CONDEMNATION & EMINENT DOMAIN

Condemnation & Eminent Domain: Takings

***Shands v. City of Marathon*,**
No. 3D21-1987, 2025 WL 396272 (Fla. 3d Dist. Ct. App. Feb. 5, 2025)

Neither the prospect of a future sale nor an award of transferred development rights constitutes an economically beneficial use of a property, thus generally making them insufficient to overcome a categorical regulatory takings claim under *Lucas v. South Carolina Coastal Council*.

FACTS AND PROCEDURAL HISTORY

Dr. R.E. Shands purchased a 7.9-acre offshore island in the Florida Keys, now known as Shands Key, while Monroe County (County) had the property zoned for "General Use," permitting residential development. After Dr. Shands' four children (the Shandses) acquired the property, the County downgraded Shands Key's zoning designation to "Conservation Offshore Island." When the City of Marathon (City) incorporated, it adopted the County's land use plan and maintained Shands Key's new designation.

In 2004, reflecting its conservation efforts, the City denied the Shandses' application for a permit to build a dock on Shands Key. However, the City instead offered to provide the Shandses with transferred development rights (TDR) under its competitive building permit allocation programs in exchange for the land. Declining the City's offer, the Shandses filed an application for a Beneficial Use Determination.

Finding that Shands Key's downzoning deprived the Shandses of any reasonable economic use for their property, the City's Special Master recommended that the City either purchase the property from the Shandses or allow them to build a home on the island. After the City Council rejected the recommendations, the Shandses filed suit against the City for inverse condemnation in the Sixteenth Judicial Circuit in and for Monroe County.

Nearly twenty years of litigation ensued, including two appeals and remands. When the case returned to the trial court for a third time, the Shandses moved for partial summary judgment, arguing that the City's downzoning of Shands Key constituted a categorical, as-applied *Lucas* taking. The City opposed the motion, countering that the potential for resale and the City's offer of TDRs retained the property's economic value. The trial court denied the Shandses' motion and ultimately found that they failed to establish a taking. The Shandses appealed to the Third District Court of Appeal for a third time.

ANALYSIS

The court began its de novo review by outlining the foundation and trajectory of the law on unconstitutional takings of private property. The Takings Clause of the Fifth Amendment to the U.S. Constitution and Article X of the Florida Constitution both prohibit the government from seizing private property for public use without just compensation. This prohibition extends to excessively burdensome regulations of property, known as regulatory takings. In *Lucas v. South Carolina Coastal Council*, the U.S. Supreme Court established the rule for "categorical" regulatory takings: when a land use regulation completely deprives a landowner of all economically beneficial use of the land, the government must provide just compensation to avoid an unconstitutional taking.

The court then analyzed whether the City's downzoning of Shands Key, which restricted the Shandses' use of their property to the economically inviable activities of beekeeping and personal camping, constituted a categorical regulatory taking. First, the court rejected the City's argument that the potential to sell the island in the future was a sufficient economic use to overcome a *Lucas* claim. Looking to the reasoning of other appellate courts, the Third District concluded that economic *uses* should provide a landowner with benefits from their ownership, rather than requiring the landowner to sell the property and *lose the use* of the land.

The court then weighed in on the ongoing debate about the role of TDRs, which typically permit the landowner to bypass zoning restrictions on an alternative piece of land, within the regulatory takings framework. The court acknowledged that the

Supreme Court has not yet dispositively addressed this issue, but it found a concurrence by Justice Scalia persuasive. Similar to the prospect of a future sale, "any income associated with TDRs does not flow from cultivating or developing the property in the traditional framework of ownership. . . . Instead, the potential revenue is generated from the preservation and non-use of the property." *Shands*, 2025 WL 396272, at *9 (citing *Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725, 747 (1997) (Scalia, J., concurring)).

Therefore, the court concluded that the City's downzoning of Shands Key constituted a regulation that went "too far" in restricting the Shandses' use of their land, and both the potential to sell the land and the City's offer of TDRs were insufficient to prevent it from being a taking. The court reversed the trial court's judgment and remanded with instructions to grant the Shandses' motion for partial summary judgment.

In a lengthy dissent, Judge Logue critiqued the majority's decision as ignoring the separation of powers doctrine, passing over key facts in the case, and disregarding that TDRs are included in the value of property per Supreme Court precedent. Judge Logue argued that the majority, by ignoring that TDRs are part of property value, replaced an objective market value-based test for total takings with a subjective "productive use" test that threatens to tie the hands of local legislatures seeking to enact critical regulations.

Judge Scales defended the majority in his concurrence, emphasizing that with no dock to access the island, the property owners were left with no meaningful economic use of their land. Judge Scales added that TDRs can be offered by governments as just compensation for regulatory takings, but warned that those TDRs must be generous in part because TDRs require no appropriation of taxpayer funds.

In a separate concurrence, Judge Gordo addressed the dissent's separation of powers argument by citing *Marbury v. Madison* in stating that the majority is only embracing its fundamental role of saying what the law is—in this case, by vindicating property rights.

SIGNIFICANCE

Shands establishes that a government's award of TDRs to a landowner is not always sufficient to overcome a categorical, as-applied takings claim. Although TDRs may be relevant to a takings determination in limited factual scenarios, they are generally insufficient to avoid a taking because they effectively allow governments to bypass the constitutional requirement of just compensation. Likewise, *Shands* clarifies that the potential to sell a property in the future is an insufficient economic use to avoid a categorical regulatory takings challenge.

RESEARCH REFERENCES

- 21 Fla. Jur. 2d *Eminent Domain* § 1 (Westlaw Precision through May 2025).
- 21 Fla. Jur. 2d *Eminent Domain* § 67 (Westlaw Precision through May 2025).
- 21 Fla. Jur. 2d *Eminent Domain* § 69 (Westlaw Precision through May 2025).

Cheyanne Sharp

Condemnation & Eminent Domain: Takings

***Sheetz v. County of El Dorado, California*,**
601 U.S. 267 (2024)

Under the Fifth Amendment of the U.S. Constitution, the *Nollan* and *Dolan* tests for determining whether land use permit conditions constitute a taking under the Takings Clause apply to both legislative and administrative permit conditions.

FACTS AND PROCEDURAL HISTORY

George Sheetz (Sheetz) wanted to build a prefabricated home on a residential parcel of land he owned in El Dorado County (County), California. In order to obtain a building permit, however, Sheetz was required to pay a traffic impact fee of $23,420—a fee dictated by the County's standardized rate schedule. After paying the fee under protest and having his refund request ignored, Sheetz filed suit in state court alleging that the County's condition amounted to an unlawful exaction in violation of the Takings Clause.

Sheetz argued that the U.S. Supreme Court's decisions in *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard* required the County to make an individualized fee determination for the traffic impact fee imposed upon him. The predetermined nature of the County's fee schedule, according to Sheetz, failed to meet the *Nollan* and *Dolan* requirements.

The trial court rejected Sheetz' argument, and the California Court of Appeal, relying on precedent from the California Supreme Court, later affirmed the trial court's holding. The California courts held that fees imposed on a broad class of property owners through legislative action need not satisfy the *Nollan* and *Dolan* tests. After the California Supreme Court denied review, the U.S. Supreme Court granted Sheetz' petition for certiorari review.

ANALYSIS

The Supreme Court began its review by outlining the Fifth Amendment Takings Clause, noting that the rules are more complicated when applied to permit conditions placed on land rather than physical or per se takings. The Court went on to

outline the two-part test created by *Nollan* and *Dolan* for permit conditions. First, permit conditions must have an essential nexus to the government's land use interest. Second, there must be rough proportionality between the permit condition(s) and the development's impact on that land use interest. The Court then considered the California Court of Appeal's holding that the *Nollan*/*Dolan* test does not apply to legislative permit conditions.

Looking first at the plain text of the Constitution, the Court held that nothing in either the Fifth or Fourteenth Amendments single out legislative takings for special treatment. On the contrary, the Court held that Takings Clause jurisprudence does not vary for the government from branch to branch. The Court also looked to history in its analysis, pointing out that during and after the American Revolution, both state governments and the national government exercised their eminent domain power through legislation. This legislation required compensation to private property owners for government takings. The Court viewed this history as demonstrating that early constitutional theorists understood the Takings Clause to apply to the legislature not just incidentally but specifically.

The Court then examined the *Nollan*/*Dolan* test and held that the respective rules from each case do not distinguish between legislative and administrative takings either. The Court noted that the *Nollan* and *Dolan* decisions are rooted in takings law, which, precedentially, has applied to both legislative and administrative takings regardless of whether that taking be physical or regulatory. Seeing no reason to apply a different, weaker rule to legislative permitting conditions, the Court emphatically, unambiguously, and unanimously held that "Nothing in constitutional text, history, or precedent supports exempting legislatures from ordinary takings rules." *Sheetz*, 601 U.S. at 276. Accordingly, the Court vacated the judgment of the California Court of Appeal and remanded the case for further proceedings.

In her concurrence, Justice Sotomayor, joined by Justice Jackson, noted the opinion's limited scope, stating that the *Nollan*/*Dolan* test only applies if the condition at issue would have been a taking had it been imposed outside of the permitting process. Justice Sotomayor joined the Court's opinion with the understanding that this question went unresolved in this opinion.

Justice Gorsuch likewise concurred, but wrote separately to emphasize that this decision was so held because the Constitution

deals in substance, not form. As such, if the constitution regulates an act of government, the form of government action in that regulated area—whether statute, ordinance, or otherwise—is irrelevant. He further wrote that while this holding specifically noted that it does not address whether *Nollan*/*Dolan* reaches takings that affect classes of properties rather than one particular parcel, it should not matter either way because the same constitutional rules would apply in either case.

Justice Kavanaugh, joined by Justices Kagan and Jackson, concurred separately in apparent disagreement with Justice Gorsuch, writing that no prior decision by this Court has addressed the government practice of imposing permit conditions on classes of developments rather than specific parcels. Justice Kavanaugh concurred with the understanding that neither the *Nollan*/*Dolan* test nor this opinion address impact fees assessed on classes of property.

SIGNIFICANCE

Sheetz establishes that the *Nollan*/*Dolan* test for land use permit conditions applies regardless of which branch of government imposes said condition. This holding resolves a state court split in favor of landowners seeking to use *Nollan* and *Dolan* to guard against government abuse of its Fifth Amendment takings power. The concurrences in this case likewise show that there remains an open question as to whether the *Nollan*/*Dolan* test reaches permit conditions tailored to classes of developments rather than specific parcels of property.

RESEARCH REFERENCES

- 21 Fla. Jur. 2d *Eminent Domain* § 51 (Westlaw Precision through May 2025).
- 26 Am. Jur. 2d *Eminent Domain* § 16 (Westlaw Precision through May 2025).

Paul Castellano

CONSTITUTIONAL LAW

Constitutional Law: Civil Rights

***City of Miramar v. Spadaro*,**
392 So. 3d 558 (Fla. 4th Dist. Ct. App. 2024)

Pursuant to section 111.071(1)(a), Florida Statutes, a municipality is prohibited from paying civil rights claim judgments, including 42 U.S.C. § 1983 claims, if the officer or employee intentionally caused the harm.

FACTS AND PROCEDURAL HISTORY

In the 1980s, two officers violated a ward's constitutional rights, and in 2011 his guardian (Spadaro) brought a federal court action alleging 42 U.S.C. § 1983 civil rights claims against those officers, specifically stating that the officers' acts were "*intentional*"; and claims against the City of Miramar (City) for negligent hiring, negligent supervision/retention, and a 42 U.S.C. § 1983 civil rights claim. The federal court granted summary judgment in the City's favor on the guardian's claims for civil rights and negligent hiring. The court then conducted a jury trial on the guardian's remaining claims against the officers and city, granting: (1) judgment as a matter of law in the City's favor on the guardian's negligent supervision/retention claim; and (2) final judgment in the guardian's favor on the 42 U.S.C. § 1983 claims against the officers; and (3) final judgment in favor of the City on the negligent supervision/retention claim.

The guardian appealed to the Eleventh Circuit Court of Appeals which affirmed judgment in the City's favor. Despite this, the guardian filed a state court action seeking a declaratory judgment and writ of mandamus requiring the City to pay the federal judgment against the officers. The circuit court agreed with the guardian, which the City then appealed to the Fourth District Court of Appeal arguing that the circuit court was prohibited from doing so because section 111.071(1)(a) prohibits a municipality from paying a 42 U.S.C. § 1983 judgment where an officer has been determined to have caused the harm intentionally.

ANALYSIS

Applying a de novo standard of review, the court began by revisiting the standard for declaratory judgment and mandamus relief. The court ultimately found that the guardian had no right to declaratory judgment or mandamus relief. The court reasoned that the guardian failed to show he had a clear legal right to the city's payment of the federal court judgment against the two officers or that the City had an indisputable legal duty to pay the federal court judgment.

The court relied on the City's argument under section 111.071(1)(a). The court noted that the guardian's claims alleged the officers' violation of the ward's rights were intentional, and the jury instruction also stated that it was intentional. This further proved that the guardian was not entitled to declaratory judgment or mandamus relief.

The court distinguished the case law relied on by the circuit court. The court noted that the circuit court's case law did not apply under the present facts. The court, therefore, concluded that "the circuit court, in its final judgment denying the city's summary judgment motion and granting the guardian's summary judgment motion, incorrectly held section 111.071(1)(a) 'would **not**' prevent the city from paying the 42 U.S.C. § 1983 civil rights judgment which the guardian had obtained against the officers." *City of Miramar*, 392 So. 3d at 564.

Accordingly, the court reversed the circuit court's final judgment and quashed the writ of mandamus.

SIGNIFICANCE

City of Miramar clarifies and reaffirms that under section 111.071(1)(a), Florida Statutes, a municipality is prohibited from paying 42 U.S.C. § 1983 civil rights claim judgments where an officer or employee has been determined to have caused the harm intentionally.

RESEARCH REFERENCE

- 9 Fla. Jur. 2d *Civil Servants* § 74 (Westlaw Edge through May 2025).

Morgan Stemple

Constitutional Law: Eighth Amendment

***Wade v. McDade*,**
106 F.4th 1251 (11th Cir. 2024)

To establish liability on an Eighth Amendment deliberate indifference claim, the plaintiff must prove they suffered a deprivation that was "objectively 'sufficiently serious'" and that the defendant acted with the subjective awareness that their own conduct caused a substantial risk of serious harm to the plaintiff.

FACTS AND PROCEDURAL HISTORY

In 2016, inmate David Henegar (Henegar) failed to receive his daily seizure medication at Walker State Prison. As a result, he suffered two seizures and sued prison employees under 42 U.S.C. § 1983, arguing that the seizures caused him permanent brain damage, and that the prison guard had exhibited deliberate indifference to his medical needs in violation of the Eighth Amendment.

The district court granted summary judgment for all defendants on qualified immunity grounds. Shortly after, Henegar died from unrelated causes and Betty Wade (Wade)—the personal representative of his estate—assumed responsibility for his suit, and on appeal contended that the district court erred in granting summary judgment.

A panel of the Eleventh Circuit Court affirmed the district court's decision, citing that there was no showing that the prison officials violated Henegar's rights, but did not reach the question of whether those rights were sufficiently clearly established to defeat qualified immunity. The Eleventh Circuit panel also noted an intracircuit split concerning one element of an inmate's deliberate-indifference claim: one approach required a showing that a prison official acted with more than mere negligence, and the other required proof that they acted with more than gross negligence. A majority of the judges of the Eleventh Circuit subsequently voted to vacate the panel's opinion and rehear the case en banc.

ANALYSIS

The Eleventh Circuit began its review by revisiting caselaw in which the Supreme Court held that a prison official violates the Eighth Amendment only when (1) the deprivation alleged is sufficiently serious and (2) the prison official acted deliberately indifferent. The court swiftly ruled that the deprivation of seizure medication was sufficiently serious, but the deliberate indifference prong would require further analysis.

The court first briefly reflected on the intracircuit split and examined the caselaw that originally set out to explain "deliberate indifference." After a review, the court concluded that caselaw settled on the subjective-recklessness standard, adopting the recklessness standard used in the criminal law system, and held that a prison official who acts reasonably cannot be found liable under the Cruel and Unusual Punishments Clause. The parties to this lawsuit both agreed that this was the correct approach, but still disagreed as to the identification of "risk" that the prison officials must have been subjectively aware of.

Again discussing relevant caselaw, the court noted that the "focus . . . was on whether the official knew that his own conduct—again, his own acts or omissions—put the inmate at risk, not just whether the inmate confronted a risk in the abstract." *Wade*, 106 F.4th at 1259. The court agreed, and further couched this argument in the wording of the Eighth Amendment, stating that the use of the words "infliction" and "punishment" indicated action or inaction. Wade contended that cases of inaction versus action should be treated differently; the court, however, rejected this idea because risk rarely ever exists in a vacuum, and Wade's focus on preexisting risk can't possibly apply to action-based deliberate-indifference cases.

The court then reviewed how other courts and commentators have historically understood criminal recklessness. The court concluded that focusing on a prison official's subjective awareness of the risk posed by his own conduct, rather than focusing on an alleged preexisting risk, more closely aligns with existing law. As such, the court held that for this prong of the claim, a plaintiff must show that the defendant actually knew their acts or omissions put the plaintiff at a substantial risk of serious harm. The court went on to note the caveat that even if the defendant actually knew of a substantial risk to inmate health or safety, he cannot be found

liable under the Cruel and Unusual Punishments Clause if he responded reasonably to that risk.

Accordingly, the court remanded to the panel of the Eleventh Circuit for application of this standard to the facts of Henegar's case.

SIGNIFICANCE

Wade clarifies that in an Eighth Amendment deliberate-indifference claim, the plaintiff must demonstrate (1) that the plaintiff suffered a deprivation that was "objectively 'sufficiently serious'" and (2) that the defendant acted with the subjective awareness that their own conduct caused a substantial risk of serious harm to the plaintiff.

RESEARCH REFERENCE

- 41 Fla. Jur. 2d *Prisons and Prisoners* § 84 (Westlaw Edge through Feb. 2025).

Morgan Stemple

Constitutional Law: First Amendment

***Caggiano v. Duval County School Board*,**
403 So. 3d 1081 (Fla. 5th Dist. Ct. App. 2025)

In Florida, teachers in public school systems are protected from disciplinary action for statements they make if the statement is on a matter of public concern and the employee's right to free speech outweighs the employer's interest in an efficient workplace without disruption.

FACTS AND PROCEDURAL HISTORY

Thomas Caggiano (Caggiano), a teacher employed by Duval County, had a personal Facebook account he believed to be private. At the time of the 2020 presidential election, Caggiano made several controversial posts to this account that, for some unknown reason, were visible to the public. The Duval County School Board (School Board) asserted that the posts violated the teacher code of conduct. A full evidentiary hearing was held in which the administrative law judge found that only two of the seven posts were at issue because these two posts concerned violence, abuse, discrimination, and derogatory views. The judge concluded that just cause existed for a written reprimand from the school board and recommended that Caggiano be suspended for three days without pay. The School Board followed the judge's recommendation. On appeal, Caggiano argued that his suspension and reprimand violated his free speech rights and that that the administrative judge lacked authority to rule on such.

ANALYSIS

The court began its review by emphasizing that the controversy pertained to posts made from Caggiano's personal computer and were not directly related to the School Board or students. The court then turned its review to the Supreme Court's holdings on the topic of teacher free speech, specifically the *Pickering-Connick* test which weighs whether (a) the employee spoke on a matter of public concern, and, if so, (b) whether the employee's right to free speech outweighs the employer's interest in an efficient workplace without disruption.

The court found that the first factor was clearly satisfied because the posts were about Bernie Sanders, a candidate of the U.S. Presidential Election. Because the two reposts involved a matter of public concern, the next question was whether they presented a risk to the School Board's interest in running an efficient workplace free of disruption.

The court found there was no evidence the posts presented a risk to the School Board's interest in running an efficient workplace free of disruption. On this point, the court observed that "[t]he notion that Caggiano was himself encouraging violence by reposting the Bernie 2020 T-Shirt joke or was degrading women by reposting the Fox News screenshot is wholly insupportable and wildly off-the-mark." *Caggiano*, 403 So. 3d at 1086.

Accordingly, the court concluded that the *Pickering-Connick* balance tipped the scale in favor of Caggiano, meaning that the disciplinary action taken against him was unsupported and his free speech rights were violated. Florida's Fifth District Court of Appeals reversed the ruling with instructions to strike the suspension and reprimand from the employment records and to reinstate Caggiano's pay and related benefits from the time of suspension.

SIGNIFICANCE

Caggiano reaffirms that where a Florida public school teacher (a) speaks on a matter of public concern and (b) the employee's right to free speech outweighs the employer's interest in an efficient workplace without disruption, no disciplinary action may be taken against that teacher for their statements.

RESEARCH REFERENCE

- 10 A Fla. Jur 2d *Constitutional Law* § 306 (Westlaw Precision through May 2025).

Morgan Stemple

Constitutional Law: First Amendment

***Hoffman v. Delgado*,**
No. 23-13213, 2025 WL 25856 (11th Cir. Jan. 3, 2025)

A municipal ordinance that restricts filming on city property does not violate an individual's First Amendment right if the ordinance is reasonable and viewpoint neutral and in a limited public forum. An arrest for violating such an ordinance that is supported by probable cause and is executed with de minimis force does not violate an individual's First or Fourth Amendment rights.

FACTS AND PROCEDURAL HISTORY

In July 2022, Jeffery Hoffman (Hoffman), a self-described photojournalist, entered the lobby of the Punta Gorda police headquarters to inquire about unanswered Freedom of Information Act (FOIA) requests. Hoffman carried a camera, intending to record his interactions at the headquarters. Officers informed Hoffman that recording violated a city ordinance and asked him to exit the building. After Hoffman refused repeated requests to leave the building, believing that such requests violated his First Amendment rights, Officer Delgado (Delgado) arrested him. Hoffman alleged that during the arrest, Delgado used force that involved shoving him into a wall, twisting his wrists, striking him in the back with his knee, and pulling on his handcuffed arms. A subsequent examination at the hospital revealed that Hoffman suffered no broken bones.

Hoffman sued Officer Delgado and the City of Punta Gorda (City), claiming that the anti-filming ordinance violated his First Amendment rights; Delgado's actions constituted First Amendment retaliation; and that the arrest violated the Fourth Amendment as excessive force and false arrest. The district court dismissed Hoffman's claims with prejudice for failure to state a claim, and Hoffman appealed.

ANALYSIS

The Eleventh Circuit began its de novo review by addressing Hoffman's First Amendment claims. The court explained that the validity of a regulation that restricts speech depends on the forum

in which it applies. Here, the police department's lobby was deemed a limited public forum, requiring that restrictions on free speech be viewpoint neutral and reasonable in light of the forum's purpose.

The court reasoned that the government is not required to permit all forms of speech on its property, and that "[a] prohibition on recording protects the police headquarters from distractions and guards sensitive documents from confidentiality threats." *Hoffman*, 2025 WL 25856, at *3. Thus, the court found the ordinance reasonable because it served to secure the building for its intended purpose of ensuring public safety. Furthermore, the court determined that the ordinance was facially viewpoint neutral because it restricted all recording in city-owned buildings, regardless of the speaker's opinion or perspective. Accordingly, the court affirmed the district court's dismissal of Hoffman's First Amendment claim. Moreover, because Hoffman's actions were not protected under the First Amendment, the court held that Hoffman could not plead a First Amendment retaliation claim.

Next, the court considered Hoffman's Fourth Amendment claims. The court held that Hoffman failed to state a claim of false arrest because his arrest was not "false." The court indicated that Hoffman had admitted to violating the ordinance and refused to comply with officers' instructions to cease recording or leave the premises. Thus, the court reasoned that Hoffman's actions gave Delgado probable cause to believe that Hoffman was violating Florida law by obstructing officers in their legal duty. Similarly, the court held that Hoffman's excessive force claims failed, and explained that when an officer has probable cause to make an arrest, de minimis force does not give rise to an excessive force claim. In this case, the court found Delgado's actions—pushing Hoffman against a wall, grabbing his wrists, and causing pain without injury—was de minimis under circuit precedent.

Ultimately, the court affirmed the district court's dismissal of Hoffman's complaint, stating that Hoffman failed to allege that Delgado and the City violated his First or Fourth Amendment rights.

SIGNIFICANCE

Hoffman demonstrates that the validity of anti-recording ordinances in government buildings depends on the forum in

which these ordinances apply. In nonpublic and limited public forums, anti-recording ordinances are constitutionally valid, so long as they are reasonable and viewpoint neutral.

RESEARCH REFERENCES

- 12A Fla. Jur. 2d *Counties, Etc.* § 222 (Westlaw Precision through May 2025).
- 5 Am. Jur. 2d *Arrest* § 82 (Westlaw Precision through May 2025).

Dustin Shore

Constitutional Law: First Amendment

***Jarrard v. Sheriff of Polk County*,**
115 F.4th 1306 (11th Cir. 2024)

Under the U.S. Constitution, a volunteer must aid the government in its delivery of public services in order to qualify as a government employee for the purposes of a *Pickering* analysis. Further, when government entities engage in viewpoint discrimination or vest administrators with unbridled discretion in the application approval process, there exists a violation of one's clearly established First Amendment rights, precluding qualified immunity.

FACTS AND PROCEDURAL HISTORY

Beginning in 2012, Stephen Jarrard (Jarrard) served as a volunteer minister at the Polk County Jail (Jail). To volunteer, Jarrard was required to place his name on a volunteer list. At the Jail, Jarrard's religious teachings relating to baptism, which included that those not baptized would be condemned to hell, quickly received negative reactions from other volunteers. As a result, the Jail's volunteer ministry team told Jarrard he could only continue teaching if he stopped teaching about baptism. Jarrard refused and was barred from returning.

Jarrard later had a meeting with Johnny Moats, the Polk County Sheriff. After a disagreement, Moats denied Jarrard's request to re-enter the volunteer ministry program. The Polk County Sheriff's Office later suspended the program temporarily and implemented the first of four policies for it. After the first policy, which outlawed inmate baptism, Jarrard's application to resume his ministry was denied without explanation. Jarrard then sued Moats and Al Sharp, the Jail's Chief Jailer, for (1) retaliation against Jarrard's exercise of First Amendment-protected speech, and (2) enacting a baptism ban in violation of the First Amendment. The Jail's second and third policies added written applications, administrative approval requirements, and background checks, but neither laid out administrative review criteria nor a review timeline. Jarrard re-applied and was denied after each new policy's release. By the time the Jail released its

fourth policy addressing some of these missing items, both parties had filed motions for summary judgment.

The district court granted summary judgment in favor of Moats and Sharp on the ground that Jarrard's speech was that of a government employee, subjecting his claim to the *Pickering* test. The court further held that law as to whether Jarrard's speech was protected, and law on whether the Jail's second and third policies allowed unconstitutional unbridled discretion over applications, was not clearly established, entitling Moats and Sharp to qualified immunity. Jarrard appealed to the Eleventh Circuit Court of Appeal.

ANALYSIS

In its de novo review, the Eleventh Circuit first addressed whether *Pickering* applied. The court noted that speech restrictions in government-owned spaces are typically subject to a "forum analysis" in which courts apply varying standards depending on whether the speech was in a traditional public, designated public, or non-public forum. The *Pickering* decision, however, is an exception to this analysis. The court noted that while mere volunteer status is insufficient to hold that one is not an employee, the particular volunteer role held by Jarrard could not make him a government employee without running afoul of the Constitution. On this point, the court noted that the delivery-of-government services rationale cannot apply here "without risking a violation of the Establishment Clause, which 'mandates governmental neutrality between religion and religion, and between religion and nonreligion.'" *Jarrard*, 115 F.4th at 1317 (quoting *McCreary Cnty. v. ACLU of Ky.*, 545 U.S. 844, 860 (2005)). The court further noted that Jarrard's volunteer ministry did not bear the traditional hallmarks of employment. Instead, Jarrard only volunteered for the position. The court found the district court's focus on later policies adding confidentiality agreements, liability waivers, and background checks unpersuasive in determining Jarrard's employee status because the Jail imposed similar conditions on family and friends visiting inmates.

Because *Pickering* does not apply here, the court held that a forum analysis, which applies strict scrutiny to regulation based on the speaker's viewpoint regardless of what forum the regulation arises in, was more appropriate. Given Moats' denial of Jarrard's

request for re-entry into the program after their disagreement, the court held that for summary judgment purposes, there was a genuine dispute of material fact as to whether unconstitutional viewpoint discrimination existed here.

Finally, the court addressed the lower court's holding that Jarrard's arguable First Amendment rights were not clearly established here. To enjoy qualified immunity, a government official must establish that they acted within the scope of their discretionary authority at the time of the alleged unlawful act, and the plaintiff must fail to establish that the official either violated a statutory or constitutional right or that the right was clearly established at the time. The court determined that the law clearly establishes that government licensing rules which fail to specify how or when a permit could be denied vests unbridled discretion in government officials and thus violates the First Amendment. Further, the court stated that the Supreme Court has unambiguously held that the government may not discriminate in forum access based on a speaker's viewpoint. Accordingly, the Eleventh Circuit reversed the district court's decision and remanded the case for further proceedings.

Judge Rosenbaum concurred in part, but dissented as to the Majority's holding on qualified immunity, focusing on whether it was truly "clearly established" that *Pickering* did not apply. Judge Rosenbaum noted that Moats and Sharp were not on clear notice that *Pickering* did not apply because other courts have applied the *Pickering* framework to prison chaplains. Similarly, the majority admits that the determination of whether one is a government employee is not clear, and the majority failed to cite caselaw showing that *Pickering* did not apply. For these reasons, Judge Rosenbaum dissented as to the court's holding on qualified immunity.

SIGNIFICANCE

Jarrard clarifies that while volunteers may sometimes be considered government employees for the purposes of *Pickering*, this designation must consider the typical hallmarks of employment and whether the volunteer's activity falls under an area of services that the government can and does traditionally provide. Further, unlawful actions undertaken by state officials will not be protected by qualified immunity when application

policies grant the government unbridled discretion in how and when an application must be decided upon. Similarly, one's freedom from viewpoint discrimination is a clearly established First Amendment right, and violation of that right makes the violator ineligible for qualified immunity protection.

RESEARCH REFERENCES

- 63C Am. Jur. 2d *Public Officers and Employees* § 235 (Westlaw Precision through May 2025).
- 10A Fla. Jur. 2d *Constitutional Law* § 306 (Westlaw Precision through May 2025).
- 60 Am. Jur. 2d *Peddlers, Solicitors, Etc.* § 44 (Westlaw Precision through May 2025).

Paul Castellano

Constitutional Law: Mootness

***Romero v. Green*,**
394 So. 3d 207 (Fla. 3d Dist. Ct. App. 2024)

Section 907.041(5)(b), Florida Statutes, which made anyone arrested for a dangerous crime ineligible for nonmonetary pretrial release at a first appearance hearing upon a probable cause determination, was a procedural statute that violated the Florida Constitution's separation of powers doctrine.

FACTS AND PROCEDURAL HISTORY

Giselle Romero and Wachovia Middlebrooks (Petitioners) were each arrested for unrelated incidents of misdemeanor domestic violence. The trial court judge for their first appearance hearings concluded that neither of the Petitioners would receive pretrial services. This decision rested upon Section 907.041(5)(b), which prohibited a judge from granting nonmonetary pretrial release to anyone arrested for certain dangerous crimes, including domestic violence, at a first appearance hearing.

Despite the Petitioners' objections, the trial court judge imposed a $1,000 bond for each Petitioner. The Petitioners promptly responded by filing petitions for writs of habeas corpus in the Third District Court of Appeal, arguing that Section 907.041(5)(b) was an unconstitutional violation of the separation of powers doctrine. Both Petitioners were released from custody the following day, but the appellate court nevertheless went on to evaluate the petitions.

ANALYSIS

The court first addressed whether the mootness doctrine extinguished the court's jurisdiction over the petitions. The court recognized that release from custody usually renders a pending petition for writ of habeas corpus moot, but it went on to point out that the public exception doctrine overrode that general rule in this case. Surveying abundant Florida caselaw, the court explained that an appellate court has jurisdiction to decide the merits of an otherwise moot petition where the issue is likely to recur or capable of repetition, yet evading review. The court concluded that the

question presented fell into this exception because it was a recurring constitutional issue raised in several prior dismissed petitions and involved an important concern of arrestees.

Having established its jurisdiction over the petitions, the court turned to the merits of the Petitioners' claims of Section 907.041(5)(b)'s unconstitutionality. Essential to the court's analysis was *State v. Raymond* where the Florida Supreme Court invalidated a prior, yet very similar, version of the statute as unconstitutional. 906 So. 2d 1045 (Fla. 2005). There, the court held that the statute was a violation of the separation of powers doctrine because it was a procedural provision falling exclusively within the authority of the state's judicial branch, rather than a substantive provision that its legislature could properly enact.

Section 907.041(5)(b) was amended in 2024, retaining the core clause, but making its application contingent on the court finding probable cause to believe that the accused committed the charged offense. The State of Florida now argued that this addition gave the amended statute intertwined procedural and substantive aspects, making it constitutional in its new form.

The court disagreed with the State, holding that the amended provision was not sufficiently distinguishable from the one invalidated in *Raymond*. From the court's perspective, "hold[ing] that a simple reference to some preexisting substantive right in a statute is sufficient to render an otherwise purely procedural provision a substantive one" would equate to "paying mere lip service to [its] well-established jurisprudence that the Legislature may not 'create a new procedural rule by statute.'" *Romero*, 394 So. 3d at 215 (quoting *Raymond*, 906 So. 2d at 1051). Here, the court explained that the substantive right to a probable cause determination was not created or conveyed by the statute—rather, it was previously established in both the United States' and Florida's Constitutions and long recognized by both of their Supreme Courts.

Therefore, the court held that the amended version of Section 907.041(5)(b) did not create or enhance any substantive rights, so it remained equivalent to the procedural statute struck down in *Raymond*. Accordingly, the court granted the petitions for writs of habeas corpus, again invalidating the provision as an unconstitutional violation of separation of powers.

SIGNIFICANCE

Romero invalidates the recently amended version of Section 907.041(5)(b), emphasizing that a statute must create or convey a substantive right—rather than merely reiterating an existing one—in order for any accompanying procedural statutory provisions to be deemed incidental, and therefore constitutional. Additionally, *Romero* exemplifies that, even if a petition for writ of habeas corpus becomes moot due to a change in custodial status, the underlying issue may still be addressed by an appellate court if significant and recurring.

RESEARCH REFERENCES

- 12A Fla. Jur. 2d *Courts and Judges* § 244 (Westlaw Precision through May 2025).
- 10 Fla. Jur. 2d *Constitutional Law* § 170 (Westlaw Precision through May 2025).
- 3 Fla. Jur. 2d *Appellate Review* § 287 (Westlaw Precision through May 2025).

Cheyanne Sharp

Constitutional Law: Privacy

***Waite v. State*,**
395 So. 3d 601 (Fla. 5th Dist. Ct. App. 2024)

Under Florida case law, Section 934.03(1)(a) of the Florida Statutes does not bar the interception of cell phone communications with a police officer if the phone call occurred while the police officer was on duty, was related to official police business, and involved phones used for official police business.

FACTS AND PROCEDURAL HISTORY

Since 2018, Michael Waite (Waite) made several 911 calls alleging trespass on his property. In January 2021, he called 911 to allege a trespass by Citrus County Sheriff's Office (CCSO) deputies and asked to file a complaint; the 911 operator advised that a supervisor would call back. When Sergeant Edward Blair called Waite, Waite recorded the conversation without Sergeant Blair's knowledge and sent a copy to the CCSO records department.

One month later, a detective obtained a warrant for Waite's arrest, alleging that Waite unlawfully intercepted an "oral communication" in violation of Section 934.03(1)(a) of the Florida Statues. During the arrest, Waite elbowed Captain Ryan Glaze in the face and the deputies found copies of three recorded phone calls between Waite and CCSO deputies.

Waite was charged with violating Section 934.03(1)(a), battery of a law enforcement officer, and resisting arrest with violence. In response, Waite filed several motions to dismiss and argued that the conversations did not fall under the statute's definition of "oral communication" as the deputies did not reasonably expect privacy. The State filed a traverse and demurer and argued the motion to dismiss should be denied because the "reasonable expectation of privacy" is an issue of fact for a jury to decide. The trial court agreed with the State. Waite appealed.

ANALYSIS

The Florida District Court of Appeal began its de novo review by reexamining Section 934.03(1)(a) of the Florida Statutes, which

makes it illegal to intercept any "oral communication." The court then looked at *State v. Smith*, holding that "oral communication" requires there to be a subjective and reasonable expectation of privacy based on societal expectations.

Thus, the Court asked whether Waite's respective recorded conversations with CCSO deputies qualified as an interception of "oral communications," and began by analyzing cases involving recorded conversations with police. First, in *Pickett v. Copeland*, a Florida court established that under the First Amendment, individuals may record police officers carrying out official duties in public. 236 So. 3d 1142, 1146 n.2 (Fla. 1st DCA 2018). Second, in *McDonough v. Fernandez-Rundle*, a Florida court held that meetings in an office are "quasi-public" in nature. 862 F.3d 1314, 1320–21 (11th Cir. 2017). Here, the court noted that "all the secretly recorded conversations were between a citizen and law enforcement officers regarding official business, occurred while the deputies were on duty, and involved phones utilized for official police business." *Waite*, 395 So. 3d at 605. Therefore, the court reasoned, even though Waite secretly recorded the conversations, the deputies did not have a reasonable expectation of privacy as recognized by society.

Additionally, the court refused to dismiss Waite's battery of a law enforcement officer and resisting arrest with violence charges. Accordingly, the court held that Waite did not violate Section 934.03(1)(a) and reversed the lower court's denial of Waite's motion to dismiss relating to the statute. However, the court affirmed the lower court's decisions in all other respects.

SIGNIFICANCE

Waite establishes that under Section 934.03(1)(a) of the Florida Statutes, a phone call with a police officer may not qualify as an "oral communication" for the purposes of barring the interception of such communication if it occurs while the officer was on duty, conducting official police business, and communicating from a phone used for official police business.

RESEARCH REFERENCES

- 14B Fla. Jur 2d *Criminal Law—Procedure* § 979 (Westlaw Precision through May 2025).
- 16 Fla. Jur 2d *Criminal Law—Substantive Principles/Offenses* § 327 (Westlaw Precision through May 2025).

Kayla Somoano

Constitutional Law: Privacy

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- 16 Fla. Jur 2d *Criminal Law—Substantive Principles/Offenses* § 327 (Westlaw Precision through May 2025).

Kayla Somoano

ELECTIONS & VOTING RIGHTS

Elections & Voting Rights: Election Law

***Golden v. Satcher*,**
395 So. 3d 207 (Fla. 2d Dist. Ct. App. 2024)

In Florida, when determining whether the supervisor of elections must hold an election for a vacancy in office stemming from a resignation, the remainder of the term of office should be calculated from the effective date of the resignation.

FACTS AND PROCEDURAL HISTORY

Richard Tatem (Tatem) was the school board member for District Five of the Manatee County School Board (School Board), with his term set to end in November 2026. On May 30 of 2024, Tatem submitted a letter of resignation, explaining his intention to run for a seat in the Florida House of Representatives. The letter provided that his resignation was effective November 5, 2024. James T. Golden (Golden), upon learning of Tatem's intent to resign, tried to submit paperwork to run for Tatem's vacant seat. The Supervisor of Elections refused to accept the paperwork, explaining that no election would be held to fill the vacancy.

Golden filed a petition for writ of mandamus in the circuit court, seeking for the court to mandate the Supervisor of Elections to fill the School Board vacancy. The circuit court dismissed the petition with prejudice, reasoning that under the Florida Constitution and Section 99.012, Florida Statutes, an election was not required because the vacancy created by Tatem's resignation would be filled by gubernatorial appointment until the November 2026 election. Golden appealed to the Second District Court of Appeals, asking the court to decide whether the remainder of the term of office should be calculated from the date on which a resignation is tendered or the date on which it is effective.

ANALYSIS

The court first looked to the Florida Constitution to determine how a vacancy in office must be filled. Under Art. IV, § 1(f), Fla.

Const., if the remainder of the term of office for an elective office is less than twenty-eight months, the vacancy must be filled by gubernatorial appointment for the remainder of the term. If the remainder of the term of elective office is more than twenty-eight months, the governor must still appoint a successor, but that successor only serves until the office is filled by election pursuant to section 100.111(1)(a), Florida Statutes. Therefore, the court stated, if the resignation is "calculated from the date on which Tatem tendered his resignation" then an election must be held, but if "the remainder of the term of office is calculated from the effective date of Tatem's resignation" then the Governor must appoint a successor. *Golden*, 395 So. 3d at 208-09.

The Florida Constitution is silent as to the exact moment when a vacancy caused by an incumbent's resignation occurs. However, Section 99.012(3)(f), also known as the "resign-to-run" law, unequivocally provides that the office is deemed vacant upon the *effective date* of the resignation stated in the letter.

The court then addressed Golden's contention that the court should ignore the plain language of Section 99.012(3)(f) and instead follow Florida Supreme Court precedent. In the case cited by Golden, the Florida Supreme Court calculated the remainder of the term from the date on which resignation was tendered. The court pointed out, however, that this precedent is no longer relevant because Section 99.012 had since been materially amended, no longer differentiating between elective offices and elective charter county offices or elective municipal offices. The Second District Court of Appeals, therefore, found Golden's argument unpersuasive, and, in considering the plain language of the constitutional provision and the resign-to-run statute, as well as other previous cases of this court, concluded that the remainder of the term of office should be calculated from the effective date of the resignation.

Accordingly, the court affirmed the lower court's dismissal of Golden's petition for writ of mandamus.

SIGNIFICANCE

Golden clarifies that when an elected official in the state of Florida resigns, the remainder of the term of office is calculated from the effective date of the resignation, not the date on which the resignation is tendered.

RESEARCH REFERENCE

- 9 Fla. Jur. 2d *Civil Servants* § 16 (Westlaw Precision through May 2025).

Morgan Stemple

Elections & Voting Rights: Election Law

Hillsborough County v.
***School Board of Hillsborough County*,**
395 So. 3d 1116 (Fla. 2d Dist. Ct. App. 2024)

From a plain reading of Section 1011.73(2), Florida Statutes, and the statutory rights and obligations of school boards, district school boards have the power and authority to decide the date(s) that a referendum pursuant to Section 1011.71(9) appears on the ballot. The county commissioners must adhere to the date(s) provided by the district school board.

FACTS AND PROCEDURAL HISTORY

Florida Statutes Section 1011.71(9) empowers Florida school boards to generate revenue by holding referendums to get voter approval. In April 2024, the Hillsborough County School Board (School Board) adopted resolution 24-SB-1, which called for a referendum on an additional millage to be placed on the November 2024 general election ballot. The resolution directed the County Commissioners to place the referendum on the November 2024 ballot. However, the County Commissioners decided that the referendum would go on the November 2026 general election ballot instead.

In response, the School Board filed an emergency petition for a writ of mandamus, seeking to compel the County Commissioners to have the 24-SB-1 referendum placed on the 2024 general election ballot. The trial court granted the petition, determining that Section 1011.73 granted the School Board the right to select the election on which the referendum vote would take place, while the County Commissioners had only the duty of calling an election on the date the School Board selected. This appeal followed, in which the County Commissioners asked the Second District to decide whether the trial court correctly determined they had purely a ministerial duty to call an election on the date selected by the School Board.

ANALYSIS

To determine whether the County Commissioners or the School Board have the authority to call an election on a specific date, the Second District first laid out the standard that entitles one to a writ of mandamus. The court explained that to be entitled to a writ of mandamus, the petitioner must have a clear legal right to the requested relief and no other adequate remedy available, and the respondent must have a legal duty to perform the requested action. Further, the court stated that a writ of mandamus is not appropriate if the respondent has any discretion in performing the duty.

The Second District then considered the County Commissioners' argument. The County Commissioners insisted they have discretion to set the date of the election because, under Section 1011.73(2), they have the duty to "call an election." In support of this argument, the County Commissioners referenced multiple definitions of "call an election" and Florida Supreme Court precedent. The Second District distinguished the facts and statutes at issue in the cited case. The court concluded that the cases were materially different and therefore required different outcomes.

The court then considered the context of the statute and gave effect to every clause in Section 1011.71 and 1011.73, finding that:

> Reading section 1011.73(2) in context with the School Board's constitutional and statutory rights and obligations, it is apparent that the School Board's directive to the County Commissioners necessarily includes the date of the election and that the County Commissioners' duty is to adhere to the date directed by the School Board—a purely ministerial task.

School Board of Hillsborough County, 395 So. 3d at 1120.

The Second District concluded that the County Commissioners' refusal to call the election as directed by the School Board effectively overrode the School Board's powers. The court noted that its conclusion is compelled by the plain statutory language and bolstered by the fact that the measure expressly called for the tax to be imposed from July 1, 2025, through June 30, 2029. Accordingly, the court upheld the trial court's order, granting the School Board's mandamus petition.

SIGNIFICANCE

Hillsborough County clarifies that under Section 1011.73, Florida Statutes, it is the district school board, not the county commissioners, who are empowered to choose the date of election for school district referendums. The county commissioners are to fulfill their ministerial duty to call an election on the date selected by the school board.

RESEARCH REFERENCE

- 46 Fla. Jur. 2d *Schools, Universities, and Colleges* § 86 (Westlaw Precision through May 2025).

Morgan Stemple

Elections & Voting Rights: Election Law

***Pedraza v. City of Miramar*,**
401 So. 3d 1195 (Fla. 4th Dist. Ct. App. 2025)

When an applicant seeking candidacy in a Florida election makes erroneous substantive statements in qualifying election paperwork, the error was caused by the applicant's mistakes, and the applicant is not disqualified for election, election officials may only accept substantive information provided by the applicant and are under no obligation to ignore or rewrite it.

FACTS AND PROCEDURAL HISTORY

Luis Pedraza (Pedraza) decided to run for city commissioner in the City of Miramar a few days before the application deadline. While filling out the required paperwork, Pedraza mistakenly checked boxes on two forms stating he was running as a write-in candidate. Not long after the deadline, the City Clerk informed Pedraza that his name would be excluded from the ballot because he indicated he was running as a write-in candidate. When Pedraza explained his mistake, the City Clerk reiterated that Pedraza's name would be excluded from the ballot.

Pedraza sued the City of Miramar Clerk and the Broward County Supervisor of Elections (collectively, the Election Officials), seeking injunctive and declaratory relief to compel the Election Officials to list his name on the ballots. Pedraza argued that his name should be included on the ballot because he filled out the required paperwork on time and paid the qualifying fee. The trial court found that Pedraza caused the problem at issue, and the Election Officials complied with Florida election laws because they did not disqualify Pedraza and qualified him as a write-in candidate based on Pedraza's substantive statements in his paperwork.

On appeal, Pedraza requested the Fourth District Court of Appeal reverse the trial court's decision and grant injunctive relief.

ANALYSIS

The Fourth District Court of Appeal began its de novo review by listing the elements of temporary injunctive relief, which include (1) substantial likelihood of success on the merits, (2) the unavailability of adequate remedy at law, (3) irreparable harm absent entry of an injunction, and (4) that the injunction would serve the public interest. The court asserted that only the first element, "substantial likelihood of success on the merits," was at issue in this case and assessed the parties' respective arguments.

First, the court rejected Pedraza's argument that section 5.02 of the City Charter prohibits write-in candidates, and therefore required the Election Officials to include his name on the ballot, because he paid the fee and submitted written notice of his candidacy. In response, the court pointed to City Charter section 5.01, which requires all elections comply with the general election laws of the State of Florida. Further, the court agreed with the City Clerk that section 99.061, Florida Statutes, applied. The court explained that under section 99.061, write-in candidates' names need not be listed on a ballot; however, a general election ballot must include space for a write-in candidates' name to be written in.

Moreover, the court rejected Pedraza's argument that the Election Officials should have excused the "scrivener's error" in Pedraza's paperwork and disagreed that his application materials should be held to a substantial compliance standard. The court relied on caselaw addressing a similar issue in which "the First District rejected [the appellant's] argument that substantial compliance applies to basic election qualifying requirements, such as paying a proper qualifying fee." *Pedraza*, 2025 WL 457930 at *4. In Pedraza's case, the court applied the same legal principle to substantive statements made in the qualifying papers of an election. The court distinguished Pedraza's case from cases where courts have granted relief when an error was outside an applicant's control because here, Pedraza had not been disqualified for election, and Pedraza's own mistakes caused the erroneous substantive statements.

Finally, the court noted that no authority directs the Election Officials to ignore the substantive information an applicant writes on qualifying election paperwork nor does any authority permit a trial court to rewrite an applicant's substantive statements on such

paperwork. Thus, the City Clerk correctly performed her ministerial function.

Accordingly, the court affirmed the trial court's decision to deny injunctive relief.

SIGNIFICANCE

Pedraza clarifies that the Florida Statutes do not require city clerks or other election officials to ignore or reinterpret erroneous substantive information submitted by a potential candidate via qualifying election paperwork when the potential candidate is not disqualified from the election and the error was caused by the candidate's mistake.

RESEARCH REFERENCES

- 21 Fla. Jur 2d Elections § 78 (Westlaw Precision through May 2025).
- 21 Fla. Jur 2d Elections § 6 (Westlaw Precision through May 2025).

Kayla Somoano

FINANCE & TAXATION

Finance & Taxation: Ad Valorem

***City of Gulf Breeze v. Brown*,**
397 So. 3d 1009 (Fla. 2024)

Under the Florida Constitution, a municipality is entitled to an ad valorem tax exemption even when the municipality hires a private management company to operate the property and compensates that company using a profit-based formula.

FACTS AND PROCEDURAL HISTORY

The City of Gulf Breeze (City) owned and operated a public golf course that the Santa Rosa County Property Appraiser (Property Appraiser) previously determined was exempt from ad valorem taxation under the Florida Constitution. After years of financial losses from managing the property, the City entered into an agreement with a private management company to more efficiently manage the property and help stem the losses.

Under the agreement, the City retained ownership, control, and the absolute right to use the property; disavowed that the agreement created a lease; and controlled the management company's use of the property through oversight by the City Director of Parks and Recreation. While the management company bore the risk of loss under the agreement and had to pay the City an annual fee, it was entitled to retain profits generated by the golf course as compensation.

The Property Appraiser later denied the City an ad valorem tax exemption, determining that the agreement's terms created a lease. The City petitioned the Value Adjustment Board, which reversed, determining that the agreement was merely a management contract. The Property Appraiser appealed to circuit court, which granted final summary judgment in favor of the City, holding that the City's maintained control of the property was inconsistent with a lease. On appeal to the First District Court of Appeal, the First District reversed, stating that it need not address whether the agreement created a lease because the property was not used exclusively by the City. The First District held that this

runs afoul of the Florida Constitutional requirement that municipal property be used exclusively by the municipality in order to qualify as tax exempt.

After the City motioned for rehearing en banc, the First District agreed to certify the question of whether a city's public golf course is still used exclusively by that city if they turn operation and management of the course over to a management company for its own profit or loss.

ANALYSIS

In its de novo review, the Florida Supreme Court first provided the relevant portion of Article VII, Section 3(a) of the Florida Constitution, which provides that municipal property owned and used exclusively by a municipality for municipal or public purposes is exempted from taxation. In analyzing this provision, the court stated that the result of this case hinges on what it means for municipally-owned property to be used exclusively by the municipality.

While the Property Appraiser conceded that the operation of the golf course was for a valid municipal purpose—as a way for the City to dispose of lightly treated sewage water—they argued that the agreement's profit-based compensation structure created a lease. The court noted that Florida caselaw holds that municipally-owned property that is leased will not be exempt from taxation unless the property is used for the administration of a phase of government. The court, however, was unpersuaded by this lease-based argument because the Property Appraiser never addressed how the extensive control retained by the City in the agreement was consistent with a lease. Examining the Black's Law Dictionary definition of a "lease," the court reasoned that the Property Appraiser never showed how the agreement conveyed the City's right to use and occupy the property to the management company.

In addressing the First District's focus on the agreement's compensation structure and the matter of exclusive municipal use, the court stated that the First District's reliance on compensation effectively treated the agreement like a lease without determining it to be a lease. The court continued that leaseholders generally exercise extensive control over leasehold property, which was not the case here. In the court's words, "the dispositive circumstance here is that the City ultimately retained control of its property and

[the management company's] operations through the terms of the management agreement as well as through direct oversight by the City's Director of Parks and Recreation." *City of Gulf Breeze*, 397 So. 3d at 1015.

Accordingly, the court rephrased the First District's certified question to instead ask whether a municipally-owned and controlled golf course is disqualified from tax exempt status because the company is compensated on a profit-based formula. The court answered this question in the negative, held that neither the agreement nor its compensation structure defeated the City's ad valorem exemption under the Florida Constitution, and quashed the First District's decision.

SIGNIFICANCE

City of Gulf Breeze highlights the importance of municipalities maintaining exclusive use and control of municipal property when hiring private management companies to manage the land. When drafting such agreements, failure to retain the municipality's absolute rights to use and control the land risks running afoul of the "used exclusively by" provision in Article VII, Section 3(a) of the Florida Constitution, and risks losing ad valorem tax protection as a result.

RESEARCH REFERENCES

- 50 Fla. Jur. 2d *Taxation* § 95 (Westlaw Precision through May 2025).
- 51A Fla. Jur. 2d *Taxation* § 1125 (Westlaw Precision through May 2025).

Paul Castellano

Finance & Taxation: Ad Valorem

***Pinellas County v. Joiner*,**
389 So. 3d 1267 (Fla. 2024)

Under Florida law, sovereign immunity shields counties from the obligation of paying ad valorem taxes on county-owned property. This protection, however, does not extend to property located outside of the county's jurisdictional boundaries.

FACTS AND PROCEDURAL HISTORY

Although Pinellas County previously paid ad valorem taxes to Pasco County for the roughly 12,400 acres of real property it owns there, Pinellas County suddenly claimed that the principle of sovereign immunity shielded it from such taxes. Pinellas County sought to enforce its position against the Pasco County Property Appraiser (Property Appraiser) by seeking a declaratory judgment holding that its real property in Pasco County was immune from ad valorem taxation, and by requesting an injunction prohibiting the future taxation of that land.

After both parties moved for summary judgment, the trial court ruled in favor of Pinellas County, holding that a Florida county's sovereign immunity from ad valorem taxation extends beyond its county borders, adding that such immunity can only be waived by the State.

The Property Appraiser appealed to the Second District Court of Appeal, which overturned the trial court's ruling. The Second District held that one county need not yield its taxation authority to another, noting that each Florida county has the statutory and constitutional authority to assess ad valorem taxes on all property within its boundaries.

Following its analysis, the district court certified the following as a question of great public importance: is property owned by a county located outside its jurisdictional boundaries immune from ad valorem taxation by the county in which the property is located? Based on that certified question, Pinellas County sought discretionary review from the Florida Supreme Court.

ANALYSIS

The Florida Supreme Court began its de novo review by providing a brief history of common law sovereign immunity. The court noted that the State of Florida's immunity is total under the common law, and that Florida's counties likewise enjoy this immunity. However, the court also pointed out historical limits placed on sovereign immunity, including U.S. Supreme Court caselaw holding that a sovereign which acquires property in a foreign country assumes the character of a private individual. This discussion of history and common law led to the Florida Supreme Court's determination that Pinellas County failed to identify any historical or common law basis supporting its asserted immunity from taxation of extraterritorial property.

The court was unpersuaded by Pinellas County's argument that sovereign immunity has been applied for the tortious extraterritorial conduct of county officials, viewing the matter as distinct from the subject at issue. As to waiver, the court clarified that state waiver is not inferred from the Florida Legislature's setting of county boundaries, but instead that the setting of these boundaries established the extent to which sovereign immunity from taxation may be asserted.

Accordingly, the court rejected Pinellas County's argument that Florida counties enjoy the same sovereign immunity from taxation as is afforded to the State. While Pinellas County's argument was not wholly without merit, the court disagreed with its overall conclusion. The court stated, "Pinellas County is correct that each county partakes of the State's sovereign immunity from ad valorem taxation. . . . But that does not mean each county enjoys that immunity coextensively with the State." *Joiner*, 389 So. 3d at 1272–73.

Justice Muñiz, with Justice Canady, argued in his dissent that common law grants counties and municipalities presumptive immunity from taxation anywhere in Florida, so long as the land is used for a public purpose. Citing a treatise from 1903 and caselaw from 1930, Justice Muñiz argued that municipal tax immunity is a longstanding protection that is so fundamental and obvious that it does not need to be embodied as an express exemption. He continued that this common law immunity is based on the subject property being used for public purposes, distinctly different from the jurisdictional analysis relied on by the majority.

The majority disagreed with this point, saying, in part, that tax immunity in Florida is based on sovereign status over the land in question, not the use of the property.

In his dissent, Justice Muñiz also looked to the differences between Florida's 1885 constitution and the governing 1968 constitution to argue that, while broad immunity is not outright provided for, an immunity rule based on ownership of property alone is consistent with the structure and logic of the document as amended. The majority quickly rejected this argument, labeling it plainly speculative.

Accordingly, the court affirmed the Second District's decision, answered the certified question in the negative, and rejected the arguments presented by both Pinellas County and the dissent.

SIGNIFICANCE

Joiner clarifies the limits of Florida counties' sovereign immunity power by establishing that while common law sovereign immunity shields Florida counties from paying ad valorem taxes on property within their jurisdiction, counties may not claim sovereign immunity over land for which they are not sovereign. *Joiner* ultimately declares that one county does not and may not extend its sovereignty into another county merely by purchasing land there.

RESEARCH REFERENCE

- 50 Fla. Jur. 2d *Taxation* § 93 (Westlaw Precision through May 2025).

Paul Castellano

LAND USE PLANNING & ZONING

Land Use Planning & Zoning: Standing

***Everett Brothers Recycling, Inc. v. Martin County*,**
401 So. 3d 372 (Fla. 4th Dist. Ct. App. 2025).

Under Florida law, when a plaintiff seeks to enforce a properly enacted, valid zoning ordinance, the plaintiff must first establish standing by showing special damages differing in kind—not merely in degree—from any suffered by the public at large.

FACTS AND PROCEDURAL HISTORY

Martin County (County) found SA Recycling, LLC (SA Recycling) to be in violation of its zoning ordinances, illegally operating as a salvage yard. The County and the owners of the business reached a stipulation and agreed final order stating that the property would no longer be used as a salvage yard, but that it could operate as a scrap metal recycling center instead.

Everett Brothers Recycling, Inc. (Everett) and Waterblasting Technologies, LLC (Waterblasting) (collectively, Appellants) brought suit against the County, eventually naming SA Recycling as another defendant. Everett lawfully operated a scrap metal salvage yard within the County and allegedly spent over $800,000 modifying the property to comply with the County's zoning ordinances. Waterblasting operated a manufacturing plant situated directly across the street from SA Recycling and alleged that this neighbor brought dust and dirt, polluted waters, noise, and traffic congestion on and around its own property.

In their two counts against the County, Appellants sought declarations that (1) the prior agreement between the County and SA Recycling was conducted ultra vires, and therefore, void and (2) both the use permitted by the agreement and the use being conducted on the property violated the applicable zoning ordinances. In the count against SA Recycling, Waterblasting sought injunctive relief for nuisance.

The County and SA Recycling moved to dismiss for lack of standing. The trial court, finding that Appellants failed to allege

special damages required for standing, dismissed the complaint with prejudice. Everett and Waterblasting appealed.

ANALYSIS

The Fourth District Court of Appeal first recognized that it reviews claims seeking declaratory judgment under an abuse of discretion standard, whereas a nuisance claim is analyzed under a de novo standard.

The court began its analysis by presenting the core elements of standing: a plaintiff must show (1) a concrete, distinct and palpable, and actual or imminent injury in fact; (2) a causal connection between the injury and the defendant's conduct; and (3) a substantial likelihood of redress through the requested relief. As established in *Boucher v. Novotny*, this standard is heightened in both nuisance and zoning suits by the special injury rule, which requires plaintiffs to show that their alleged injury in fact is different in kind and degree from any suffered by the community at large.

The court then reviewed the Florida Supreme Court case *Renard v. Dade County*, which clarified the standing requirements in different types of zoning ordinance challenges. If a plaintiff seeks to enforce a valid zoning ordinance, the *Boucher* special injury rule must be met. However, if a plaintiff seeks to challenge a zoning ordinance that was improperly enacted, any affected citizen will have standing. The court noted that Appellants principally argued that the Florida Supreme Court receded from *Boucher*'s broad application of the special injury rule in *Renard*, and that the rule did not apply to them because their challenge to the County's ultra vires act fell within the latter category.

However, the court disagreed, finding the two precedents consistent and explaining that "Appellants conflate[d] the difference between the *enforcement* of an ordinance, which falls under the first category in *Renard* and requires special damages, with the *enactment* of an ordinance, which falls under the third category." *Everett Brothers*, 401 So. 3d at 377. Appellants' claims were based on their allegations that SA Recycling's operations were not permitted within its zoning district, equating to an attempt to enforce the zoning ordinance. And although Appellants also challenged the validity of a stipulation and order that were

allegedly improperly enacted, that was not the same as challenging an improperly enacted zoning ordinance.

After affirming that special damages were required for standing in this case, the court went on to find that Appellants did not meet this standard. Even if SA Recycling did not have to incur costs to comply with the County's zoning ordinances like Everett did, a claim of financial disadvantage or loss of business was not a special injury. Similarly, the disturbances Waterblasting endured were also experienced by all property owners neighboring SA Recycling.

The court affirmed the trial court's decision to dismiss Appellants' complaint based on lack of standing because they effectively sought to enforce the County's zoning ordinances—an approach which requires the special injury rule to establish standing.

SIGNIFICANCE

Everett Brothers clarifies that the categories of zoning ordinance challenges set forth in *Renard* expand on the special injury rule established in *Boucher*—they do not constitute a retreat from the rule. *Everett Brothers* also emphasizes the difference between seeking enforcement of a valid zoning ordinance, which requires a showing of special damages, and challenging an improperly enacted one, which does not. Lastly, it provides two examples of alleged injuries that were not individualized or concrete enough to satisfy the special injury rule.

RESEARCH REFERENCES

- 7 Fla. Jur. 2d *Building, Zoning, and Land Controls* § 237 (Westlaw Precision through May 2025).
- 1 Fla. Jur. 2d *Actions* § 45 (Westlaw Precision through May 2025).

Cheyanne Sharp

Land Use Planning & Zoning: Ripeness

***Lozman v. City of Riviera Beach*,**
119 F.4th 913 (11th Cir. 2024)

In Florida, a landowner's claim against a land use regulation is considered ripe for judicial review only if the government reached a final decision prohibiting the desired land use, or if the government created a regulation that "precisely and only" targeted the landowner's property.

FACTS AND PROCEDURAL HISTORY

In 2014, Fane Lozman (Lozman) purchased approximately 7.75 acres of mostly submerged land in the City of Riviera Beach (City). The City's 1991 comprehensive plan included a Special Preservation Future Land Use provision that prohibited landowners from developing submerged land. However, in 2010, the City amended the plan to allow for the development of "residential fishing or viewing platforms and docks for non-motorized boats." Additionally, an exception prevented the plan from being construed or implemented in a way that would impair "judicially determined vested rights to develop or alter submerged lands."

Although Lozman's parcel was designated under the Special Preservation Future Land Use provision of the comprehensive plan, a conflicting local zoning ordinance allowed landowners like Lozman to build single-family homes. In 2020, the City corrected the inconsistency when it adopted Ordinance 4147, which mirrored the 2010 comprehensive plan's limitations and included an exception for properties with judicially determined vested rights.

Lozman sued the City, arguing the comprehensive plan and ordinance equated to an unconstitutional taking of his property because it deprived it of all beneficial economic use without just compensation. The district court granted the City's motion for summary judgment.

ANALYSIS

The Eleventh Circuit Court began its de novo review by analyzing whether Lozman's case was ripe for judicial review, as

he did not apply for a variance, permit, or rezoning from the City. The court noted that for a *Lucas* "total takings" claim to be ripe for judicial review, the challenged authority had to have reached a final decision about the extent of permitted development on the land in question.

The court analyzed whether a final decision occurred in Lozman's case by reviewing past judicial decisions. For example, in prior case law, one court held that generally, a government has not reached a final decision until a landowner has applied for at least one variance to a disputed zoning ordinance; however, the same court established a futility exception that states a zoning ordinance may qualify as a final decision when it targets and prohibits "precisely and only" the aggrieved landowner's property. The court reasoned that here, the ordinance did not specifically target Lozman's property alone, therefore neither the ordinance nor the comprehensive plan constituted a final decision to suggest the case was ripe for review.

Moreover, the court explained that both the exception allowing viewing platforms and docks in certain cases and the provision protecting "judicially determined vested rights" in Ordinance 4147 demonstrate the need for the City to reach a final decision before Lozman's case could be ripe for judicial review. Finally, the court clarified, "We have not held that a property owner who has not applied for *any* permit, variance, or rezoning to develop his land may utilize the futility exception." *Lozman*, 119 F.4th at 919. Instead, the court explained that Lozman's failure to apply for any permits made it impossible to know the extent of the economic impact caused by the City's regulations. Ultimately, the court concluded the City of Riviera Beach did not reach a final decision and thus Lozman's case was not ripe for review.

SIGNIFICANCE

Lozman clarifies that a land use regulation restricting a landowner from developing the landowner's property is not ripe for judicial review unless the government has reached a final decision about prohibiting that landowner from developing their land in a specific way.

RESEARCH REFERENCES

- 7 Fla. Jur 2d *Building, Zoning, and Land Controls* § 244 (Westlaw Precision through May 2025).
- 7 Fla. Jur 2d *Building, Zoning, and Land Controls* § 263 (Westlaw Precision through May 2025).

Kayla Somoano

MUNICIPAL AUTHORITY

Municipal Authority: Party Costs

***Palm Beach County School District v. Smith*,**
389 So. 3d 558 (Fla. 1st Dist. Ct. App. 2024)

Under Florida law, prevailing party costs may be awarded to an employer and its workers' compensation carrier even when they do not prevail on all claims raised in the proceedings. Section 440.34(3), Florida Statutes, allows prevailing party costs to be awarded to more than one party because such cost awards are restorative rather than punitive.

FACTS AND PROCEDURAL HISTORY

Frances Smith filed a petition for benefits in 2019, seeking workers' compensation for a tailbone injury, that her employer, Palm Beach County School District, had already accepted, and for a lower back injury. The parties resolved the 2019 petition for benefits by joint stipulation. Under the stipulation, Palm Beach County and its workers' compensation carrier (E/C) agreed to accept and treat Smith's tailbone injury if Smith withdrew her claim for the lower back injury. The E/C subsequently sought costs for prevailing on the back injury claim. However, the Judge of Compensation Claims (JCC) denied the motion, concluding that the E/C had waived the right to costs in the joint stipulation. Furthermore, the JCC concluded that even if the E/C had not waived entitlement to prevailing party costs, she could not award costs under section 440.34(3) because the E/C did not prevail on all issues.

The E/C appealed the decision, arguing that the JCC erred in two ways. First, the E/C asserted that the JCC erred when she concluded that the E/C waived entitlement to costs under the joint stipulation. Second, the E/C argued that there can be more than one prevailing party in proceedings before the JCC. Accordingly, because it prevailed on one of the claims in the 2019 petition for benefits, the E/C asserted that it was entitled to prevailing party costs.

ANALYSIS

The court began by reviewing de novo the JCC's interpretation of the stipulation, and her conclusion that the E/C waived entitlement to costs. The court found that the stipulation did not explicitly waive the employer's right to recover costs for the lower back injury claim. Since the stipulation was silent on the issue of costs for claims other than the tailbone injury, the court determined that there was no waiver.

Next, the court analyzed the JCC's determination that the E/C was not entitled to costs because it did not prevail on all issues under the 2019 petition for benefits. The court reviewed this second issue de novo, stating that the E/C's entitlement to costs required an interpretation of section 440.34(3). The court agreed with the E/C's argument that a JCC may award prevailing party costs to more than one party in proceedings under chapter 440.

The court cited precedent from the First District Court of Appeal that held under section 440.34(3), "a party can be 'both prevailing and nonprevailing relative to different claims in the same proceeding.'" *Palm Beach County School District*, 389 So. 3d at 561 (quoting *Aguilar v. Kohl's Department Stores, Inc.*, 68 So. 3d 356, 358 (Fla. 1st Dist. Ct. App. 2011)). The court noted that unlike attorney's fees, which are awarded for punitive purposes and generally limited to one prevailing party, cost awards under section 440.34(3) are restorative and may be awarded to multiple parties who prevail on distinct claims. Similarly, the court articulated that it had reached the same conclusion in previous cases. Relying on precedent, the court held that a JCC is not limited to awarding prevailing party costs to only one party.

Lastly, the court emphasized that in workers' compensation cases, which often involve multiple types of claims that do not lend themselves to a simple determination of an "overall victor," it is proper for costs to be awarded based on specific outcomes for individual claims. Thus, because the E/C had prevailed on the lower back injury claim, it was entitled to costs on that issue, even though Smith had prevailed on her tailbone injury claim.

Ultimately, the court reversed the portion of the JCC's order denying the E/C's motion for costs on the 2019 petition for benefits, and remanded for further proceedings. The court affirmed the JCC's ruling on all other issues.

SIGNIFICANCE

Palm Beach County School District demonstrates that in workers' compensation litigation, there can be multiple prevailing parties with respect to different claims in the same proceeding. Thus, an employer and its carrier can recover prevailing party costs even when they succeed on only some claims within a petition for benefits.

RESEARCH REFERENCES

- 12 Fla. Jur. 2d Costs § 79 (West Law Precision through May 2025).
- 10 Fla. Prac., Workers' Comp. § 30:44 (West Law Precision through May 2025).

Dustin Shore

ORDINANCES & REGULATIONS

Ordinances & Regulations: Injunctions

***Tower Hotel, LLC v. City of Miami*,**
395 So. 3d 196 (Fla. 3d Dist. Ct. App. 2024)

Under Florida law, a property owner may be granted a temporary injunction against a city's demolition efforts under a theory of equitable estoppel if the owner relies on the city's representations of timely permit approval but the city unreasonably delays in granting the requisite permits.

FACTS AND PROCEDURAL HISTORY

The Unsafe Structures Panel of the City of Miami (City) declared four properties unsafe and ordered the owners of those properties (Owners) to repair or demolish the structures. Three of the Owners reached compliance agreements with the City, establishing extended timelines for them to complete repairs. Under the agreements, the Owners had to obtain and pay for building permits within sixty days of submitting their proposed repair plans, and then complete all repairs within a specified time only after the issuance of those permits.

The City punctually approved the Owners' repair plans but delayed in issuing their required building permits, preventing the Owners from completing their repairs by the contractual deadline. As permitted by the agreements in the case of noncompliance, the City proceeded with its plans for demolition.

The Owners resisted by filing a complaint against the City for breach of contract and equitable estoppel. The Owners insisted that the City breached the compliance agreements first by delaying issuance of the building permits. The trial court denied the Owners' motion for a temporary injunction, determining that their failure to request deadline extensions likely precluded their success on such claims. The Owners appealed to the Third District Court of Appeal.

ANALYSIS

In analyzing the trial court's denial of the temporary injunction, the court reviewed factual findings under an abuse of discretion standard and employed a de novo review of prior legal conclusions. Like the trial court, the Third District Court of Appeal focused primarily on just one element that must be proven to secure an injunction: whether the Owners were likely to succeed on the merits of their claims.

Upon review, the court agreed that the Owners were not substantially likely to succeed on their breach of contract claim. Referring to its own holdings in factually similar cases, the court concluded that the Owners' failure to pursue all available administrative remedies—such as requesting deadline extensions from a building official, as permitted by the compliance agreements—impeded their success.

On the other hand, the court disagreed with the trial court regarding the Owners' likelihood of success on their equitable estoppel claim. The court explained that, whereas the former claim depended on the enforceability of the compliance agreements, the equitable estoppel claim was instead determined by the reasonableness and extent of the Owners' reliance on the City's representations. Here, the Owners relied on the City's representations that it would timely approve their building permits to facilitate their compliance with the contractual deadlines.

The court emphasized that, despite the Owners' diligence, their ability to secure building permits within the specified timeframe was rendered functionally impossible by the City's delay. The court reasoned that any endorsement of this result would be unreasonable, unfair, and an impermissible interpretation of the compliance agreements. The court distilled the doctrine of equitable estoppel down to its core principle of fairness, stating, "One party will not be permitted to invite another onto a welcome mat and then be permitted to snatch the mat away to the detriment of the party induced or permitted to stand thereon." *Tower Hotel*, 395 So. 3d at 201 (quoting *Castro v. Miami-Dade Cnty. Code Enf't*, 967 So. 2d 230, 234 (Fla. 3d Dist. Ct. App. 2007)).

Accordingly, the court held that the Owners who were under compliance agreements had demonstrated a sufficient likelihood of

success on their equitable estoppel claims to warrant a temporary injunction against the City's demolition efforts.

SIGNIFICANCE

Tower Hotel exemplifies that, under exceptional circumstances, the doctrine of equitable estoppel may be invoked to secure a temporary injunction against government actions such as demolition. In contrast, if a property owner does not pursue all available administrative remedies to maintain their own contractual compliance, the owner is unlikely to succeed on a breach of contract claim or secure an injunction on those grounds.

RESEARCH REFERENCES

- 22 Fla. Jur. 2d *Estoppel and Waiver* § 83 (Westlaw Precision through May 2025).
- 29 Fla. Jur. 2d *Injunctions* § 8 (Westlaw Precision through May 2025).

Cheyanne Sharp

PUBLIC EMPLOYMENT

Public Employment: Benefits

Braddock v. City of Port Orange Pension Fund's Board of Trustees,
395 So. 3d 219 (Fla. 5th Dist. Ct. App. 2024)

To constitute a specified offense subject to a pension forfeiture action under section 112.3173(2)(e)(6), Florida Statutes, there must be a clear, individualized misuse of the public employee's position in furtherance of the felony committed.

FACTS AND PROCEDURAL HISTORY

Officer Steven Michael Braddock (Braddock) began receiving pension benefits after retiring from the City of Port Orange Police Department (Department) in 2018. Pursuant to a prior agreement settling his divorce, his ex-wife, Kim Braddock, also received a twenty-five percent share of those benefits.

In 2021, Braddock pleaded nolo contendere to felony charges of exploitation of an elderly person and uttering a forgery. While working at the Department, Braddock had two documents improperly notarized by the Department's on-duty records clerk. The documents, a warranty deed and a power of attorney, transferred rights from Braddock's mother to himself, although his mother was not present before the notary to verify her signature.

Subsequently, the Board of Trustees of the City of Port Orange Police Pension Fund (Board) sought forfeiture of Braddock's pension fund, depriving both Braddock and his ex-wife of their shares. The Board argued that Braddock's use of the Department's notary services under these circumstances constituted a misuse of his position and authority in breach of the public trust, bringing his conduct within the narrow confines of Florida's forfeiture statute.

Kim Braddock challenged the Board's forfeiture decision in an appeal to the Fifth District Court of Appeal.

ANALYSIS

The Fifth District's review was rooted in interpretation of Florida's forfeiture statute, with guidance from the Florida Constitution. Article II, section 8(d) of the Florida Constitution provides for pension forfeiture actions against any public officer convicted of a felony that involves a breach of public trust, to be conducted in a manner provided by law. The court emphasized that any resulting forfeiture statute must be strictly construed in favor of the retiree because these actions involve such a harsh penalty and deprive retirees of constitutionally protected property.

Section 112.3173(2)(e) of the Florida Statutes further defines the applicability of the constitutional provision, narrowing the use of forfeiture actions as a response to only seven specified offenses. In Braddock's case, the only potentially applicable specified offense was the sixth one, involving a felony committed by a public employee with the intent to profit and defraud and through the use of the employee's status or authority. The only element of this specified offense at issue here was whether Braddock's conduct—the use of the Department's notary service—was a misuse of his position constituting a breach of the public trust.

The court decided that Braddock's conduct did not fall within this specified offense because there was an insufficient nexus between his criminal conduct and his role as a Department police officer. Braddock did not take advantage of his power or position in soliciting the Department's notary services—any public employee, or even public citizen, would have had the same access to the services. Similarly, the court noted, his conduct did not constitute a breach of the public trust sufficiently related to his employment because he did not utilize the position's status, expertise, or resources in pursuit of defrauding his mother. After drawing these distinctions, the court concluded, "[I]t is unclear what limiting principle applies if the catch-all provision is expanded to include the use of free notary services available to all City employees. . . . In an unclear or close case of statutory analysis, such as this one, the interpretive edge goes to the employee. . . ." *Braddock*, 395 So. 3d at 226.

Accordingly, the court vacated the Board's forfeiture order and remanded with instructions to fully restore Kim Braddock's partial right to her ex-husband's pension fund.

Judge Soud dissented, initially questioning both the principle of strict statutory construction itself along with any necessity of its application in this case. Judge Soud then argued that Braddock did abuse his position to carry out his crimes, explaining that Braddock knew the Department's records clerk personally only through his employment and that he utilized his superiority to elicit the illegal notarization. Therefore, Judge Soud would have found that Braddock's conduct qualified as a specified offense, affirmed the Board's forfeiture order, and revoked Kim Braddock's conditional right to her share of the pension fund.

SIGNIFICANCE

Braddock clarifies that section 112.3173(2)(e)(6) of the Florida Statutes, which allows for pension forfeiture actions in response to certain felonies committed by public employees, is not to be interpreted as a broad catch-all provision—this specified offense is strictly construed in favor of the retiree. There must be a sufficient nexus between the employee's position and the crime committed to fit this specified offense.

RESEARCH REFERENCES

- 39 Fla. Jur. 2d *Pensions and Retirement Funds* §§ 38–39 (Westlaw Precision through May 2025).
- 9 Fla. Jur. 2d *Civil Servants* § 185 (Westlaw Precision through May 2025).

Cheyanne Sharp

Public Employment: Whistleblower Retaliation

***City of Hallandale Beach v. Rosemond*,**
388 So. 3d 826 (Fla. 4th Dist. Ct. App. 2024)

Under Florida law, a "cat's paw" theory of liability is unavailable in whistleblower retaliation claims under the Florida Whistleblower's Act in actions involving a city commission majority vote in which all members are equal decisionmakers. The retaliatory intent of one decisionmaker, even if others reached the same decision, does not impute retaliatory liability to the commission as a whole.

FACTS AND PROCEDURAL HISTORY

In 2015, an internal discrimination suit was filed against then-City Commissioner London (London) by the city attorney for the City of Hallandale Beach (City). During the City's investigation, the deputy city manager (Employee) was interviewed and alleged London had committed state law and city violations. The Employee was later appointed city manager after a five-member city commission majority vote. Both London and Commissioner Lazarow voted against the appointment.

Later, in 2016, newly elected City Commissioner Lima-Taub selected London as vice mayor. London then requested a commission meeting regarding the Employee's contract and revealed three incidents he believed required termination and moved for suspension of the Employee. The motion passed with a majority by London, Lazarow, and Lima-Taub. Later, London moved for the Employee's termination, which passed, supported by the same. The Employee then sued the City for whistleblower retaliation and breach of contract.

The jury found for the Employee on both claims. Several times during the trial, the City moved for a directed verdict, pertinently arguing the retaliation claim was invalid because evidence had only been introduced as to London's improper motive, rather than for all the majority voters. The trial court denied the City's motions and entered judgment for the Employee. The City appealed to the First District Court of Appeal arguing the trial court erred in denying its motions.

ANALYSIS

The Fourth District began its review de novo. The court first addressed the Employee's reliance on the "cat's paw" theory as to the retaliation claim. The court reviewed case law that explained the theory required an improperly motivated employee who influenced the decision but lacked decision-making power. As such, the court concluded the theory was inapplicable here as London, Lazarow, and Lima-Taub were all decisionmakers.

Considering whether the retaliation claim could proceed absent the "cat's paw" theory when one decisionmaker among other, equal decisionmakers had an improper motive, the court reviewed case law on the issue. The court turned to 11th Circuit precedent that concluded that absent evidence as to an improper motive of all council members in a majority who voted against reappointment, it would not presume a shared improper motive among the majority. Further precedent held that a commission is liable only if the entity itself acted improperly and that one improperly motivated majority-member who influenced others did not impute liability to the entity. Thus, this court concluded that without evidence as to Lazarow and Lima-Taub's retaliatory intent, the commission could not be held liable. Further, the court explained Lima-Taub's unawareness of the Employee's statements and the fact that London's proffered reasons "whether incomplete, slanted, false, or all of those—may have influenced Commissioners Lazarow and Lima-Taub, or that the three of them tended to vote as a majority bloc, does not change the result." *Rosemond*, 388 So. 3d at 834.

The court next looked to the discrimination case against London where that court held Lima-Taub was not a "cat's paw" in voting to terminate the city attorney following the allegations. Because Lima-Taub was unaware of the allegations and the vote was cast after listening to discussions among other commission members, there was no proven shared improper motive among the majority. Given the similar facts here, the court concluded the same and that neither Lazarow nor Lima-Taub were a "cat's paw." As such, the court reversed the judgment denying the City's motion for a directed verdict, but affirmed the judgment for the breach of contract claim in favor of the Employee.

SIGNIFICANCE

Rosemond clarifies that a whistleblower retaliation claim operating under a "cat's paw" must involve an employee lacking decision-making power who influenced the decisionmakers. A whistleblower retaliation claim, in which all persons alleged to have been involved in the retaliatory action are decisionmakers, must establish an improper motive for all decisionmakers to impute liability to the entity.

RESEARCH REFERENCE

- 9 Fla. Jur. *Civil Servants* § 187 (Westlaw Precision through May 2025).

Mackenzie Herman

PUBLIC RECORDS & MEETINGS

Public Records & Meetings: Public Records Act

***Doe v. DeSantis*,**
390 So. 3d 1245 (Fla. 1st Dist. Ct. App. 2024)

Under Florida law, claimants filing a petition for writ of mandamus must not file anonymously unless they properly present sufficient reasons to the court that outweigh state and public interest in maintaining open proceedings. Additionally, mandamus relief relating to public records requests must clearly demonstrate a valid claim, which requires the request was specific and tailored for fulfillment.

FACTS AND PROCEDURAL HISTORY

In October 2022, J. Doe made an anonymous public records request to Governor DeSantis' office. Doe requested all materials in various forms stored on official and personal devices related to official business within the Governor's office. Doe specifically sought communications between Governor DeSantis, Casey DeSantis, several other members of the Governor's office, and the six or seven "legal conservative heavyweights" mentioned in an interview by the Governor to be his trusted advisors for Florida Supreme Court appointments.

Doe's request was received and acknowledged by the Governor's office, but Doe attempted to have the request expedited. On October 26, 2022, Doe gave notice to the Governor's office of an intent to file suit and asked for the names of the legal heavyweights to satisfy his request. Doe filed suit in the circuit court anonymously the next day, filing a complaint for enforcement of the Public Records Act, a petition for writ of mandamus, and an ex parte motion for alternative writ of mandamus.

The circuit court entered judgment against Doe, determining that anonymous petitioners cannot request a writ of mandamus, and further, that Doe had not made a claim justifying mandamus relief. Doe appealed to the First District Court of Appeal to consider whether anonymous petitioners qualified for mandamus relief and whether Doe stated a claim for mandamus relief.

ANALYSIS

The First District reviewed the circuit court's decision for an abuse of discretion. The court first looked to Florida Rule of Civil Procedure 1.630. Rule 1.630(b)(3) provides that a writ of mandamus must be filed in the name of the petitioner. As such, the court rejected Doe's argument that anonymous filings were permitted for public records requests. Further, the court looked to Florida Rule of Civil Procedure 1.100(c)(1), which provides that every pleading must contain the names of parties involved in an action. The court discussed rule 1.100(c)(1)'s similarity to Federal Rule of Civil Procedure 10(a), which requires all parties be named in the title of a complaint.

Based on rule 1.100(c)(1)'s similarity to rule 10(a), the court noted that federal case law is instructive and acknowledges rule 10(a) exists for both administrative purposes and to protect the public by disclosing the identities of parties. As such, federal courts favor parties using their own names absent extraordinary circumstances. The court then turned to the circumstances under which Doe wanted to remain anonymous. Without concluding whether Doe's reasons outweighed the public's interest, the court concluded that, because Doe's vague reasons were not properly presented to the court, the petition did not comply with rule 1.630 and mandamus relief had to be denied.

The court then considered whether, had Doe's petition been compliant with rule 1.630, there was a claim for mandamus relief. For a claimant to be entitled to mandamus relief, the court stated there must be a legal right mandating a public officer to perform a legal duty and no other remedies available to the claimant.

The court found Doe demonstrated no such right and only made a broad request concerning several people over some period of time. The court reasoned that, due to the broad request, the records custodian would likely have to consult with the Governor to determine the identity of the legal heavyweights sought by Doe. The court stated that, even though the records custodian may have had some success determining the context surrounding the "legal conservative heavyweights," this request was "akin to an interrogatory seeking information, not a request to produce public records." *Doe*, 390 So. 3d at 1249. The court also addressed Doe's argument that the relevant public record's statute does not include a specificity requirement. The court agreed that the statute does

not include a specificity requirement, the records custodian, however, must have enough information to perform the requested action.

Accordingly, because Doe's request was not specific and tailored enough to be fulfilled by the records custodian alone, the court held Doe's petition for a writ of mandamus was legally insufficient and affirmed the circuit court's denial of mandamus relief.

SIGNIFICANCE

Doe clarifies that, pursuant to Florida courts' preference for openness in judicial proceedings, only in extraordinary circumstances in which the need for anonymity outweighs the public's interest in identifying all parties to an action may a claimant file for mandamus relief anonymously. Further, a public records request must be sufficiently specific to permit the records custodian to fulfill the request.

RESEARCH REFERENCES

- 35 Fla. Jur. 2d *Mandamus and Prohibition* § 14 (Westlaw Precision through May 2025).
- 44 Fla. Jur. 2d *Records and Recording Acts* § 41 (Westlaw Precision through May 2025).

Mackenzie Herman

Public Records & Meetings: Public Records Act

***Florida Department of Health v. Woliner*,**
397 So. 3d 121 (Fla. 1st Dist. Ct. App. 2024).

Under Florida law, section 119.12, Florida Statutes, displaces section 57.041 in actions brought to enforce the Public Records Act and controls the court's award, if any, of costs and fees.

FACTS AND PROCEDURAL HISTORY

In 2019, Kenneth Woliner (Woliner) filed a complaint to enforce the Public Records Act against the Florida Department of Health (Department) and select employees. Woliner sought a judgment awarding attorney's fees and costs. The trial court entered judgment for Woliner, finding the Department violated chapter 119, Florida Statutes, by failing to produce a closure letter and untimely producing other public records included in Woliner's records requests. However, because Woliner did not abide by chapter 119's notice requirement, the trial court did not award him fees and costs under section 119.12. Instead, the court applied section 57.041 to award Woliner $5,546.32 in attorney's fees and costs and in reasonable costs of enforcement.

The Department appealed to the First District Court of Appeal to consider whether section 57.041 was improperly applied by the trial court. The issue before the First District was whether section 57.041 could apply to award fees and costs in the chapter 119 action brought by Woliner.

ANALYSIS

The First District reviewed the trial court's decision de novo. The court began by comparing the provisions of sections 57.041 and 119.12. Section 57.041 provides that the prevailing party shall recover legal fees and costs included in the judgment, except in actions involving executors and administrators not liable for costs. Section 119.12 provides that in actions against an agency to enforce a provision of chapter 119, courts shall award reasonable costs of enforcement and attorney's fees if (1) the agency failed to lawfully produce a requested record and (2) the complainant

provided written notice of the request to the agency's public records custodian at least five business days before filing suit.

The court then discussed the rules of statutory construction, which provide that specific statutes control over general statutes, recent statutes control over older statutes, and the interpretation of one statute should not render meaningless other statutes. The court then acknowledged that section 57.041 has been recognized as applying to all civil actions, except ones governed by specific statutes with particularized provisions pertaining to the nature of a given proceeding. Providing examples of various actions governed by specific statutes that displace section 57.04, the court reiterated the general nature of the section.

Turning back to sections 119.12 and 57.041, the court acknowledged the different requirements imposed by the sections despite both addressing an award of costs. While section 119.12 authorized reasonable costs of enforcement and attorney fees attributable to the action, section 57.041 only authorized legal costs and charges, which do not include attorney's fees. The court noted that the language of section 119.12 also pertains to the losing agency, whereas section 57.041's language pertains to the losing party. Further, section 119.12 imposes conditions that must be met before an award is authorized, whereas section 57.041 contains no such conditions. As such, the court found that "section 119.12 is both the more recently enacted and the more specific statute, addressing with particularity the award of costs in cases such as this brought to enforce the Public Records Act." *Woliner*, 397 So. 3d at 124. Thus, the court held section 119.12 is the controlling statute and any finding otherwise would render the section meaningless.

Accordingly, the court reversed the costs awarded to Woliner under section 57.041 and remanded the case for judgment without an award of costs under either section 57.041 or 119.12.

SIGNIFICANCE

Woliner establishes that in actions to enforce the Public Records Act, courts should look to section 119.12 in determining whether to award costs and fees.

RESEARCH REFERENCE

- 48A Fla. Jur. 2d *Construction and Interpretation* § 162 (Westlaw Precision through May 2025).

Mackenzie Herman

Public Records & Meetings: Sunshine Law

***Florida Citizens' Alliance, Inc. v. School Board of Indian River County*,**
398 So. 3d 1005 (Fla. 4th Dist. Ct. App. 2024)

A School Board committee is subject to Florida's Sunshine Law if it is delegated decision-making authority by the School Board. Committees that are subject to the Sunshine Law must provide reasonable public notice of its meetings, and maintain meeting minutes. However, committees that serve only an advisory function, and that provide recommendations to the School Board without winnowing alternative choices, are not subject to the Sunshine Law.

FACTS AND PROCEDURAL HISTORY

Florida Citizens' Alliance (FLCA) sued the School Board of Indian River County (School Board), alleging Sunshine Law violations by two separate School Board committees: a textbook committee and a library committee. The textbook committee, created in 2016-17, was tasked with evaluating social studies textbooks using the School Board's established rubrics and recommending selections to the School Board. FLCA alleged that the School Board violated Florida's Sunshine Law by approving the purchase of the recommended textbooks without providing adequate public notice of the textbook committee meetings, and by failing to maintain minutes of the committee meetings.

The library book review committee was convened in 2021-22 to review challenged library books for literary merit, and to determine if the challenged books violated Florida's pornography statutes. The library committee then categorized the reviewed books as appropriate for middle, high school, high school with restrictions, or inappropriate for school libraries. FLCA similarly alleged that the library committee exercised decision-making authority and was subject to the Sunshine Law, requiring public access, notice, and recordkeeping for meetings.

The circuit court granted summary judgment in favor of the School Board on both claims. FLCA appealed the circuit court's holding, arguing that both committees were subject to the Sunshine Law.

ANALYSIS

The Fourth District began its review by discussing the types of government meetings that are subject to the Sunshine Law. Florida's Sunshine Law, chapter 286, Florida Statutes, provides a right of access to governmental proceedings. The Sunshine Law requires that public entities provide the public with reasonable notice, access, and an opportunity to be heard before taking official action. Further, public entities must maintain meeting minutes and promptly disclose those minutes for public inspection. However, the Sunshine Law does not apply to informal meetings of staff, where none of the meeting attendees have decision-making authority, and where no formal action may be taken.

Turning to the textbook committee, the court held that the committee was delegated decision-making authority—and therefore subject to the Sunshine Law—because it helped crystallize the Schools Board's final decision though structured recommendations that eliminated any alternative choices. Applying the Sunshine Law to the textbook committee, the School Board argued that it had published adequate notice of its formal meetings in a social media post and in a separate press release. However, the court found both communications insufficient to constitute notice because neither communication provided the meetings' time or location, and did not state that the meetings were open to the public.

Moreover, the court held that the textbook committee failed to maintain meeting minutes because the committee's handwritten notes did not detail what was discussed at the meetings, and were not saved or made available to the public. Thus, the court held that textbook committee violated the Sunshine Law because it failed to notice its meetings or keep meeting minutes.

Furthermore, the court rejected the School Board's argument that it cured any Sunshine Law violations. The court articulated that a Sunshine Law violation can only be cured by a properly noticed, open hearing. However, a violation may not be cured by a perfunctory ratification of the prior action. Here, the court held that the School Board did not cure its violation because the School Board's cursory examination of the decision-making process "did not truly relitigate the findings of the textbook committee." *Florida Citizens' Alliance*, 398 So. 3d at 1014.

Next, the court applied the same analysis to the library committee. The court held that the library committee was not delegated decision-making authority because the School Board retained complete authority over the final decision. Unlike the textbook committee, the library committee did not limit the number of books before sending its recommendations to the School Board. Instead, the library committee submitted every challenged book to the School Board for a final decision. Thus, the court held that the library committee was not subject to the Sunshine Law.

Ultimately, the court affirmed the circuit court's ruling that the library committee was not subject to the Sunshine Law. However, the court reversed the circuit court's ruling concerning the textbook committee. The court held that the textbook committee was subject to the Sunshine Law and violated the Sunshine Law by failing to publicly notice its meetings or maintain meeting minutes.

SIGNIFICANCE

Florida Citizens' Alliance demonstrates that Florida's Sunshine Law applies to committees with delegated decision-making authority. In determining whether a committee is delegated decision-making authority, courts will evaluate the nature of the acts performed, including whether the committee has structured recommendations that eliminate opportunities for alternative choices by the final authority. If a committee is delegated decision-making authority, it must comply with the Sunshine Law's notice and recordkeeping requirements.

RESEARCH REFERENCE

- 2 Fla. Jur. 2d *Administrative Law* § 36 (Westlaw Precision through May 2025).

Dustin Shore

TORT LIABILITY & GOVERNMENTAL IMMUNITY

Tort Liability & Governmental Immunity: Absolute Immunity

***North Brevard County Hospital District v. Deligdish*,**
398 So. 3d 1126 (Fla. 5th Dist. Ct. App. 2024)

In a defamation lawsuit, a public employee working on behalf of a public agency is a public official for purposes of absolute immunity; however, Florida law is unclear about whether a private lawyer working for a public agency becomes a public official for purposes of absolute immunity.

FACTS AND PROCEDURAL HISTORY

Doctor Craig Deligdish (Deligdish) was the president of a healthcare company and was a volunteer faculty member at the University of Central Florida's College of Medicine (UCF). Through his company, Deligdish had a relationship with Parrish Medical Center (Parrish) that eventually soured, leading Deligdish to make accusations about Parrish in correspondences with elected officials among others. Notably, Deligdish used his "Associate Professor of Medicine" title in these communications. Thus, Parrish's chief executive officer (CEO) and outside legal counsel (Counsel) each notified UCF of such, suspecting Deligdish used his professor title to add merit to his claims and mislead readers to believe UCF endorsed the allegations.

UCF informed Parrish that it instructed Deligdish to immediately cease all unauthorized use of his title in situations unrelated to UCF and requested that Parrish immediately notify UCF if Deligdish failed to comply. Ultimately, Parrish reported that Deligdish used his title in an email about Parrish to the U.S. Department of Justice, and UCF terminated Deligdish's position.

As a result, Deligdish sued Parrish for defamation. Parrish moved to dismiss on multiple grounds, including absolute immunity. When the trial court denied the motion, Parrish petitioned for certiorari, but only with respect to absolute immunity.

ANALYSIS

The Fifth District Court of Appeal began its opinion by reasoning that here, certiorari review of the lower court's non-final order was proper because if Parrish had absolute immunity, such an order would cause Parrish irreparable harm, and certiorari should be used to prevent a miscarriage of justice.

The court then analyzed whether Parrish was entitled to absolute immunity. First, the court quoted precedent stating, "[p]ublic officials who make statements within the scope of their duties are absolutely immune from suit for defamation." *Deligdish*, 398 So. 3d 1126 at 1130. Furthermore, the court elaborated, this rule protects all statements, even those that are false or malicious, made by all public officials, so long as the statements were made as part of the public employee's duties.

The court then highlighted that Deligdish recognized Parrish's status as a government entity and CEO's status as an employee of Parrish. By doing so, the court reasoned, Deligdish indirectly admitted that CEO acted within the scope of his duties when he wrote to UCF in the alleged defamation. Thus, the court concluded, Parrish had absolute immunity when it came to CEO's statements.

As for the statements made by Counsel, the court pointed out that Parrish failed to reference any authority confirming whether a private lawyer representing a public agency becomes a public official for purposes of absolute immunity. Because the law is unclear about this matter, the court granted Parrish's petition regarding Deligdish's claims about CEO's statements and denied the petition regarding Deligdish's claims about Counsel's statements.

Accordingly, the court granted Hospital's petition in part, quashed the lower court's order in part, and remanded with instructions.

SIGNIFICANCE

Deligdish reaffirms that a CEO of a hospital who makes statements within the scope of his duties qualifies as a public official for purposes of absolute immunity and raises the question of whether a private attorney representing a public agency becomes a public official for purposes of absolute immunity.

RESEARCH REFERENCES

- 50 Am. Jur. 2d *Libel and Slander* § 269 (Westlaw Precision through May 2025).
- 19 Fla. Jur 2d *Defamation and Privacy* § 61 (Westlaw Precision through May 2025).

Kayla Somoano

Tort Liability & Governmental Immunity: Classification

***Soto v. Franklin Academy Foundation, Inc.*,**
386 So. 3d 150 (Fla. 4th Dist. Ct. App. 2024)

Under Florida law, charter schools are classified as state agencies, not county agencies, even if the charter school is within the county school district and chartered by the county school board.

FACTS AND PROCEDURAL HISTORY

After the Plaintiff's child was injured in a playground accident at a charter school, the Plaintiff brought a negligence action against the school. Following a motion to dismiss filed by the defendant charter school, the circuit court dismissed the Plaintiff's action for failure to timely comply with section 768.28(6)(a), Florida Statutes. Section 768.28(6)(a) states in relevant part that an action may not be instituted on a claim against a state agency unless the claimant presents the claim in writing to the appropriate agency and, except as to municipalities and counties, presents the claim in writing to the Florida Department of Financial Services within three years after the claim accrues and the Department of Financial Services or the agency denies the claim in writing. Following the circuit court's dismissal and denial of his motion for rehearing, the Plaintiff appealed to the Fourth District Court of Appeal.

In support of his appeal, the Plaintiff raised that his son's charter school was a county agency because it fell within the county school district and was chartered by the county school board. The Plaintiff also cited Article IX, Section 4(a) of the Florida Constitution, which states that each county in Florida shall constitute a school district. Based on this support, the Plaintiff argued that charter schools fall within the county agency exception stated in section 768.28(6)(a), and thus any conditions precedent for claims against state agencies did not apply.

ANALYSIS

In its de novo review, the Fourth District adopted the circuit court's basis for its final judgment in concluding that charter schools are "state" agencies, not "county" agencies, as those terms

are used in section 768.28(6)(a). Pointing to the circuit court's explanation, the Fourth District rejected the Plaintiff's constitutional argument, stating that Article IX, Section 4(a) of the Florida Constitution merely provides a physical description when it says that each county shall constitute a school district. As the circuit court explained, nothing in the plain language of Article IX, Section 4(a) indicates that a school district is synonymous with a county.

The Fourth District further agreed with the circuit court's argument that, per section 1002.33(1), Florida Statutes, all charter schools in the state of Florida are considered public schools and are part of the State's program of public education. The court added that Florida Supreme Court precedent holds that notice requirements are conditions precedent to maintaining lawsuits against school districts. Further, the court found persuasive a federal district court opinion from the Southern District of Florida which held that section 768.28(6)'s pre-suit notice requirements applied to a charter school.

Based on the foregoing analysis, the court concluded that Florida charter schools are state, rather than county, agencies. As a result:

> pursuant to sections 768.28(6)(a) and 768.28(6)(b), a claimant seeking to institute a negligence claim against a charter school must present the claim in writing to the charter school, and to the state's Department of Financial Services, within three years after such claim has accrued, and obtain the Department of Financial Services' or the charter school's denial of such claim in writing, as a condition precedent to maintaining such action.

Soto, 386 So. 3d at 151.

Accordingly, the Fourth District affirmed the circuit court's final judgment dismissing the Plaintiff's action with prejudice and affirmed the circuit court's denial of the Plaintiff's motion for rehearing.

SIGNIFICANCE

Soto establishes that charter schools are treated as state, rather than county, agencies for the purposes of section 768.28(6), Florida Statutes. As such, claimants seeking tort claims against charter schools must satisfy the statutory conditions precedent for

instituting a claim against a state agency. Additionally, the broad court adopted reasoning used in this decision, that charter schools are part of the state's public education program per Florida Statutes, indicates that the state agency status of charter schools may be one of general classification rather than one strictly limited to section 768.28(6).

RESEARCH REFERENCES

- 46 Fla. Jur. 2d *Schools, Universities, and Colleges* § 313 (Westlaw Precision through May 2025).
- 28 Fla. Jur. 2d *Government Tort Liability* § 55 (Westlaw Precision through May 2025).
- 28 Fla. Jur. 2d *Government Tort Liability* § 73 (Westlaw Precision through May 2025).

Paul Castellano

Tort Liability & Governmental Immunity: Qualified Immunity

***H.M. v. Castoro*,**
No. 23-10762, 2024 WL 4799480 (11th Cir. Nov. 15, 2024)

Officers are afforded qualified immunity unless a plaintiff shows his rights were violated, and the violation was clearly established. To prevail, a plaintiff must offer caselaw, a broad principle squarely applicable to the facts, or demonstrate the officer's conduct was so egregious that every officer in the same circumstances would know that the conduct was unlawful.

FACTS AND PROCEDURAL HISTORY

In 2019, H.S., a thirteen-year-old, 120-pound boy, and his friend were stopped by Deputy Castoro. The boys were stopped after a mother reported an incident in which two boys threw or kicked a ball and cursed at her. Deputy Castoro spotted the two boys, who matched the description in the report, walking in the neighborhood. After stopping H.S. and his friend, Deputy Castoro informed them why he was there, and asked them to identify themselves, but H.S. refused. After continually refusing to identify himself, H.S. put his hands in the pocket of his hoodie, which Deputy Castoro perceived as a potentially dangerous action. H.S. refused to remove his hands after numerous requests by Deputy Castoro. Deputy Castoro then lunged at H.S. and grabbed his wrists to handcuff him. H.S. resisted, not knowing he was under arrest and believing he should not be under arrest. Deputy Castoro then brought H.S. to a grassy area and slammed him into the ground using a wrestling-like move. H.S. landed on the grass patch, but his head hit the pavement, resulting in several fractures and permanent injuries. A pocketknife fell from H.S.' hoodie when he hit the ground.

H.S. sued Deputy Castoro, claiming his Fourth Amendment right had been violated because excessive force was used. Summary judgment was granted in favor of Deputy Castoro, as the district court found excessive force was not used and Deputy Castoro was entitled to qualified immunity. H.S. appealed and the case came before the Eleventh Circuit Court of Appeals.

ANALYSIS

The Eleventh Circuit began its de novo review by explaining that qualified immunity immunizes officers from individual suit arising from discretionary functions unless their actions clearly violated a person's statutory or constitutional rights. To be protected, an officer must prove he acted within the scope of his discretionary authority. Once protected, the plaintiff then must demonstrate immunity is not appropriate. Deputy Castoro was within his discretionary authority, so the court analyzed only whether H.S. satisfied a two-prong test: (1) whether the facts show the conduct at issue violated one's federal right and (2) whether the violation was clearly established.

The court noted here that the second prong of the test is determinative. Plaintiffs can meet this burden by pointing to materially similar case law, showing there is a broad and applicable established principle, or showing the conduct was so egregious there was a clear violation. H.S. relied on the latter two methods.

The court observed that H.S. first offered caselaw that less force is needed for nonthreatening misdemeanor suspects. The court, however, rejected this due to H.S.' physical resistance, a felony under Florida law and supportive of the deputy's belief H.S. posed a threat. Further, the principle is not so specific as to make clear that subduing a potentially armed suspect in a wrestling-like move would violate federal law. Next, H.S. offered a principle stating greater force is not appropriate when there is resistance without force, which the court rejected because the wrestling move was not used until H.S. was resisting with force. Lastly, H.S. cited a principle justifying a plaintiff's resistance against force when he was not made aware of the arrest. The court rejected this non-binding principle, explaining Eleventh Circuit precedent has previously held officers may use force without verbalization of the arrest when suspects ignore commands. In all, the court rejected the principles set forth as not squarely governing the facts and as not clearly establishing unlawful conduct.

Next, the court rejected H.S.' argument that Deputy Castoro's actions were egregious. The court described this exception as being met when "every reasonable officer would conclude that the excessive force used was plainly unlawful." *Castoro*, 2024 WL 4799480, at *5 (quoting *Lewis v. City of W. Palm Beach*, 561 F.3d

1288, 1292 (11th Cir. 2009). The court noted the rarity in which this argument prevails, explaining plaintiffs have prevailed only when they did not resist and were subdued before being subjected to the force, both of which are factors not present here. Rather, H.S. both resisted Deputy Castoro's efforts and was not subdued prior to the use of force. The court cited case law in which an officer who injured an un-subdued, resistant plaintiff was not found to have acted egregiously because force was used only after the plaintiff actively and physically resisted the officer. Similarly, the court concluded here that Deputy Castoro's use of force was not clearly egregious given H.S.' refusal to identify himself and remove his hands from his pocket, and his resistance to Deputy Castoro's physical attempt to free H.S.' hands so that every reasonable officer would know the use of force would be unlawful in that circumstance.

Thus, the Eleventh Circuit affirmed that Deputy Castoro was afforded qualified immunity and upheld summary judgment.

SIGNIFICANCE

Castoro clarifies that a plaintiff will not overcome qualified immunity unless he shows, through (1) caselaw, (2) an established principle that can apply to the facts at issue, or (3) by establishing the officer's conduct as so egregious that all reasonable officers would objectively know the conduct was unlawful, that a violation was clearly established at the time of the challenged conduct.

RESEARCH REFERENCE

- 5 Am. Jur. *Arrest* § 126 (Westlaw Precision through May 2025).

Mackenzie Herman

Tort Liability & Governmental Immunity: Sovereign Immunity

School Board of Broward County v. State Farm Mutual Automobile Insurance Co.,
390 So. 3d 27 (Fla. 4th Dist. Ct. App. 2024)

Under Chapter 627, Florida Statutes, school boards' sovereign immunity is not waived for personal injury protection reimbursement claims resulting from accidents between school buses and private passenger vehicles. Although chapter 627 creates a cause of action for personal injury protection reimbursement against the "owner" or the "insurer" of a commercial motor vehicle, chapter 627 does not define those terms to include school boards or any other state entity.

FACTS AND PROCEDURAL HISTORY

State Farm Mutual Automobile Insurance Company (State Farm) filed two separate lawsuits against the School Boards of Broward and Palm Beach Counties (School Boards) seeking reimbursement for personal injury protection (PIP) benefits it had paid after its insureds were involved in separate school bus accidents. State Farm argued that it could sue the School Boards under Section 627.7405(1), Florida Statutes, which provides a right of reimbursement against the owners of commercial motor vehicles. State Farm contended that under *Lee County School Board v. State Farm Mutual Automobile Insurance Co.,* a case where the Second District Court of Appeal found a waiver of immunity for such claims, section 627.7405(1) waived the School Boards' sovereign immunity for PIP reimbursement actions to recover benefits paid in connection with school bus accidents. 276 So. 3d 352 (Fla. 2d Dist. Ct. App. 2019).

The School Boards moved to dismiss the claims, asserting sovereign immunity. However, the county courts denied the motions, and ultimately entered summary judgement for State Farm, holding that school boards were not entitled to sovereign immunity under *Lee County*. Both cases were consolidated for appeal, and the School Boards challenged the summary judgments granted to State Farm.

ANALYSIS

The central issue before the Fourth District Court of Appeal was whether the Florida legislature waived the sovereign immunity of school boards for PIP reimbursement claims brought under section 627.7405(1). The court began by examining the applicability of sovereign immunity, which provides protection for the state and its subdivisions from suit unless it is clearly and unequivocally waived by the legislature. Further, the court emphasized that any statute purporting to waive immunity should be strictly construed, and should not be implied or inferred from the statutory text. Here, the court articulated that under section 627.7405(1), an insurer providing PIP benefits on a private passenger motor vehicle has a right of reimbursement against the owner or the insurer of a commercial vehicle. Further, Section 627.732(3)(b), Florida Statutes, defines a commercial motor vehicle to include public school buses.

Next, the court analyzed *Lee County,* wherein the Second District held that a private motor vehicle insurer may sue a school board for reimbursement of PIP benefits under Section 627.7405(1). The Second District reasoned that, by expressly including public school buses, but not other government-owned mass transit vehicles in the definition of commercial vehicles, the legislature clearly and unequivocally waived the school boards' sovereign immunity in actions brought under section 627.7405(1). However, the Fourth District Court of Appeal disagreed. The court reasoned that although school buses are included in the category of vehicles covered by section 627,7405(1), chapter 627 does not identify school boards as a proper party to be sued for reimbursement, and would require the court to infer that section 627.7405(1) waives the school boards' immunity. Reiterating that chapter 627 must be strictly construed, the court reasoned, "[s]uch an inference, even if reasonable, cannot form the basis of a sovereign immunity waiver." *School Board of Broward County*, 390 So. 3d at 34. Furthermore, the court explained that Florida Administrative Code Rule 6A-3.0171 (2021), specifically allows school boards to contract with private companies to provide public school transportation. Thus, the court found that section 627.7405(1) allows for the reimbursement of PIP benefits from those private owners of school buses and their insurers, who are not otherwise entitled to sovereign immunity.

Ultimately, the court held that the school boards retained their sovereign immunity from section 627.7405(1) PIP reimbursement claims, absent a "clear and unequivocal" legislative intent to the contrary. Accordingly, the court reversed the final summary judgements on review, and remanded for entry of judgements in the School Boards' favor.

SIGNIFICANCE

School Board of Broward County demonstrates that any waiver to sovereign immunity must be clear and unequivocal, and may not be inferred or implied by the text of the relevant statute. Because chapter 627 does not expressly name any state entity as the proper party to be sued, school boards are immune from section 627.7405(1) PIP reimbursement claims.

RESEARCH REFERENCES

- 28 Fla. Jur. 2d *Government Tort Liability* § 7 (Westlaw Precision through May 2025)
- 24 Fla. Prac., Florida Municipal Law and Practice § 7:13 (Westlaw Precision through May 2025)

Dustin Shore

Tort Liability & Governmental Immunity: Sovereign Immunity

***City of Tampa v. Foottit*,**
396 So. 3d 812 (Fla. 2d Dist. Ct. App. 2024)

Under Florida law, a city may be liable for negligence when a police officer engages in a vehicle pursuit that results in damage to a person or property. To prevail on a claim of sovereign immunity under section 768.28(9)(d), Florida Statutes, the city must show the officer's conduct was not reckless, the officer reasonably believed that the fleeing suspect committed a forcible felony, and the officer's conduct complied with the police department's written high-speed pursuit policy.

FACTS AND PROCEDURAL HISTORY

On March 12, 2022, Officer Gibson (Gibson) of the Tampa Police Department (TPD) received a "signal 10," indicating an automobile theft. While on patrol that evening, Gibson spotted the truck identified in the earlier dispatch. Gibson did not identify the driver, nor did he observe any erratic driving or traffic ordinance violations. Before contacting his supervisor for authorization, Gibson initiated a high-speed pursuit lasting approximately fourteen minutes and covering nineteen miles, reaching speeds up to 105 miles per hour. The evidence further indicated that during the pursuit, Gibson ran several red lights, and at one point, drove with only one hand on the steering wheel so that he could radio in his speed.

The pursuit ended when the fleeing truck collided with a Honda Civic being driven by Christopher Foottit, causing the death of one family member. The Foottits alleged they suffered serious, permanent injuries and filed a negligence action against the City of Tampa (City). The City filed a motion for summary judgement arguing sovereign immunity from liability under section 768.28(9)(d). The circuit court denied the City's motion for summary judgement, and the City appealed to the Second District Court of Appeal.

ANALYSIS

The Second District began its de novo review by discussing whether the City may allege sovereign immunity under section 768.28(9)(d). Section 768.28(9)(d) provides that employing agencies of law enforcement officers are not liable for injury, death, or damage caused by a person fleeing from a law enforcement officer in a motor vehicle if certain conditions are met. The court noted that the City must show: (1) the officer's conduct was not reckless or wanting in care as to constitute disregard of human life, human rights, safety, or the property of another; (2) the officer reasonably believed that the fleeing suspect committed a forcible felony when he engaged in pursuit, and (3) the officer conducted the pursuit pursuant to TPD's vehicle pursuit policy.

Turning to the first requirement under section 768.28(9)(d), the court determined that the speed and duration of the pursuit, through red traffic signals, conducted in the dark, and without backup, raised a genuine issue of material fact such that a jury could reasonably conclude that Gibson's conduct was reckless.

As to the second requirement under section 768.28(9)(d), the court again found that there was a dispute regarding the reasonableness of Gibson's belief that the suspect committed a forcible felony. The record showed that the dispatch labeled the incident as a signal 10 for a stolen vehicle, without reference to burglary, which would have required a separate "signal 21 call." After considering expert testimony in addition to comments made by other officers on the scene who "wondered why Officer Gibson engaged in this pursuit for a signal 10 call," the court held that the City failed to meet its burden of showing that Gibson's belief that the truck driver had committed a forcible felony was reasonable. *Foottit*, 396 So. 3d at 817.

The final issue was whether Gibson's actions aligned with TPD's vehicle pursuit policy, which required consideration of factors such as speed, time of day, road conditions, and required officers to weigh public risk against the need for immediate apprehension. Based on these factors, along with expert testimony suggesting that Gibson's pursuit violated the TPD policy, the court held that a disputed issue of material fact existed as to whether Gibson's actions complied with the TPD's vehicle pursuit policy.

Ultimately, the court held that the City did not satisfy all three requirements under section 768.28(9)(d), and affirmed the

circuit court's decision to deny the City's motion for summary judgement.

SIGNIFICANCE

Foottit demonstrates that in order to avoid liability for injury, death, or property damage caused by a vehicle pursuit, employing agencies of law enforcement officers must prove all three requirements under section 768.28(9)(d). Specifically, the employing agency must show that the officer's conduct was not reckless, the officer reasonably believed the fleeing suspect had committed a forcible felony at the time he initiated the pursuit, and the pursuit was conducted pursuant to a written vehicle pursuit policy.

RESEARCH REFERENCES

- 28 Fla. Jur. 2d *Government Tort Liability* § 9 (Westlaw Precision through May 2025).
- 40 Fla. Jur. 2d *Police, Sheriffs, and Other Law Enforcement Officers* § 127 (Westlaw Precision through May 2025).

Dustin Shore

Tort Liability & Governmental Immunity: Sovereign Immunity

***Staly v. Izotova*,**
No. 5D202-0531, 2024 WL 5172110 (Fla. 5th Dist. Ct. App. Dec. 20, 2024).

Under Florida statutory law, strict compliance with the notice requirements set forth by section 768.28(6) must be met before an action against the State or its agencies and subdivisions can be properly instituted. Strict compliance with this section requires a written claim and demand for compensation given to the appropriate agency, and if applicable per the statute, the Department of Financial Services, prior to institution of the suit.

FACTS AND PROCEDURAL HISTORY

In 2019, Appellee Nina Izotova (Izotova) and Appellant Rick Staly (Staly), a Flagler County Sherriff's Deputy, were involved in a car accident while Staly was on duty. Izotova filed a negligence suit against Staly based on vicarious liability. Izotova's amended complaint stated all conditions pursuant to section 768.28, Florida Statutes, had been met. In response, Staly's answer and affirmative defenses claimed sovereign immunity except as limited by section 768.28, and that Izotova had not met all conditions precedent under section 768.28(6). Staly then filed a summary judgment motion, claiming both he and the Flagler County Sherriff's Office (Sheriff's Office) had not received notice of the claim. Izotova's opposition motion included excerpts of emails from her attorney's office to the Sherriff's Office requesting information pertaining to the accident. In addition, written notice was mailed to various state agencies, of which the Sheriff's Office was not included.

The trial court denied Staly's motion for summary judgment, finding that pre-suit notice was met by the mail notices to relevant agencies and the emails to the Sherriff's Office, which was reasonable to put the agency on notice of the claim against it. Staly appealed and the case came before the Fifth District Court of Appeal to determine whether Izotova sufficiently complied with the pre-suit notice requirement of section 768.28(6).

ANALYSIS

The Fifth District began its analysis by looking to the statutory language of section 768.28(6). Subsection (6)(a) of the statute provides that before an action may be brought against the State or its agencies, the following conditions must be met: (1) written notice of the claim presented to the appropriate agency, as well as to the Department of Financial services in some circumstances, within three years of accrual of the claim, or (2) the claim was denied in writing by the agency.

The court then explained that the State must receive notice of claims against it before it can waive sovereign immunity, and notice allows the State and its agencies an opportunity to investigate and respond to claims. Thus, notice is a condition precedent to claims against the State and its agencies. The court also emphasized section 768.28(6) must be strictly construed as the statute pertains to sovereign immunity waivers. Therefore, it requires a written claim demanding compensation for compliance with section 768.28(6)(a).

Looking to past case law, the court reviewed *Smart v. Monge*, in which the court found a letter that identified an incident, but failed to make a claim, insufficient considering section 768.28(6)'s notice requirement. Similarly, here, the court explained the emails only identified Izotova and some relevant information about the accident, but did not give notice of any claims or demands. As such, the court found that the emails were not in conformity with section 768.28(6).

The court, again relying on case law, observed that an appropriate agency within the meaning of section 768.28(6)(a) is "the governmental entity whose employee's alleged negligence, wrongful act, or omission caused the plaintiff's alleged injuries or loss." *Staly*, 2024 WL 5172110, at *3. Thus, the court explained the Sheriff's Office was the appropriate agency for Izotova to give notice to, which she did not do. The court found Izotova similarly failed to provide notice to the Department of Financial services (Department), despite her argument that she gave notice to a subdivision by mailing notice to the Bureau of Consumer Assistance (Bureau). The court found her argument without merit, as Izotova offered no evidence to establish that the Bureau is a subdivision of the Department, nor did she offer any case law to

support that notice given to a subdivision of the Department would suffice.

Thus, the court held Izotova did not comply with section 768.28(6), and Staly's sovereign immunity was not waived. The court therefore reversed and remanded the case for entry of summary judgment in favor of Staly.

SIGNIFICANCE

Staly reaffirms the strict pre-suit notice requirement of section 768.28(6) in litigation in which the State or its agencies or subdivisions are a party. Plaintiffs must provide written notice of the claim to the appropriate agencies to be in compliance with the notice requirement.

RESEARCH REFERENCE

- 38 Fla. Jur. 2d *Notice and Notices* § 1 (Westlaw Precision through May 2025).

Mackenzie Herman