitutionally Expand the Government Speech Doctrine.

1. The written policies and unbroken, twelve-year history prior to Camp Constitution's application in 2017, and continuing policy and practice after 2017, evidence conclusively that the private flags were private speech, and readily distinguishable from the government speech found in *Summum* and *Walker*.

As shown above (Part I.A, *supra*), the forum doctrine governs the analysis of the claims against the City for excluding Camp Constitution's flag from the City Hall Flag Poles. But the First Circuit forsook forum analysis and, relying on this Court's decisions in *Summum* and *Walker*, canonized and applied a rigid, "three-part *Summum*/*Walker* test" (Pet. App. 16a) to hold the 284 private flag raisings approved by the City before denying Camp Constitution's were government speech. The First Circuit's test, however, was not faithful to *Summum* or *Walker*, both of which expressly recognized that forum analysis, rather than government speech analysis, applies to nontraditional forums intentionally designated by the government for private expression. *See Summum*, 555 U.S. at 469–70 ("[A] government entity may create 'a designated public forum' if government property that has not

traditionally been regarded as a public forum is intentionally opened up for that purpose," and "may create a forum that is limited to use by certain groups or dedicated solely to the discussion of certain subjects."); *see also Walker*, 576 U.S. at 215–16.

In *Summum*, the question was whether "the First Amendment entitled a private group to insist that a municipality permit it to place a permanent monument in a city park." 555 U.S. at 464. The Court rejected such a First Amendment claim because "the placement of a *permanent monument* in a public park is best viewed as a form of government speech." *Id.* (emphasis added). This was so because "[i]t is certainly not common for property owners to open up their property for the installation of permanent monuments that convey a message with which they do not wish to be associated." *Id.* at 471. The permanent nature of the proposed monument was critical to the Court's rejection of the plaintiffs' argument that the City had created a forum for private expression by accepting a limited number of other permanent monuments. *Id.* at 478–79.

The *Summum* Court offered several examples distinguishing government accommodation of temporary private speech from permanent monuments constituting government speech:

> The forum doctrine has been applied in situations in which government-owned property or a government program was capable of accommodating a large number of public speakers without defeating the

> essential function of the land or the program. For example, a park can accommodate many speakers and, over time, many parades and demonstrations. The Combined Federal Campaign permits hundreds of groups to solicit donations from federal employees. A public university's student activity fund can provide money for many campus activities. A public university's buildings may offer meeting space for hundreds of student groups. A school system's internal mail facilities can support the transmission of many messages to and from teachers and school administrators.
>
> By contrast, *public parks can accommodate only a limited number of permanent monuments*.

555 U.S. at 478 (emphasis added) (citations omitted). Thus, the Court reasoned, "[p]ermanent monuments displayed on public property typically represent government speech." *Id.* at 470.

The undisputed record facts here show where flag raisings on Boston's City Hall Flag Poles fit within *Summum*'s illustrations: the Flag Poles are "capable of accommodating a large number of public speakers without defeating the essential function of the [Flag Poles]," *id.*, because they have done so frequently and continually, for "all applicants" over twelve years. (Pet. App. 132a–142a, 149a–150a.) The 284 approvals with no denials (including 39 approvals— averaging more than three per month—

the year before Camp Constitution was denied) prove the Flag Poles "over the years, can provide a [forum] for a very large number of [flags] . . . for all who want to speak . . . ." 555 U.S. at 479. The temporary nature of the flag raisings (e.g., Camp Constitution requested an hour (Pet. App. 131a)) ensures the Flag Poles are continually open for the City's own speech (e.g., the City of Boston Flag (Pet. App. 141A–142a)), as well as the speech of a large number of other private organizations allowed to raise their flags pursuant to the City's "public forums" for "all applicants" policy, serving the City's express purposes of "foster[ing] diversity and build[ing] and strengthen[ing] connections among Boston's many communities." (Pet. App. 141a–143a.) *Summum*'s government speech analysis could only apply to Camp Constitution if it had requested to permanently occupy the third Flag Pole, or permanently place its own flagpole in the ground. *Cf. United Veterans Memorial & Patriotic Ass'n of the City of New Rochelle v. City of New Rochelle*, 72 F. Supp. 3d 468, 475 (S.D.N.Y. 2014) ("United Veterans' flags are displayed for long periods of time (until they become tattered) and then promptly replaced [such that] their presence at the Armory is nearly as constant as that of the park monuments in *Summum*."), *aff'd*, 615 F. App'x 693 (2d Cir. 2015).

In *Walker*, the Court confirmed the importance of the permanence of the monuments at issue in *Summum*: "we emphasized that monuments were 'permanent,' and we observed that public parks can accommodate only a limited number of permanent monuments." *Walker*, 576 U.S. at 213–14. Indeed, the Court "believed that the speech at issue was

government speech" because it "found it hard to imagine how a public park could be opened up for the installation of permanent monuments by every person or group." *Id.*

The issue in *Walker* was whether Texas accommodated private speech or engaged in government speech when it adopted numerous specialty license plate designs for a program offering drivers a choice between standard-issue and specialty Texas license plates. 576 U.S. at 203–04. In holding the specialty plates to be government speech, the *Walker* Court referred to the factors considered in *Summum*, but it emphasized the "exercise" of "direct" and "effective" government control over the specialty plates, indicating that the license plate messages were "conveyed on behalf of the government." *Id.* at 212–14, 216. A specialty plate design could be proposed by either Texas or private actors, through three different processes, *id.* at 205, but Texas exercised all aspects of ownership over the specialty license plates. The state prepared the designs of the specialty plates, owned the designs, and was responsible for making and disseminating the plates. *Id.* at 205, 212–14, 216. In addition, Texas required that all specialty plates be returned to the state at the end of their use. *Id.* at 212. Moreover, Texas law required all drivers to obtain and display a license plate on their vehicle, which the Court noted was "primarily used as a form of government ID," bearing the state's name. *Id.* at 212, 214, 216.

The "exercise" of "direct" and "effective" government control essential to the Court's

government speech finding in *Walker* does not exist in Boston, where 284 flag raisings were approved with no review of the flags whatsoever. Boston does not design, fabricate, take ownership of, or affix its name to any private flag approved for a flag raising—or even look at a proposed flag before approving it (or denying it in Camp Constitution's case). (Pet. App. 150a, 156a.) And Boston's simple, one-step process for proposing a flag raising—submitting a single form with the box checked for the City Hall Flag Poles among the City's other "public forums" (Pet. App. 135a–136a)—is nothing like the three separate processes, with multiple layers of review and approval, before Texas adopts, prints, and issues a specialty license plate with the state's insignia, and then later demands its return.

The relevant government control in *Walker* was the state's "*direct control* over the messages conveyed," where the state "*actively exercised* this authority" and "*rejected* at least *a dozen* proposed designs." 576 U.S. at 213 (emphasis added). Thus, the Court concluded, "Texas has *effectively controlled* the messages conveyed by *exercising* final approval authority over their selection." *Id.* (emphasis added) (cleaned up). In this case, however, Boston does not actively exercise its authority to reject or even look at proposed flags, and there is no record of any denial prior to Camp Constitution's application. (App. 132a–143a, 149a–150a.)

The City *says* it must review and approve flag raising requests (Pet. App. 149a), but the City's bare "statement of intent [is] contradicted by consistent

actual policy and practice" of never so much as looking at a flag before approving it. *Ridley v. Massachusetts Bay Transp. Auth.*, 390 F.3d 65, 77 (1st Cir. 2004). Just as this Court has held that the mere involvement of private parties in selecting a government message does not, in and of itself, make the message private expression, *see Walker*, 576 U.S. at 210, 217, the mere involvement of the government in providing a forum likewise does not constitute sufficient control to make the message government speech. *See Matal v. Tam*, 137 S. Ct. 1744, 1758 (2017); *Wandering Dago, Inc. v. Destito*, 879 F.3d 20, 34–35 (2d Cir. 2018) ("[S]peech that is otherwise private does not become speech of the government merely because the government provides a forum for the speech or in some ways allows or facilitates it."). Access to many public forums requires an application or some form of permission from the government, but an application requirement by itself cannot transform private speech in a public forum into government speech.

Accepting the City's rationale would vastly expand and sanction dangerous aspects of the government-speech doctrine: "[W]hile the government-speech doctrine is important—indeed, essential—it is a doctrine that is susceptible to dangerous misuse. If private speech could be passed off as government speech by simply affixing a government seal of approval, government could silence or muffle the expression of disfavored viewpoints." *Matal*, 137 S. Ct. at 1758; c*f. Walker*, 576 U.S. at 221 (Alito, J., dissenting) ("The Court's decision passes off private speech as government speech and, in doing so, establishes a precedent that

threatens private speech that government finds displeasing."). Thus, the government cannot, merely by reserving to itself "approval" rights, convert to government speech the private speech it openly solicits and allows in its designated forums. Any claim by the City of direct or effective control over flag raising messages is a litigation contrivance contradicted by the undisputed evidence of the City's actual practice.[11]

And, although the *Walker* Court concluded the permanence factor emphasized in *Summum* was not relevant to the Texas specialty license plates under consideration, *see* 576 U.S. at 213–214, it does not follow that the permanence factor is irrelevant to the nature of the Boston Flag Poles forum as posited by the First Circuit. (Pet. App. 22a.) If *Summum* has any application at all to the instant case, then the lack of permanence of the myriad private flags flown on the City Hall Flag Poles militates against any government speech finding. *Compare New Rochelle*, 72 F. Supp. 3d at 475 ("United Veterans' flags are

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[11] The record shows one denied flag raising request sometime *after* the denial of Camp Constitution's application, after the commencement of litigation. (Pet. App. 160a.) The only reason given was "the City's sole and complete discretion." (*Id.*) With no other evidence, this lone, *post litigation* denial does not alter the decisiveness of the City's uninterrupted streak of 284 approvals with no denials in the designated public forum analysis. Just as "[o]ne or more instances of erratic enforcement of a policy does not itself defeat the government's intent not to create a public forum," *Ridley*, 390 F.3d at 78, a lone, aberrational departure from the City's otherwise perfect record of approving every request does not defeat the City's intent to create a public forum.

displayed for long periods of time (until they become tattered) and then promptly replaced [such that] their presence at the Armory is nearly as constant as that of the park monuments in *Summum*." (emphasis added)), *with Wandering Dago, Inc.*, 879 F.3d at 35 ("[D]rawing on the Court's reasoning in *Summum*, which also involved the use of public land—we find it significant that the food vendors participating in the Lunch Program are a merely temporary feature of the landscape, and quite visibly so."). Moreover, though not emphasized like the permanence factor, government control was also important to the *Summum* government speech holding, for Pleasant Grove City "took ownership of the monument," "[a]ll rights previously possessed by the monument's donor [were] relinquished," and the city maintained the permanent monuments placed in the park. 555 U.S. at 473. Thus, neither the permanence nor control important in *Summum* are implicated by the private flag raisings on Boston's Flag Poles.

Finally, Boston's flag raising policies include a critical component missing from *Summum*'s permanent monument policy and *Walker*'s state license plate policy: an express, written "public forums" designation for "all applicants." (Pet. App. 137a.) Boston's express statement of intent combined with an unrebutted record of approving as many flag raisers as apply compel the conclusion that Boston has intentionally designated the Flag Poles a public forum for private expression.

2. The foreign government flags raised by private groups cannot be government speech because it is a criminal offense for a local government to raise a foreign nation's flag.

Massachusetts criminal law also precludes the conclusion that Boston is speaking through the myriad private flags it allows on its Flag Poles, some of which are the flags of foreign nations. It is a crime for any Boston official to "display[] the flag . . . of a foreign country upon the outside of a . . . city . . . building," Mass. Gen. Laws ch. 264, § 8, and the common definition of "upon" includes "in . . . approximate contact with." Dictionary.com, *upon*, https://www.dictionary.com/browse/upon (last visited Nov. 9, 2021). Moreover, Rooney testified that the City raises its flags on the Flag Poles pursuant to another statute providing that "[t]he flag of the United States and the flag of the commonwealth shall be displayed *on* the main or administration *building* of each public institution of the commonwealth." Mass. Gen. Laws ch. 2, § 6 (emphasis added). (R. 58-2 at 4.) If flying the United States and Massachusetts flags on the Flag Poles satisfies the statute requiring those flags to be displayed "on" City Hall, then flying foreign nations' flags on the Flag Poles violates the statute prohibiting the display of those flags "upon the outside of" City Hall. The City, when it speaks, does not enjoy the First Amendment's protection from criminal prosecution for pure speech as private speakers do. No reasonable observer of the regular and frequent occurrence of foreign nations' flags on

the Flag Poles would conclude Boston—the Capital City of the Commonwealth—is violating the Commonwealth's criminal law, as opposed to merely accommodating the private speech of the private flag raisers.

C. The First Circuit Did Considerable Damage to the Forum Doctrine and Wiped Away Protections for Private Speech by Inventing a Test That Distorts the Government Speech Doctrine in Violation of This Court's Precedents.

By subjecting Camp Constitution's requested flag raising to its rigid, "three-part *Summum/Walker* test" for government speech in the first instance, the First Circuit's opinion conflicts not only with this Court's forum doctrine precedents (*see* Pt. I.A, *supra*), but also with *Summum* and *Walker* because they disclaim any such formulaic application of "the recently minted government speech doctrine," *Summum*, 555 U.S. at 481 (Stevens, J., concurring), and affirm that forum doctrine applies to intentional designations of government property for private speech.[12] Though *Walker* emphasized three primary factors from *Summum*, the Court clarified that *Summum* did not

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[12] The First Circuit ultimately paid lip service to forum analysis, but with circular reasoning, having already committed to its formulaic government speech finding. (Pet. App. 27a ("[A] conclusion that the City has designated the flagpole as a public forum 'is precluded by our government-speech finding.'").)

provide a formulaic test for government speech by highlighting some of the other, nonexclusive considerations deemed relevant to the government speech finding. *See Walker*, 576 U.S. at 210 ("In light of these and a few *other relevant considerations*, the Court concluded that the expression at issue was government speech." (emphasis added)), 213 ("That is *not* to say that *every element* of our discussion in [*Summum*] is relevant here." (emphasis added)); *cf. Matal*, 137 S. Ct. at 1759 ("Holding that the monuments in the park represented government speech, we cited *many factors*." (emphasis added)). The First Circuit's rigid approach expands the government speech doctrine beyond its constitutional bounds. *See Matal*, 137 S. Ct. at 1760 ("*Walker* . . . likely marks the outer bounds of the government speech doctrine.").

The First Circuit's formulaic test comprises (1) history ("the historical use of flags by the government"); (2) attribution ("whether an observer would attribute the message of a third-party flag on the City's third flagpole to the City"); and (3) control ("whether the City maintains control over the messages conveyed by the third-party flags"). (Pet. App. 16a–23a.). By discarding other relevant factors, this test can eviscerate the public forum doctrine.

A recently designated public forum would invariably have a prior history of government speech, allowing courts to ignore the evidence of express policies and actual practices and rely on *ad hoc* government litigation positions used to justify censorship. Or, if a court *a priori* assumes that certain government property is incompatible with a

public forum based on the general history of *other* government properties, then it could refuse to consider the government's intentional designation of the forum by policy and practice, which is what the First Circuit did in this case, citing a case where a government flagpole was never designated or ever used as a public forum.[13] (Pet. App. 17a.) While a flagpole may not be a typical designated public forum (by nature designated public forums are not typical), when the government intentionally designates a flagpole a public forum, as the City did here, it becomes a public forum in the same way as any other government property becomes a designated public forum. Without the First Circuit's categorical, *a priori* assumption, Boston's policy and practice make the designated public forum conclusion easy. Indeed, the history of *Boston's* Flag Poles preclude a government speech finding even under the First Circuit's test.

After stumbling out of the gate with its first prong, the First Circuit crammed its government speech conclusion into the second and third prongs. Under the second "attribution" prong, the First Circuit shunned the perspective of any reasonable *and informed* observer (Pet. App. 17a–21a), allowing the court to disregard the express policy and longstanding practice evidencing the City's intent to accommodate private speech in a designated

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[13] *See Griffin v. Sec'y of Veterans Affairs*, 288 F.3d 1309, 1324 (Fed. Cir. 2002) ("We have no doubt that the government engages in speech *when it flies its own flags* over a national cemetery . . . ." (emphasis added)).

forum.[14] Despite Commissioner Rooney's admitting there is no evidence that any observer ever concluded the private flags flown on the Flag Poles were endorsed by the City (Pet. App. 150a), the First Circuit supposed its *uninformed* observer would so conclude based on *made-up* facts nowhere in the record. For example, the court imagined that an up-close observer of a flag raising would "see a city employee replace the city flag with a third-party flag." (Pet. App. 18a.) But Commissioner Rooney disclaimed any knowledge of whether a city employee ever raised a private flag. (Pet. App. 191a.) The court also imagined that "[a] faraway observer (one without a view of the Plaza)" would necessarily attribute a temporary private flag to the City because it would be flying next to the U.S. and Massachusetts flags. (Pet. App. 18a–19a.) But City Hall and other buildings surrounding the Plaza are taller than the Flag Poles, so there is no realistic vantage point from which an observer could see the private flag without also seeing an associated flag raising event on the Plaza. (Pet. App. 161a.)

Finally, the control prong of the First Circuit finds government speech where even de minimis government control is exercised over access to the forum. This allowed Boston to use its neutral and minimal application process to turn private speech

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[14] *See Summum*, 555 U.S. at 487 (Souter, J., concurring) ("To avoid relying on a *per se* rule to say when speech is governmental, the best approach that occurs to me is to ask whether a reasonable and fully informed observer would understand the expression to be government speech, as distinct from private speech the government chooses to oblige . . . .").

into government speech when it served as a convenient excuse to censor religious viewpoints.

The Eleventh Circuit took a better approach in *Leake v. Drinkard*, 14 F.4th 1242 (11th Cir. 2021). The *Leake* court invoked its version of the *Summum*/*Walker* factors and held that a veterans parade funded and organized by the City of Alpharetta, Georgia, was the city's speech. *Id.* at 1253. Thus, "the Sons of Confederate Veterans cannot force the City to include a Confederate battle flag in the veterans parades it funds and organizes." *Id.* (cleaned up).

Unlike the First Circuit, the Eleventh Circuit in *Leake* acknowledged that courts "lack a 'precise test'" for determining "[w]hat makes speech *government* speech," but that "there are three factors we use to distinguish government speech from private speech" which "are neither individually nor jointly necessary for speech to constitute government speech." *Id.* at 1248. The court named the three factors "history, endorsement, and control." *Id.*

In addition to recognizing the "three factors" are nonexclusive and nondispositive, the *Leake* court also applied the factors more intuitively than the First Circuit. The *Leake* court considered "[t]he history of military parades in general, *and this Parade* in particular." *Id.* (emphasis added). The First Circuit, by contrast, considered only the general history of government flag poles, but disregarded the history of the Boston City Hall Flag

Poles and their extensive use by private actors to communicate private messages. (Pet. App. 17a.)

Applying the "endorsement" factor, *Leake* used a reasonable *and informed* observer who would know the parade was organized and funded by the city, even though the public largely viewed the parade as an event put on by the local American Legion post, and knew the city promoted the parade as the Legion's partner, but did not know the city was the chief organizer and financial backer of the event. *Id.* at 1249–1250. The First Circuit, applying its attribution test, rejected an informed observer in favor of an ignorant observer who only knows whatever is in the observer's line of sight (Pet. App. 17a–21a), or the court's imagination (*see* "up-close observer" and "faraway observer," *supra*). Conversely, the Eleventh Circuit's informed observer would have known: (1) that the City's policy and practice "seeks to accommodate all applicants seeking to take advantage of the City of Boston's public forums," including the City Hall Flag Poles (Pet. App. 136a–140a); (2) that the City permits private organizations to temporarily raise their flags associated with their private events (Pet. App. 142a); (3) that the City approved at least 284 flag raising events over twelve years with no denials (Pet. App. 142a–143a); (4) that during the year preceding Camp Constitution's application the City approved an average of over three flag raisings per month (Pet. App. 142a–143a); (5) that the City will allow essentially any event to take place on City Hall Plaza (Pet. App. 149a); (6) that the City does not even review the content of the flags it allows private organizations to raise (Pet. App. 150a); and (7) that

the private events using flags of foreign nations cannot be government speech under Massachusetts law (Part III.B.2, *supra*). A half-informed observer even marginally aware of these undisputed facts could not conclude that Boston speaks through the private flags on its Flag Poles.

The *Leake* court also concluded that the "control" factor favored government speech because the city "'effectively controlled the messages conveyed' by requiring applicants to describe the messages they intended to communicate and then by 'exercising final approval authority over their selection' based on those descriptions." 14 F.4th at 1250 (*quoting Walker*, 576 U.S. at 213). The court reasoned, "When the City exercised this control as the Parade's organizer by excluding organizations with whose speech the City disagreed, the City was speaking." *Id.* Thus, like this Court in *Walker*, the *Leake* court viewed exclusions from the parade as evidence of the city's *effective* control over the parade. *See id.*; *Walker*, 576 U.S. at 213 ("[The State] and its predecessor have *actively* exercised this authority. . . . [T]he State has rejected at least a dozen proposed designs." (emphasis added)). But the First Circuit discounted Boston's history of accepting all comers to its Flag Poles prior to denying Camp Constitution. (Pet. App. 24a–25a.)

The *Leake* court's summation of its "control" analysis, however, may promote the same error that the First Circuit adopted. According to *Leake*, "Either exclusion or advance preconditions would be adequate control." 14 F.4th at 1250–51. Most designated or limited public forums are likely to

condition use on an application, neutral criteria, and conformance with the purpose of the forum. Finding government speech based on such de minimis regulation which is inherent to any government property—no matter how clear the evidence of government intent to open a forum—damages the forum doctrine by constructing an almost irrebuttable presumption against a designated or limited forum. Such a presumption conflicts with this Court and several circuits holding that mere government approval or allowance of access to its property does not transform private speech into government speech. (Q.P.3, Part III.B.1, *supra*.)

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Courts should begin with forum analysis to determine whether the government's policy and practice evidence an intent to designate a public forum for private speakers, or open a nonpublic forum for certain speakers or subjects. The First Circuit's *a priori* assumptions about the City Hall Flag Poles ignored the City's policy and practice evidencing its intent to designate the Flag Poles a public forum. The court then distorted *Summum* and *Walker* to support its *a priori* assumptions. If the First Circuit can commit such an obvious error under the facts of this case, there is little protection from other courts' misapplying *Summum* and *Walker* and obliterating the designated and nonpublic forum categories. The shrinking public forum would be a tragic loss of free speech.

CONCLUSION

For all of the foregoing reasons, the Court should reverse and vacate the First Circuit's decision and remand the case for entry of judgment for Camp Constitution on its First Amendment claims.

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