



The Village of Biscayne Park

600 NE 114th St., Biscayne Park, FL 33161

Telephone: 305 899 8000 Facsimile: 305 891 7241

AGENDA
SPECIAL COMMISSION MEETING
LOG CABIN - 640 NE 114th Street
Biscayne Park, FL 33161
Tuesday, February 12, 2019 6:30pm

In accordance with the provisions of F.S. Section 286.0105, should any person seek to appeal any decision made by the Commission with respect to any matter considered at this meeting, such person will need to ensure that a verbatim record of the proceedings is made; which record includes the testimony and evidence upon which the appeal is to be based.

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in the proceedings should call Village Hall at (305) 899 8000 no later than four (4) days prior to the proceeding for assistance.

DECORUM - All comments must be addressed to the Commission as a body and not to individuals. Any person making impertinent or slanderous remarks, or who becomes boisterous while addressing the Commission, shall be barred from further audience before the Commission by the presiding officer, unless permission to continue or again address the commission is granted by the majority vote of the Commission members present. No clapping, applauding, heckling or verbal outbursts in support or in opposition to a speaker or his/her remarks shall be permitted. No signs or placards shall be allowed in the Commission Chambers. Please mute or turn off your cell phone or pager at the start of the meeting. Failure to do so may result in being barred from the meeting. Persons exiting the Chamber shall do so quietly.

1 Call to Order

2 Roll Call

Mayor Truppman

Vice-Mayor Johnson-Sardella

Commissioner Samaria

Commissioner Tudor

Commissioner Wise

3 Pledge of Allegiance

4 Public Comments Related to Agenda Items / Good & Welfare

Comments from the public relating to topics that are on the agenda, or other general topics.

5 Additions, Deletions or Withdrawals to the Agenda

At this time, any member of the Village Commission or the Village Manager may request to add, change, or delete items from the agenda.

6 New Business

6.a Decision on Village Attorney

7 Adjournment



VILLAGE OF BISCAYNE PARK
Village Commission Agenda Report
REGULAR MEETING

Item # 6.a

TO: Honorable Mayor & Members of the
Biscayne Park Village Commission

FROM: Krishan Manners, Village Manager

DATE: February 11, 2019

TITLE: Village Attorney

Recommendation

N/A

Background

The Village Attorney, John Herin, notified all Commissioners that he is leaving Gray/Robinson to join the firm of Fox Rothschild. As a result, Gray Robinson sent a letter to the Village requesting a decision to 1) remain with Gray Robinson, 2) remain with John Herrin/Fox Rothschild and have Gray/Robinson transfer the files to him, or 3) choose a different attorney and firm. The Attorney is appointed by the Commission.

Resource Impact

TBD

Attachment

Letter from Gray/Robinson

Prepared by: Krishan Manners

GRAY ROBINSON
ATTORNEYS AT LAW

401 EAST LAS OLAS BLVD.
SUITE 1000
POST OFFICE BOX 2328 (33303-9998)
FORT LAUDERDALE, FLORIDA 33301
TEL 954-761-8111
FAX 954-761-8112
gray-robinson.com

BOCA RATON
FORT LAUDERDALE
FORT MYERS
GAINESVILLE
JACKSONVILLE
KEY WEST
LAKE LAND
MELBOURNE
MIAMI
NAPLES
ORLANDO
TALLAHASSEE
TAMPA
WASHINGTON, DC
WEST PALM BEACH

954-761-7499

TOM.LOFFREDO@GRAY-ROBINSON.COM

February 7, 2019

VIA EMAIL: villagemanager@biscayneparkfl.gov

Krishan Manners
Village Manager
Village of Biscayne Park

Re: **Client Name/Number:** Village of Biscayne Park/824224

Matter

1

Matter Name

General

Dear Mr. Manners:

As you may know, John R. Herin, Jr., Esq., has resigned his position as Of Counsel with GrayRobinson, P.A., effective February 8, 2019.

During the course of Mr. Herin's association with GrayRobinson, he has represented you regarding the above-referenced matter(s). To assure that interests continue to be properly represented, the rules regulating Florida attorneys encourage us to determine whether you want Mr. Herin to continue in his new capacity at Fox Rothschild LLP to represent you, GrayRobinson, P.A. to continue to represent you or prefer another law firm to represent you. Please indicate your choice by selecting the appropriate box, sign where indicated and send your response via email to the attention of Debbie Senko, Regional Office Administrator, at debbie.senko@gray-robinson.com.

Irrespective of your choice, please understand you remain responsible for any applicable fees and costs incurred through February 8, 2019. Fees and/or costs may be deducted from any trust or suspense funds held by the Firm.

Krishan Manners
Village Manager
Village of Biscayne Park
February 7, 2019
Page 2

Sincerely yours,



Thomas H. Loffredo, Jr., Esq.



John R. Herin, Jr., Esq.

I desire that GrayRobinson, P.A. continue to represent me and keep my files, including all electronic data.

I desire that John R. Herin, Jr., Esq. represent me and instruct the Firm to transfer my files, including all electronic data be forwarded to:

John R. Herin, Jr., Esq.
Fox Rothschild LLP
One Biscayne Tower
2 South Biscayne Blvd., Suite 2750
Miami, FL 33131
Email: jherin@foxrothschild.com
Main: 305.442.6540

I desire that the attorney listed below represent me and instruct the Firm to transfer files, including all electronic data be forwarded to:

Attorney Name: _____
Firm Name: _____
Firm Address: _____
Email Address: _____
Main Phone Number: _____

Client Signature _____ Date _____

Edward George Labrador

Attorney & Counselor At Law

Board Certified in City, County
and Local Government Law

April 26, 2018

Via Hard Copy and Email to:

Villagemanager@biscayneparkfl.gov

Village Manager
Village of Biscayne Park
600 NE 114th Street
Biscayne Park, FL 33161

Re: *Village Attorney Recruitment*

Dear Village Manager:

Please accept this submission for the position of Village Attorney. I am an active member of The Florida Bar in good standing and board certified in City, County, and Local Government Law.

Enclosed with this letter is a brief biography describing my relevant experience, education, and background. A more detailed resume is also provided. Per the solicitation, I have also enclosed writing samples and references. For all legal work performed, I propose a standard hourly rate of \$200.00.

I understand that Mr. John Hearn has been your Village Attorney for a significant time period. Because an orderly transition will be essential to protect the Village's legal position in all current matters, I intend to work Mr. Hearn to ensure a smooth transition and will independently engage Mr. Hearn, as necessary, to provide the Village with the most effective legal services. Any costs associated with Mr. Hearn's legal services will be billed through me at an hourly rate not exceeding the proposed standard rate.

I look forward to further discussing my qualifications and how I can provide legal services to the Village of Biscayne Park. My contact information is below – please feel free to contact me.

Sincerely,



Edward G. Labrador

Enclosures

C: John Hearn, Esq.



The Village of Biscayne Park

600 NE 114th St., Biscayne Park, FL 33161
Telephone: 305-899-8000 Facsimile: 305 891 7241

**THE VILLAGE OF BISCAYNE PARK
Announces recruitment for the following position:
VILLAGE ATTORNEY**

An Equal Opportunity /Equal Access Employer

COMPENSATION: Negotiated Hourly Rate; Budgeted for \$75,000 Annually

JOB TYPE: Professional / Administrative

OPENING DATE: March 14, 2018

CLOSING DATE: April 30, 2018

Established in 1933, the Village of Biscayne Park is a community with approximately 1286 homes and 3,000 residents. The Village's unique charm has the dual benefits of its proximity to urban Miami-Dade County all the while maintaining its small-town charisma and identity. The Village staff's goal is to provide high quality services that create economic, environmental and social sustainability.

Job Requirements

The candidate for Village Attorney is appointed by and serves at the pleasure of the Commission. The Attorney shall act as the legal advisor to, and attorney and counselor for, the Village and all of its officers in matters relating to their official duties under such terms, conditions and compensation as are consistent with the Village of Biscayne Park Charter. The scope of services involves drafting and reviewing ordinances, resolutions, policies and procedures, and contracts prior to consideration by the Village Commission to ensure compliance with state, federal, and local laws. Emphasis is placed on municipal law, civil code enforcement, land use, zoning, labor relations, and legislative interpretation. Duties include coordinating with outside counsel regarding litigation on behalf of the Village, researching/preparing oral and written legal opinions for Village Commission, Village Manager, Department Heads, staff, committees, and boards, and preparing legal documents.

The candidate shall demonstrate knowledge of labor relations, civil litigation, collective bargaining and municipal, state, federal and constitutional law affecting municipal government. The applicant must be skillful in managing situations requiring diplomacy, fairness, firmness and sound judgement, and understanding/applying Village policies and procedures. The Village Attorney is required to attend all Village Commission meetings.



Edward G. Labrador Biography

Edward G. Labrador is a 28-year member, in good standing, of The Florida Bar and board certified in City, County and Local Government Law since 1999. He presently serves as Legislative Counsel for the Intergovernmental Affairs/Boards Section of the Broward County Office of the County Administrator.

Prior to assuming his current role on October 8, 2017, Labrador served for over five years as Director of Broward County's Office of Intergovernmental Affairs and Professional Standards (OIAPS), a 20-employee, \$3.0 Million county operation, to which he was appointed by County Administrator Bertha Henry on April 23, 2012. During his tenure as OIAPS Director, Labrador provided executive direction and leadership regarding several key county programs, including federal, state, and local governmental relations; grants; ADA and HIPAA compliance; EEO, Whistle-Blower, Employee Ethics, Living Wage, Wage Recovery, and Cone of Silence compliance, investigations, and enforcement; and enforcement of the County's Human Rights Act, including the Human Rights Section's HUD-certified, Fair Housing Assistance Program.

During his 23-year tenure with Broward County, Labrador has served as Legislative Counsel and Senior Legislative Coordinator for OIAPS and its predecessor, the Office of Public and Governmental Relations (January 1, 2007-April 22, 2012). From March 2005 through December 2006, Labrador served as director of the Broward County Civil Rights Division; and for more than 10 years served as an assistant county attorney with the Office of the County Attorney, handling a variety of legal areas, including intergovernmental affairs, labor and employment litigation, small business development, whistleblower and civil rights issues, ethics and elections, homelessness and affordable housing, transactional and procurement matters, and providing general advice and counsel to County departments, offices, divisions, boards, officials, and employees.

Prior to his career with Broward County, Labrador served as staff counsel for the Florida House of Representatives' Committee on Insurance, focusing on health and life insurance matters. Additionally, he served as a senior attorney/assistant general counsel for the Florida Agency for Health Care Administration (including its predecessor the state DHRS' Office of Regulation and Health Facilities) handling trial and appellate litigation involving certificate-of-need, licensure, health care cost containment matters, bankruptcy issues, and health care facility construction.

Labrador received a Bachelor of Science degree in criminal justice from Florida International University in 1984, and his Juris Doctor in 1989 from Cumberland School of Law of Samford University in Birmingham, AL. In 2016, he was elected President of the National Association of County Intergovernmental Relations Officials (NACIRO), for a two-year term, and served as a member of the National Association of Counties' (NACo) Board of Directors. He's been a member of NACo's Transportation Steering Committee since 2009; and a former president of the Florida Association for Intergovernmental Relations (FAIR), a professional trade association for city, county and special district representatives engaged in intergovernmental affairs.

Labrador was born in La Habana, Cuba, and has been a citizen of the United States of America since 1975. He resides in Pembroke Pines, FL, with his wife, Emma, a teacher at Sunset Lakes Elementary in Miramar, and their two children, Areana and Mikael.



Edward G. Labrador

6243 SW 191st Avenue
Pembroke Pines, Florida 33332
Tel. (954) 437-2706
Cell: (954) 319-3326

Email: edward.labradorlawgroup@gmail.com

Qualifications

- ✓ Over 28 years experience as an attorney in good standing with The Florida Bar.
- ✓ Board Certified by The Florida Bar in City, County and Local Government Law since 1999.
- ✓ Over 24 years legislative experience, including lobbying the Legislative and Executive Branches of the United States, the Florida Legislature and state Executive Branch agencies.
- ✓ Over 23 years experience in local government law, including preparation of legislation, ordinances, resolutions, contracts, legal opinions and other legal documents.
- ✓ Over 17 years of legal experience in the areas of civil rights, employment law and labor relations, including conducting and reviewing internal client investigations, defending clients against charges of discrimination before federal and state trial courts, and civil rights agencies, defending clients in arbitration, civil service and other administrative hearings.

Relevant Experience

Director

Office of Intergovernmental Affairs and Professional Standards

Broward County Board of County Commissioners

Appointed by County Administrator on April 23, 2012 – Served through October 7, 2017

Experience:

- ✓ Provide executive direction and leadership for a county operation consisting of 20 county employees and \$3.0 million budget.
- ✓ Responsible for the following key county programs:
 - Federal, state, and local governmental relations
 - Grants coordination
 - ADA and HIPAA compliance
 - EEO, Whistle-Blower, Employee Ethics, Living Wage, Wage Recovery, and Cone of Silence compliance, investigations, and enforcement;
 - Enforcement of the County's Human Rights Act, including the Human Rights Section's HUD-certified, Fair Housing Assistance Program.

Legislative Counsel

October 8, 2017 to Present

Legislative Counsel/Senior Legislative Coordinator

Office of Intergovernmental Affairs & Professional Standards (and predecessor Office of Public & Governmental Relations)

Broward County Board of County Commissioners

115 S. Andrews Avenue, Suite 427

Fort Lauderdale, Florida 33301

January 2, 2007-April 22, 2012

Experience:

- ✓ Responsible for representing Broward County's interests before the Legislative and Executive Branches of the Federal government, the Florida Legislature, Governor and Cabinet, and executive branch agencies of the state; staff lead for various subject areas including environment, transportation (aviation, maritime, and transit issues), civil rights, human resources/labor relations, public works (construction, utilities, solid waste) and growth management.
- ✓ Providing legal advice and counsel to Office management, the County's lobbying team, and county officials and staff regarding state and federal legislative matters impacting Broward County; providing advice and counsel to county departments, offices, divisions, and agencies concerning proposed legislation or administrative rules impacting programmatic areas.
- ✓ Researching, reviewing, and analyzing varied legislation, amendments and issues; preparing and rendering legal opinions on such matters; preparing lobbying services contracts; and preparing, reviewing and analyzing other issues, documents and matters under the Office's jurisdiction.
- ✓ Assisting in the development and implementation of strategies to obtain successful passage of legislation and amendments that implement the legislative directives and positions approved by the Broward County Board of County Commissioners; and assist Office management in supervising the advancement of legislative issues during regular and special sessions of the Florida Legislature.
- ✓ Prepare reports, letters, memorandums and other communications concerning the legislative, and other matters and activities undertaken on behalf of Broward County or the Office.

Director, Civil Rights Division

Office of Equal Opportunity

Broward County, Board of County Commissioners

115 S. Andrews Avenue, Suite A680

Fort Lauderdale, Florida 33301

March 21, 2005 to January 1, 2007

Experience:

- ✓ Executive management position responsible for supervision of 17 staff, a \$1.3 million budget, and for planning, organizing, and directing the activities of the Civil Rights Division including the Community Relations and Outreach Program, Fair Employment Practice Agency Program, Fair Housing Assistance Program, and the County's Equal Employment Opportunity Program areas.
- ✓ Served as the Chief Investigative and Administrative Officer responsible for the implementation of the Broward County Human Rights Act.
- ✓ Responsible for developing, issuing and implementing the Division's strategic policy initiatives; establishing priorities and procedures; establishing divisional goals; developing and maintaining budgetary, fiscal, and capital improvement plans of the Division; preparing special reports, directing studies, and implementing special programs; served as division counsel responsible legal opinions and representation of the Division at reasonable cause hearings before the Human Rights Board.
- ✓ Responsible for the development and monitoring of the County's equal opportunity action plans and providing advice and assistance to county departments, divisions, and offices.
- ✓ Served as Liaison to advisory and quasi-judicial boards under the jurisdiction of the Civil Rights Division; coordinating activities with federal and state partners; attended public meetings and conferences; formed relationships with leaders of national, state and local civil rights organizations.
- ✓ Served on management team of the Office of Equal Opportunity, assisted the Office's Director with priority issues and provided legal advice and counsel as necessary.

Assistant County Attorney

Office of the County Attorney

Broward County, Board of County Commissioners

115 S. Andrews Avenue, Suite 423

Fort Lauderdale, Florida 33301

November 14, 1994 to March 18, 2005

Experience:

- ✓ Represented Broward County, county agencies and officials, and the Broward County Supervisor of Elections, as trial counsel before federal, state, and administrative courts and other administrative agencies, concerning labor and employment matters, civil rights, elections and other civil actions.
- ✓ Represented Broward County before the Florida Legislature and administrative agencies of the State of Florida including: providing legal advice and counsel to the Office of Public and Governmental Relations and other county agencies concerning legislative matters; drafted legislation, amendments, letters and other related legislative documents as necessary; reviewed and analyzed legislation, amendments and administrative rules.
- ✓ Provided legal advice and counsel to the Human Resources Division, in the areas of employee benefits, labor, and employment matters.
- ✓ Provided legal advice and counsel to various county agencies including the Community Development Division, Office of Economic Development, and Small Business Development Division concerning CDBG and SHIP housing programs, economic development matters, and small/disadvantaged business development and procurement access programs, respectively.
- ✓ Served as lead counsel to the Office of Equal Opportunity and the Office of Professional Standards with respect to internal investigations concerning charges of discrimination and whistle-blower matters, and providing legal services to the Civil Rights Division.
- ✓ Served as lead counsel to various county boards and procurement committees during tenure, including the Homeless Initiative Partnership Board, Human Rights Board, ADA Eligibility Determination Appeals Board (Paratransit), Health Insurance Selection & Negotiation Committee, State and Federal Lobbyist Services Selection & Negotiation Committees, Small Business Advisory Board, Disparity Study Selection & Negotiation Committee, and the Broward County Canvassing Board.
- ✓ Provided legal advice and counsel to county agencies and officials concerning ethics and elections matters, and other general legal matters including drafting legal opinions, preparing legal documents, and preparing of county ordinances and resolutions.

Staff Attorney

Committee on Insurance

Florida House of Representatives

The Capitol

Tallahassee, Florida 32301

November 8, 1993 to November 11, 1994

Experience:

- ✓ Served as lead staff counsel for the Committee on Insurance concerning health insurance and life insurance matters.
- ✓ Provided legal advice and counsel to the Committee chairman, committee members, and other members of the Florida House of Representatives in drafting legislative bills, developing regulatory programs, interpreting state and federal legislative acts and developing state policies relating to health and life insurance matters.
- ✓ Conducted independent and varied legal research relating to legislative matters before the committee or as assigned by the chairman or staff director.
- ✓ Drafted legislative bills, resolutions and amendments for the committee and individual members.
- ✓ Reviewed and analyzed information submitted to the committee; and prepared analyses of legislative bills referred to the committee.

- ✓ Provided legal advice and counsel regarding cases brought before state and federal courts or other matters brought before state and federal administrative agencies.
- ✓ Answered routine correspondence and telephone inquiries concerning constituent problems and interpretations of Florida Statutes for citizens and public officials.

Senior Attorney

Agency for Health Care Administration
 2727 Mahan Drive, Suite 101
 Tallahassee, Florida 32308
 July 1, 1992 to November 5, 1993

Attorney/Senior Attorney - promoted on October 22, 1991

Office of Regulation & Health Facilities
 Department of Health & Rehabilitative Services
 2727 Mahan Drive, Suite 101
 Tallahassee, Florida
 December 15, 1989 to June 30, 1992

Experience:

- ✓ Provided legal services to agency managers and staff in the areas of Certificate of Need, Health Care Facility Licensure, Health Care Facility Construction, Administrative Law, Bankruptcy Law, Hospital Budget Review and Health Care Policy.
- ✓ Represented the agency as trial and appellate counsel before all federal and state civil, appellate and administrative courts.
- ✓ Provided legal assistance and advice with respect to legislation, administrative rules and the agency's policy initiatives.
- ✓ Provided legal services, as lead counsel for the agency's Office of Plans & Construction.
- ✓ Provided other services such as training seminars for agency staff on rule development, the administrative process and expert testimony.

Associate

Carey L. Ewing, P.A.
 Coral Gables, Florida 33134
 October 6, 1989 to December 13, 1989
 Served as Law Clerk to the firm from June 1, 1989
 to October 5, 1989

Experience:

- ✓ General Practice - Main areas of practice included Family Law, Personal Injury, Corporate Law, Commercial Law, and Trial & Appellate Litigation.
- ✓ Prepared and filed complaints, motions, answers and other pleadings.
- ✓ Conducted legal research and prepared appropriate memorandums of law, trial briefs and appellate briefs.
- ✓ Assisted the partner at depositions, trials and appellate proceedings.

Legislative Assistant

The Honorable Arnhilda Gonzalez-Quevedo, State Representative
 Florida House of Representatives, District 112
 November 1984 to August 1986

Experience:

- ✓ Served as the Representative's liaison to local government officials.
- ✓ Researched, developed, drafted and filed legislation sponsored by the Representative.
- ✓ Supervised the Legislative Office including all paid and volunteer staff.
- ✓ Identified and resolved constituent problems with local and state governmental agencies.
- ✓ Served as the member's representative to all city council meetings, school board meetings, Dade Delegation meetings and public hearings which the Representative could not attend.

Court Admissions

- ✓ The Florida Bar - October 6, 1989
- ✓ United States Supreme Court - January 11, 1993
- ✓ United States Court of Appeals, 11th Circuit - July 23, 1990
- ✓ United States District Court, Northern District of Florida – May 1, 1990
- ✓ United States District Court, Southern District of Florida – October 24, 1995

Education

- ✓ **Juris Doctor, May 1989**
Cumberland School of Law
Samford University, Birmingham AL
Class Rank: Top 32%

National Order of Barristers

Insurance Law National Moot Court Team,
Briefwriter & Alternate Advocate
Semifinalist, Shores Moot Court Competition
Fall 1987
Gordon T. Saad Moot Court Competition,
Spring 1987
Quarterfinalist, Judge Haley Mock Competition,
Summer 1988
Jefferson County Mock Trial Competition,
Spring 1989

Moot Court Board, Member
Semifinalist, 1988 William Starr Insurance
Law National Competition, Hartford CT
Quarterfinalist, Shores Moot Court Competition
Summer 1988
Judge Haley Mock Trial Competition, 1987
Semifinalist, Herbert Peterson Trial Advocacy Competition,
Spring 1989

Other Activities:

Phi Alpha Delta Law Fraternity, Vice-Justice 1988-1989
Cumberland Young Republicans, Treasurer 1988-1989
Alabama & Florida Student Bar Associations
International Law Society
Cumberland Federalist Society

- ✓ **Bachelor of Science, August 1984**
Florida International University, Miami FL
Major: Criminal Justice

Major Activities:

Student Government Association, President & Vice-President 1984
State Council of Student Body Presidents, Treasurer 1984
Florida Students Association, Board Member & Treasurer 1984
SGA Student Senate, Senator for the School of Public Affairs 1983
Omicron Delta Kappa, Charter Member
Criminal Justice Society
Circle K

- ✓ **Associate of Arts, May 1992**
Miami-Dade Community College, Miami FL

Major Activities:

Sigma Phi Epsilon Fraternity, Chaplain 1981 & Secretary 1982
MDCC Judo Team 1980-1982, Team Captain 1982

Professional and Community Activities, & Affiliations

The Florida Bar

- ✓ **Board Certified in City, County and Local Government Law**
- ✓ City, County and Local Government Law Section
- ✓ Government Lawyers Section
 - Article V Funding Policy Symposium, Program Coordinator, 1995
 - Legislative and Long Range Planning Committee, Co-Chair 1995-1997
 - Charter Member appointed to Government Lawyer Committee, 1990
- ✓ Labor & Employment Law Section
- ✓ Administrative Law Section

American Bar Association

- ✓ Government and Public Sector Lawyers Division
- ✓ Section of Environment, Energy and Resources
- ✓ Section of Labor & Employment Law
- ✓ Section of Litigation
- ✓ Section of Public Utility, Communications and Transportation Law
- ✓ Section of State and Local Government Law
- ✓ Tort Trial and Insurance Practice Section

National Association of Counties (NACo)

- ✓ **NACo Board of Directors (May 2016-May 2018)**
- ✓ **Transportation Steering Committee (2009-Present)**
- ✓ Labor and Employment Steering Committee (2008)
- ✓

National Association of County Intergovernmental Relations Officials (NACIRO)

- ✓ Past President (March 2018-Present)
- ✓ **President, 2016-2018**

- ✓ Vice-President, 2014-2016
- ✓ Treasurer, 2010-2014
- ✓ Governance Committee, Chair, 2008-2010

Florida Association of County Attorneys (1995-2005, 2008 to Present)

- ✓ General Government Committee
- ✓ Public Safety Committee
- ✓ Finance and Tax Committee
- ✓ Growth Management Committee

Florida Association for Intergovernmental Relations (1995-2004, 2007-2016)

- ✓ **President, 1997-1999**
- ✓ Vice-President, 1996
- ✓ Board of Directors, 1995 & 2000
- ✓ By-Laws Committee, Chair, 1995, 2009

Laguna Isles Community Association, Inc. (2003-2016)

- ✓ Director (2003-2005, 2014-2016)
- ✓ Vice-President (2003-2005, 2010-2014)
- ✓ Secretary (2005-2009)

United Way of Broward County Public Policy Advisory Committee (2013-Present)

Awards

- ✓ *Florida Association of Counties – 2009 Legislative Advocacy Award*
- ✓ *Government Lawyer’s Section - Chairman’s Award Recipient, 1995*

Publications and Presentations

Articles

- ✓ Contributing writer on legislative issues: Legally Speaking Newsletter (Office of the County Attorney 1995-1998); OPRG and OIAPS Federal and State Legislative publications (January 2007 – Present)
- ✓ *Broken Promises: The Failure to Adequately Fund a Uniform State Court System*, Copelan, John J., Jr. and Labrador, Edward G., The Florida Bar Journal (April 1997)
- ✓ *Unequal Justice: Failure to Fund the State Court System*, Copelan, John J., Jr. and Labrador, Edward G., County Magazine (Florida Association of Counties 1997)

Presentations

- ✓ Broward Academy Presenter – County Legislative Issues and Role of Office of Intergovernmental Affairs and Professional Standards (2015 and 2017)
- ✓ 2015 Legislative Update – Florida Government Finance Officers Association, South Florida Chapter
- ✓ Presentation EEO Investigations and Ethics, Positive Start Class (County Supervisors - 2013)
- ✓ Presentation relating to the ADA and County’s Reasonable Accommodation Process before the Broward County Advisory Board for Individuals with Disabilities (Spring 2006)
- ✓ Presentation to County EEO Counselors relating federal and state anti-discrimination laws and County policies and procedures (2004)
- ✓ Presentations relating to the ADA and Paratransit Eligibility Standards, Florida’s Sunshine Law, Public Records, and Ethics Laws, before the Broward County ADA Eligibility Determination Appeals Board (Fall 2001; Summer 2002)
- ✓ Presentations Broward County’s Human Rights Act (HRA), 2002 Amendments to HRA, Florida’s Sunshine Law,

Public Records, and Ethics Laws, before the Human Rights Board (Fall 1999; Winter 2003).

Personal

- ✓ Date of Birth – September 19, 1962
- ✓ Place of Birth – La Habana, Cuba
- ✓ Citizenship – United States
- ✓ Social Security No. XXX-XX-4753
- ✓ Marital Status – Married to Emma Ernand-Labrador, Two Children – Areana and Mikael
- ✓ Special Skills – Bilingual (Spanish)
Working knowledge of Adobe Acrobat, Microsoft Office Programs

References

- ✓ **Available Upon Request**

References

Edward G. Labrador

1. David Caserta, Esq.
Cell: 305-401-3006
Email: flagovernment@aol.com
2. Ron Greenstein
Cell: 954-610-7745
Email: rgreen2505@aol.com
3. Frank Bernardino
Cell: 561-718-2345
Email: frank@anfieldflorida.com
4. Candice Ericks
Cell: 954-648-1204
Email: candice@ericksconsultants.com

WRITING SAMPLES

Additionally, the Proposal 6007 imposes prohibitions on representing others for compensation during a public officer's term of office. This ban interferes with a public officer's opportunity to engage in a lawful livelihood. For example, a county commissioner who is an attorney could not represent a nonprofit entity client on matters it may have before a federal agency or state agency, a school-board, a university, a state college, a county other than the commissioner's county, even if the representation does not conflict in any way with the commissioner's public office. Additionally, a state legislator who is an attorney and represents clients before local code enforcement boards, planning divisions, or environmental and permitting authorities and advocates for policy-related issues or changes, may be prohibited from doing so because of the proposed ban.

Similarly, an elected public officer that works for a nonprofit entity may not be able to fundraise or advocate for grants from other governmental bodies (not her/his own) due to restrictions on lobbying government officials during the public officer's term. Likewise, public officers that represent entities engaged in property assessed clean energy (PACE) programs, economic development and business, and disaster recovery, for example, would not be able to lobby or make presentations to any local governments; or lobby for improved policies in these areas in behalf of a private client, including advocacy related to opportunities for new innovative cost-savings measures or development prospects.

I am sure there are other examples of how Proposal 6007 would impact elected public officers' opportunities to engage in lawful professions and occupations. While well-intentioned, persons seeking to serve their constituents *should not* be made to choose between engaging in a lawful livelihood to provide for their families and serving in the public office of their choice. To this extent, Proposal 6007 is overly broad and unreasonably imposes restrictions that may prevent good women and men in this state from providing government their industry and ideas to better serve our citizens.

Should you have any questions, please feel free to contact me. Thank you for your service and consideration.

Sincerely,

Edward G. Labrador, Esq., B.C.S.*
Legislative Counsel
Intergovernmental Affairs/Boards Section
Office of the County Administrator
Governmental Center, Room 426
115 S. Andrews Avenue
Fort Lauderdale, FL 33301
(954) 357-7575 - Office
(954) 357-6573 - E-fax
(954) 826-1155 - Cell
elabrador@broward.org



*Board Certified City, County,
and Local Government Law

Bertha Henry, County Administrator
March 7, 2017

to be set free. In addition, an ICE detainer unaccompanied by a signed judicial warrant or deportation order could expose BSO to civil liability if someone is detained improperly.

BSO also complies with Section 1373 as it provides ICE with notice of the detention of a suspected undocumented individual and their anticipated release date. In this case, jail staff contacts an ICE office and explains the conditions under which a detainer will be honored and the approximate date the inmate is expected to be released. This provides ICE with the opportunity to meet the conditions required by law or take custody of the inmate on or prior to the release date.

Based upon the above information, Broward County and the Broward Sheriff's Office are not sanctuary jurisdictions. Please let me know if you have any questions.

EGL/CMC:cml

C: Monica Cepero, Assistant County Administrator
Mark Journey, Assistant County Attorney
Marty Cassini, Legislative Counsel, OIAPS

Bertha Henry, County Administrator
Transportation Network Company Legislation
March 9, 2015

The bill also requires both TNC's and their drivers to meet specific automobile liability insurance requirements. The first requirement is the minimum personal insurance when a driver is not providing services to a passenger. The second applies when TNC services are provided. The driver must not only maintain minimum personal liability insurance, but also one which recognizes the driver's provision of TNC service and insurance of at least \$1 million for death, personal injury, and property damage.

HB 817 also requires TNC's to screen driver applications for the appropriate insurance policies and conduct a state and national criminal background check for each applicant to include the Multi-State/Multi-Jurisdiction Criminal Records Locator and the Dru Sjodin National Sex Offender Public Website. The bill also requires the TNC to adopt a policy of nondiscrimination on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity with respect to passengers and potential passengers.

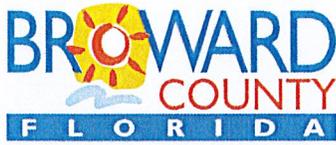
SB 1326 has similar definitions, addresses insurance requirements and TNC driver requirements including background checks. A TNC may not own, control, operate, or manage vehicles owned by TNC drivers. Motor vehicles used by TNC drivers to provide services must also meet the safety and emissions requirements in Chapter 316, F.S., and a TNC driver must not solicit or accept street hails. At present, the bill does not expressly preempt local regulation of TNCs or TNC drivers. *SB 1326, has not yet been scheduled for a hearing before the Regulated Industries Committee, it first committee of reference.*

B. General Transportation dealing with Transportation Network Companies

CS/SB 1186 addresses the use of innovative transportation technologies, calls for studies and pilot programs to expedite integration of these technologies, directs the Department of Transportation to develop pedestrian and bicycle facilities, and makes a number of revisions relating to various transportation issues. In relevant part:

- Section 14 of the bill authorizes a public transit provider to enter into an agreement with a transportation network company under which the company provides public transit service. The bill defines "transportation network company" to mean an entity that uses a digital or software application to connect passengers to services provided by TNC drivers. A public transit provider who contracts with a TNC may use drivers from companies such as Uber, Lyft, and SideCar, to provide public transit, including paratransit services, in addition to other demand-responsive operations.
- Section 30 requires the Commission for the Transportation Disadvantaged and the Center for Urban Transportation Research to cooperatively develop and implement a pilot program, and provide a report to House and Senate Appropriations Committees, assessing the potential for increasing accessibility and cost effectiveness of providing transportation to certain transportation disadvantaged individuals through use of TNCs. Subject to legislative appropriation, the Commission may spend up to \$750,000 for the pilot program.

CS/SB 1186 passed the Transportation Committee unanimously on Thursday, March 5, 2015. The bill next moves to the Senate Regulated Industries Committee.



OFFICE OF INTERGOVERNMENTAL AFFAIRS AND PROFESSIONAL STANDARDS
115 S. Andrews Avenue, Room 426 • Fort Lauderdale, Florida 33301 • 954-357-7575 • FAX 954-357-6573

*Board Certified in City, County
and Local Government Law

April 30, 2013

Good morning, House Members of the Broward Legislative Delegation,

On behalf of Broward County, I want to inform you that legislation has passed the Senate yesterday afternoon to change the way counties contribute for Medicaid services. Similar legislation has not been released, heard by a committee, or introduced in any capacity in the House of Representatives. We urge the Delegation to be prepared for the appearance of legislation on the House floor this week.

With the strong likelihood that legislation will be released with very limited time to respond or prepare, we feel most comfortable asking you to support the Senate approach. CS/SB 1884 by Sen. Grimsley was heard in two committees and counties were at the table every step of the way. The Senate Bill calls for a transition from a billing and utilization based system to a contribution to Medicaid services based on enrollment. Broward County remains very concerned about this approach as not every enrolled beneficiary utilizes medical or nursing home services in a given fiscal year. In addition, the change to an enrollment-based contributory system means AHCA will no longer provide bills for services provided to Medicaid beneficiaries residing in Broward County, thus removing from the County and our hospital districts (who also pay a portion of the required contribution) the ability to review or challenge particular billings, or request refunds when billing errors are found.

Despite our hesitation with this transition, the County believes the Senate approach has been more transparent and deliberative. Sen. Grimsley has shown a great interest in working with all the stakeholders. Sen. Grimsley amended her bill to maintain constant the base rate amount during a 7-year phase in to an enrollment-based county Medicaid contribution system. The locked-in \$269.6 million base rate provides counties with a modest level of comfort over the phase in period. Over the 7 years, each county's contribution will grow increasingly reliant on enrollment numbers and less on utilization data. The Senate Bill also calls for a report by AHCA to assess Medicaid utilization data.

Lastly, the County believes CS/SB1884's financial impact will be less than what the House may likely offer as an alternative. Please support the Senate Bill and maintain the fixed base contribution amount, preserve the 7-year phase in period, and the required AHCA report that will study statewide utilization data. Thank you for your consideration.

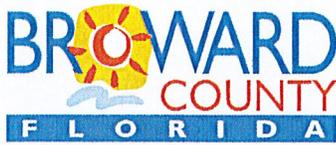
Sincerely,

Edward G. Labrador [authorized computer signature]

Edward G. Labrador, Esq.*
Director

EGL/

c: Bertha Henry, County Administrator
Pamela Madison, Deputy County Administrator



OFFICE OF INTERGOVERNMENTAL AFFAIRS AND PROFESSIONAL STANDARDS
115 S. Andrews Avenue, Room 426 • Fort Lauderdale, Florida 33301 • 954-357-7575 • FAX 954-357-6573

April 17, 2013

Memorandum

To: House of Representatives – Broward Legislative Delegation Members

From: Eddy Labrador, Esq., Director

CS/CS/HB 707 and CS/SB 444, which relate to the five remaining ocean outfalls in South Florida, are on the Special Order Calendar for consideration in today's session. Broward County along with its partners – Miami-Dade County, and the Cities of Hollywood and Boca Raton – have been working to obtain these changes to the 2008 ocean outfall law during the last three years. Our goal of passing this important legislation is within sight and your support will get us there. These identical bills make the following changes:

1. Allow up to 5% of annual flow to continue to be discharged through the ocean outfalls during peak flow events. Doing so, avoids building facilities otherwise needed to deal with such extraordinary water-related events. The capital costs avoided by each outfall utility are \$820 million for Miami-Dade County, \$300 million for Broward County, and \$150-\$200 million for the City of Hollywood.
2. Allow the outfall utilities to meet the law's 60% reuse requirement anywhere in their service area (instead of just from the ocean outfall flows), or through contracts with other utilities in the Broward, Miami-Dade and Palm Beach county area, resulting in substantial savings and beneficial reuse projects.
3. Updates requirements for the detailed plan the outfall utilities must develop and submit to FDEP by July 1, 2013, including:
 - Identifying the technical, environmental and economic feasibility of various reuse options;
 - Providing an analysis of costs necessary for utilities to meet state and local water quality criteria; and
 - Providing comparative cost estimate of achieving reuse requirements from ocean outfalls and other sources.

The plan must evaluate the demand for reuse in the context of future regional water supply demands, the availability of traditional sources of water, the need for alternative water supplies, the offset reuse will have on potable supplies, and other factors contained in the SFWMD's Lower East Coast Regional Water Supply Plan. Under current law, the outfall utilities must submit to the FDEP an update to this plan by July 1, 2016.

4. Requires the Florida Department of Environmental Protection to provide a report to the Legislature in February 2015 containing recommendations to further refine the law's reuse requirements.

Last, unlike in previous years, this year's legislation does not include any changes to the original compliance schedule, including the July 2013 plan submission date, the December 2018 nutrient reduction date, and the December 2025 final compliance date for having an operational reuse system and eliminating the use of the ocean outfalls except for the limited backup discharges allowed by law.

Broward County welcomes your support of this important legislation and your favorable vote. If you have any questions, please feel free to contact me at 954-826-1155 or at elabrador@broward.org. Thank you for your consideration.

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

██████████,

Case No. 01-6784(05)
██████████

Plaintiff,

v.

BROWARD COUNTY, a
political subdivision of the
STATE OF FLORIDA,

Defendant.

DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

Defendant, Broward County ("County"), by and through undersigned counsel, and pursuant to Rule 1.140 (b), Fla. R. Civ. P., files this Defendant's Motion to Dismiss Plaintiff's Amended Complaint. The grounds in support of the Motion are as follows:

Count I - Title VII (Race Discrimination)

1. In Count I, Plaintiff attempts to assert a race discrimination claim under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, as amended ("Title VII"), for the County's alleged failure to promote or reclassify the Plaintiff to a higher grade position in 1999. The Plaintiff also alleges the County retaliated against the Plaintiff by changing his work shift on March 6, 2001, and termination him in July 2001.¹

2. Plaintiff admits that an EEOC charge relating to County's alleged failure to promote or reclassify him in 1999, was resolved through a mediated settlement. The Plaintiff and County entered into an EEOC mediated settlement agreement on June 13, 2000.² See, Exhibit "A," attached.³

3. The Amended Complaint fails to allege that prior to initiating the instant civil action alleging the Plaintiff was denied a promotion, his shift was changed or that he was terminated by reason race discrimination, a Charge of Discrimination ("charge") was timely filed with the United States Equal Employment Opportunity

¹ Retaliation is a separate cause of action under Title VII. It appears, however, the Plaintiff is attempting to assert a race discrimination claim based upon retaliation. No such cause of action is recognized under Title VII. Rather, it is obvious the Plaintiff is trying to assert a claim of retaliation which he cannot otherwise assert due to his failure to timely file a charge with the EEOC alleging same and receiving a notice of right to sue from the EEOC based on said charge.

² The settlement agreement provided for the County to review the Plaintiff's Position Classification Questionnaire ("PCQ") for the purpose of determining whether the Plaintiff's position of Computer Operator II should be reclassified. No promise to reclassify was made to the Plaintiff. In return, for the review, the Plaintiff agreed to dismiss all pending EEOC charges which had been filed with the EEOC as of June 13, 2000. This included EEOC charge number 150 A0 1178 filed on January 14, 2000, as later amended by the Plaintiff on February 22, 2000. See, Exhibits "B" and "C."

³ See *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1280-81, n.16 (11th Cir. 1999) (when the Plaintiff fails to attach a document upon which his complaint is based, the court may consider that document when submitted by the Defense in conjunction with a motion to dismiss).

Plaintiff must file a charge with the EEOC specifying the alleged illegal misconduct by the employer. Because Florida is a deferral state, a Title VII charge of discrimination must be filed within 300-days of the occurrence of the alleged discriminatory practice. See, 42 U.S.C. Section 2000e-5(a)(1).

Subsequent to the filing of a Title VII charge, the EEOC must issue a notice of right-to-sue which authorizes the aggrieved person to file a civil action within 90 days after receipt of the EEOC's notice. The fulfillment of these administrative prerequisites is mandatory and may not be side-stepped by a Title VII plaintiff. *East v. Romine*, 518 F.2d 332, 335 (5th Cir. 1975). The scope of the subsequent judicial proceedings is limited by the specific claims contained in the charge filed with the administrative agency. A Plaintiff cannot assert within a lawsuit a claim which was not included within the charge. *Evans v. U.S. Pipe & Found Co.*, 696 F.2d 925, 929 (11th Cir. 1983); *Sanchez v. Standard Brands, Inc.*, 431 F.2d 455, 466 (5th Cir. 1970); and *Ekanem v. Health and Hospital Corporation*, 724 F.2d 563, 572-3 (7th Cir. 1983).

A Plaintiff may not complain to the EEOC of only certain instances of forbidden conduct and thereafter seek judicial relief from the Court based upon a different, non-asserted ground of discrimination. *Platsance v. Travelers Insurance Co.*, 880 F. Supp. 798, 806-807 (N.D. Ga. 1994), *aff'd*, 56 F.3d 1391 (11th Cir. 1995). As stated by the 11th Circuit in *Evans, supra*, at 696 F.2d 928, the scope of a Plaintiff's judicial complaint is restricted to that which was contained within or can reasonably be expected to grow out of, an actual and timely filed EEOC charge. See, *Sanchez*, 431 F.2d at 466.

The charge (i.e. Exhibit "D") filed by the Plaintiff in this case reflects only a race discrimination claim for failure to reclassify the Plaintiff to a higher grade position. There is no allegation relating the alleged failure to promote; the shift reassignment, or the alleged termination of the Plaintiff's employment with the County. The Plaintiff's charge frames the issues for which this Court has and can assert subject matter jurisdiction. Clearly, the Court cannot assert jurisdiction over issues that arose after the EEOC had issued (February 14, 2001) its notice dismissing the charge and informing the Plaintiff of his right to sue. The Plaintiff has admitted as much by acknowledging that he was not advised of the change in his work shift until March 6, 2001 and that his alleged termination did not occur until sometime in July 2001.

Thus, the Plaintiff's claim race discrimination based on events not disclosed in the charge must be dismissed for lack of subject matter jurisdiction. To do otherwise, would allow the Plaintiff to deny the EEOC the opportunity to investigate the alleged claims and perform its role in obtaining voluntary compliance and promotion of conciliation efforts. *Evans*, 696 F.2d at 929.

In addition, Count I should also be dismissed to the extent the Plaintiff asserts a claim of race discrimination based upon events which occurred prior to June 13, 2000. As noted earlier and as acknowledged in the Amended Complaint, the Plaintiff and the County, on June 13, 2000, entered into an EEOC mediated settlement agreement for the purpose of resolving those issues raised in Plaintiff's charge number 150 A0 1178, as amended. Except for the unsupported allegation in Paragraph 13 of the Amended Complaint, stating the County has not complied with the

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. mail to [REDACTED], Esquire,
400 Southeast 8th Street, Fort Lauderdale, Florida 33316, this 28th day of September, 2001.

EDWARD G. LABRADOR
Assistant County Attorney

H:\DATA\DIV5\Cases\Sapp\Mot & Plead\MotiontoDismissAmendedComplaint.p01.wpd

Relationships. Resources. Results.

Prepared for:
The Village of Biscayne Park

Village Attorney
June 7, 2018

Presented by:
John R. Herin Jr.
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Lakeland | Melbourne | Miami | Naples | Orlando | Tallahassee | Tampa | West Palm Beach

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The Village of Biscayne Park
Village Attorney
June 7, 2018

Cover Letter

John R. Herin, Jr.
Attorney At Law

JOHN.HERIN@GRAY-ROBINSON.COM

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401 EAST LAS OLAS BLVD.
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*BOCA RATON
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FORT MYERS
GAINESVILLE
JACKSONVILLE
KEY WEST
LAKELAND
MELBOURNE
MIAMI
NAPLES
ORLANDO
TALLAHASSEE
TAMPA
WEST PALM BEACH*

VIA COURIER/HAND DELIVERY

Krishan Manners
Village Manager
Village of Biscayne Park
600 NE 114 Street
Biscayne Park, FL 33161

Re: Village Attorney Services

Dear Ms. Manners:

The law firm of GrayRobinson, P.A. (the "Firm") is pleased and honored to submit our qualifications to serve as Village Attorney to the Village of Biscayne Park (the "Village"). As a statewide firm founded in 1970 with 300 lawyers in 14 offices, we have worked for and with numerous municipalities and local government agencies in all aspects of local government law.

I am the main point of contact and lead attorney for this representation. I have over 25 years of experience in representing local government agencies throughout the State, and am board certified by The Florida Bar in City, County and Local Government Law. My practice focuses on representing public and private clients in the areas of local government, administrative and environmental law, and land use and zoning matters. I am well versed in all aspects of local government law and have served as the City Attorney for the City of Marathon and the City of Doral, the Town Attorney for the Town of Miami Lakes, the Village Attorney for the Village of Islamorada and as Interim Village Attorney for the Village of Palmetto Bay.

I have also worked "in-house" or been a part of the legal team that has served as City Attorney, Assistant City Attorney, Assistant County Attorney or Special Counsel to more than two dozen cities, counties and special districts statewide throughout my career. I routinely advise elected and appointed officials and staff on administrative issues, annexations; building and permitting matters; charter amendments; charter enforcement and interpretation; code enforcement; comprehensive planning; contracts; drafting of ordinances and resolutions; employment and labor issues; environmental law and endangered species; ethics; intergovernmental agreements and disputes; procurement; public records; submerged land leases; sunshine law compliance; stormwater and wastewater utilities and zoning matters. Furthermore, I can call

The Village of Biscayne Park
Village Attorney
June 7, 2018

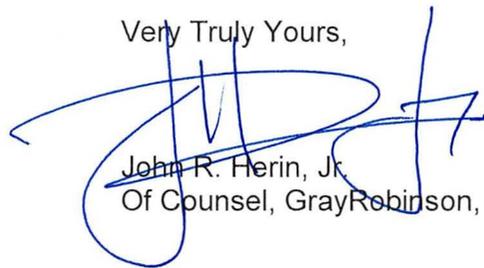
GRAY | **ROBINSON**
ATTORNEYS AT LAW

upon the assistance, knowledge and resources of the Firm's 300+ attorneys in 14 offices across the State when needed.

At this time, we are not aware of any conflicts that preclude us from representing the Village and we are committed to perform the required work within the timeframe specified by the Village. We will strive to accomplish three critical objectives in representing the Village. These objectives are: (1) to provide superior legal services in a cost effective manner; (2) to maintain the flexibility necessary to respond to problems swiftly and thoroughly; and (3) to facilitate communication and accountability. The Firm believes in the quality of the work we produce, not the quantity.

Again, we appreciate the opportunity to present our qualifications to serve as Village Attorney for the Village of Biscayne Park, and thank you for your consideration.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read 'John R. Herin, Jr.', is written over the typed name and title.

John R. Herin, Jr.
Of Counsel, GrayRobinson, P.A.

Resume

John R. Herin, Jr. Of Counsel

john.herin@gray-robinson.com

401 East Las Olas Blvd.
Suite 1000
Fort Lauderdale, Florida 33301
Phone: 954-761-8111
Fax: 954-761-8112
Direct: 954-761-7500



Experience

John is of counsel in the firm's Land Use, Environment, and Government Affairs Department. He brings to the firm over 25 years of experience in the private and public sector. His practice focuses on representing private and public clients in the areas of land use, zoning, and local government, administrative and environmental law. John has handled complex development entitlement matters throughout Florida, including comprehensive plan, platting, permitting, site plan and zoning applications and amendments; endangered species, submerged land leases, and stormwater and wastewater permitting; and lender/buyer due diligence issues. He also has extensive experience in representing firm clients with respect to eminent domain, inverse condemnation and land use litigation, as well as claims under the Bert J. Harris, Jr., Private Property Rights Protection Act.

John appears before the Florida governor and cabinet, cabinet aides, district and circuit courts, division of administrative hearings, state agencies and local government bodies on a broad range of environmental and land use issues, and has drafted hundreds of ordinances and resolutions for cities and counties, covering a wide array of subjects. He is a frequent speaker on governmental and land use topics.

Areas of Practice

- Environmental
- Utilities
- Land Use Law
- Government
- Eminent Domain & Condemnation Law
- Senior Housing

Education

- **University of Central Florida, B.A.** (political science, 1986)

- **Stetson University College of Law, J.D. (1991)**

Professional Associations & Memberships

- The Florida Bar
 - Board Certified in City, County and Local Government Law
 - City, County and Local Government Law Section, Member
 - Environmental and Land Use Law Section, Member
- Florida Municipal Attorneys Association, Member
- Greater Miami Chamber of Commerce, Member
- Cuban American Bar Association, Member

Admissions

- Florida

Awards & Recognitions

- AV Preeminent™, *Martindale Hubbell*
- *Florida Super Lawyers*, 2007
- *The American Lawyer & Corporate Counsel*, Top Lawyer in Land Use and Zoning, 2013

Representative Experience

Public Sector Experience

- Served as city attorney for the City of Marathon
- Served as city attorney for the City of Doral
- Served as interim village attorney for the Village of Palmetto Bay
- Served as town attorney for the Town of Miami Lakes
- Served as village attorney for the Village of Islamorada
- Served as special counsel to city in the negotiation and drafting of a development agreement wherein property owner voluntarily contributed monetary and off-site improvements benefiting city's residents
- Served as special counsel to city in an annexation dispute with adjacent local government
- Served as special counsel to town with respect to draft environmental impact statement for proposed runway expansion
- Served as special counsel to hospital special district in court challenge to the imposition of a municipal special assessment
- Serves as special counsel to municipality in special assessment dispute with county
- Serves as Code Enforcement Special Magistrate to local municipality in Broward County
- Serves or has served as city attorney, assistant city attorney, assistant county attorney and special counsel to numerous local governments and quasi-governmental agencies

Private Sector Experience

- Obtained a vested rights determination on summary judgment for developer of proposed 12-story beachfront residential condominium, notwithstanding a referendum initiative that resulted in an amendment to the city charter limiting the height of all new construction to three stories
- Obtained required permit approvals from local government allowing developer to use transferable development rights to increase density and height of office building project
- Assisted owner of regional mall in securing amendments to local government's comprehensive plan and land development regulations to facilitate redevelopment of property into a mixed-use regional activity center
- Represented group of agricultural property owners in a \$172 million Bert J. Harris, Jr. Private Property Rights Protection Act claim arising from county's change in interpretation of open-space requirements in comprehensive plan and land development regulations
- Negotiated and drafted public-private agreement for the construction of dual radio transmission/emergency management communications tower on special district property
- Represented clients completing environmental remediation projects in connection with ongoing industrial operations and redevelopment projects
- Assisted national banking institution in securing amendments to the Palm Beach County Land Development Code to allow stand-alone banking centers as a matter of right in most commercial zoning districts
- Represented clients in due diligence associated with acquisition of land for industrial, commercial and residential development

Reported Cases

- *Sansbury v. City of Orlando*, 654 So.2d 965 (Fla. 5th DCA 1995) [upholding juvenile curfew]
- *Bott v. City of Marathon*, 949 So.2d 295 (Fla. 3rd DCA 2007) [enforceability of affordable housing restrictive covenant]
- *Beyer v. City of Marathon*, 197 So.3d 563, (Fla. 3rd DCA 2013), *reh'g. den.*, 222 So.3d 17 (Fla. 3rd DCA 2016) [inverse condemnation claim – owners were not deprived of all economically beneficial use of their property]
- *City of Coral Springs v. North Broward Hospital District*, 166 So.3d 902 (Fla. 4th DCA 2015) [imposition of city fire service special assessment on district property was illegal]
- *Department of Community Affairs v. City of Marathon*, DOAH Case No. 04-3500GM [challenge to adopted comprehensive plan]
- *Florida Keys Citizens Coalition, Inc. & Last Stand, Inc. v. Florida Administration Commission & City of Marathon*, DOAH Case No. 04-2755RP [proposed Administration Commission rule amending city's comprehensive plan not invalid exercise of delegated legislative authority]
- *Rossignol v. Village of Islamorada & Department of Community Affairs*, DOAH Case No. 01-2409GM [comprehensive plan provisions limiting transient rental uses in residential areas supported by appropriate data and analysis]
- *Department of Community Affairs v. Village of Islamorada*, DOAH Case No. 01-1216GM [challenge to adopted comprehensive plan]

Presentations & Seminars

- "Consultants Competitive Negotiation Act (CCNA)," Florida City & County Management Association and Center for Florida Local Government Excellence's Training Program, March 18, 2016

- “Ethics in Land Use,” National Business Institute’s Land Use Law: Current Issues in Subdivision, Annexation and Zoning, April 3, 2014
- 2011 Regulatory Takings Seminar, CLE International, 2011
- “Cheesehead Fallout: What Is the Future of Public Sector Bargaining and Pensions in Florida?” 21st Annual Labor and Employment Law Seminar, 2011
- “Alternatives to Litigation,” Regulatory Takings Seminar, CLE International, 2007
- “Making Code Enforcement Work,” 10th Annual Public Interest Environmental Conference, University of Florida, 2005
- “What You Need to Know About Public Records and Open Meetings in Florida – Overlap and Interaction Between Public Records and Open Meetings,” Lorman Education Services, 2001

Municipal Experience

GrayRobinson has long provided our government clients with effective representation as city/county attorney or special counsel to numerous cities, counties, and public agencies. For example, currently our firm serves as Village Attorney for Florida's most recent incorporated municipality – the Village of Estero. When the North Broward Hospital District found itself in a dispute with a Broward County municipality, the Hospital District turned to GrayRobinson for assistance in resolving the dispute. The firm also represented the cities of Palm Bay, Port St. Lucie and North Port when they decided to purchase major utilities. Recently, Mr. Herin successfully represented the City of Marathon before the United States Supreme Court in a long running inverse condemnation claim initiated by a property owner that claimed the city's land development regulations deprived the property owner of all beneficial use of his property.

GrayRobinson understands how local government really works.

Representation of Local Governments

The experience and reputation gained during the firm's years of public service enable it to provide quality legal services to local governments in such areas of administrative law, contracting and procurement, election law, environmental and land use law, governmental operations and home rule powers, legislative representation, public finance and taxation, utilities, and zoning, to name a few. In addition, members of our public law team have served on the staff of governmental agencies for both state and local governments, providing our clients with a unique perspective and knowledge of local government. The public law group is comprised of more than 45 attorneys and consultants that has been fulfilling the legal needs of cities, counties, special districts, and utilities throughout Florida since 1970.

- **Administrative Representation & Litigation.** Whether the issue is lobbying executive agencies, safeguarding legislation through the rule-making process, licensing, regulatory matters or Chapter 120 Administrative Law proceedings, GrayRobinson has the experience and relationships necessary to provide our clients with effective representation before the Division of Administrative Hearings, all state agencies, state offices and the Florida Cabinet.
 - Administrative litigation
 - Construction claims
 - Contractual disputes
 - Enforceability of affordable housing deed restrictions
 - Eminent domain & inverse condemnation
 - Forfeitures
 - Land use litigation
 - Liability & tort defense
 - Police issues
 - Sovereign immunity
 - Utility disputes
- **Contracting & Procurement.** The firm provides legal counsel relating to all aspects of public contracting and procurement, including assistance in the preparation of bids, RFP's and proposals (including the CCNA); contract documents, contract negotiation; bid protests; appellate review and contract disputes.

- **Governmental Operations and Home Rule.** Through our representation of counties and municipalities, we have developed experience and depth in all areas of home rule law, drafting contracts ordinances and resolutions, governmental ethics, public-private projects, public records law, public utilities, solid waste, sunshine law and all other aspects of daily governmental operations.
 - Annexations
 - Charter amendments & Charter issues
 - Drafting & review of contracts, ordinances, and resolutions
 - Elections
 - Ethics
 - Code enforcement
 - Legislative affairs
 - Parliamentary procedures
 - Procurement
 - Public Finance
 - Public records
 - Public safety
 - Sunshine law
 - Utilities

- **Construction Law.** The GrayRobinson team is one of the largest construction law departments in the state and has litigated hundreds of millions of dollars in construction disputes ranging from simple construction lien disputes to major public and private works and facilities projects throughout the state.

- **Eminent Domain and Inverse Condemnation.** GrayRobinson has earned a deserved reputation of being innovative and tenacious in our handling of eminent domain and inverse condemnation matters resulting from our handling of thousands of cases on behalf of our public and private clients.

- **Employment and Labor Law.** The firm's attorneys have extensive employment law and litigation experience, and advise clients in all areas of agency, state and federal law. We also defend employers against equal employment opportunity charges and claims in the investigation and litigation stages and advise clients with respect to administrative actions and claims. The firm has represented Florida public sector employers at the city, county, constitutional officers, school district, community colleges, state universities, authority and special district levels in union elections, collective bargaining, arbitrations and unfair labor practice litigation.
 - ADA issues
 - Age discrimination claims
 - Arbitration of employee claims
 - Collective bargaining
 - EEOC & PERC claims
 - Employee benefits

- Employment agreements
 - Employment litigation
 - Equal pay act
 - Drafting & counseling regarding employee policies and procedures
 - HR audits & training
 - Housing discrimination claims
 - Investigation & counseling regarding employee relations complaints
 - Unfair labor practice litigation
 - Union elections
 - Whistleblower litigation
- ***Environmental and Land Use Law.*** Our experience as city/county attorney for numerous jurisdictions has generated a sophisticated and wide-ranging practice in the fields of environmental regulation and land use planning. We are recognized throughout the state for our experience and ability in representing both public and private clients in comprehensive planning, environmental permitting, land use and zoning involving brownfields, “green” development, new development and redevelopment.
 - Affordable housing
 - Acquisition, development & sale of real property for municipal use
 - Beach re-nourishment
 - Comprehensive plan – growth management
 - Conservation easements
 - Endangered species
 - Environmental resource permits
 - Exactions & impact fees
 - “Green” development
 - Habitat conservation plans
 - Land development regulations
 - Marina permitting & operations
 - Overlay districts
 - Public-private projects
 - Quasi-judicial hearings and procedures
 - Re-zonings
 - Sea level rise
 - Sector plans
 - Site plan approval and development
 - Water based and water related activities
 - Wetlands
- ***Legislative Representation.*** We have decades of experience in lobbying the Florida Legislature and state agencies, both offensively and defensively, on behalf of public and private entities. Many of our public law attorneys began their careers as staff to the Florida Legislature, Governor's Office and State agencies, providing our clients with a unique perspective on the most efficient means of meeting their legislative goals. We maintain close relationships with local delegations and political leadership.

- **Procurement.** We provide legal counsel relating to all aspects of procurement, including assistance in the preparation of bids, RFPs and proposals, contract negotiation, bid protests, appellate review and contract disputes.
- **Public Finance and Taxation.** With respect to public finance and taxation, we have represented issuers and underwriters in a variety of local government financings, including dependent and independent special districts.

The firm developed these skills initially while serving as the Orange County Attorney during the 70s and 80s. Since that time, the firm has represented governments, businesses, and individuals in thousands of federal, state, and local matters.

The Depth to Handle the Issues

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Brevard County Clerk's Office
Broward Sheriff's Office
Canaveral Port Authority
Central Florida Regional Transportation Authority (LYNX)
Charlotte County Property Appraiser
Charlotte County Tax Collector
Citizens Property Insurance Corporation
Citrus County
Citrus County Property Appraiser
City of Apopka
City of Boynton Beach
City of Bunnell
City of Cape Coral
City of Clermont
City of Coconut Creek
City of Coral Gables
City of Deerfield Beach
City of Deland
City of Doral
City of Dunedin
City of Ft. Meade
City of Ft. Myers
City of Groveland
City of Hialeah
City of Hollywood
City of Key West
City of Kissimmee
City of Lakeland
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City of Melbourne
City of Miami
City of Miramar
City of Naples
City of Neptune Beach
City of North Miami
City of North Miami Beach
City of Ocoee
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City of Palm Bay
City of Pembroke Pines
City of Pinellas Park
City of Pompano Beach
City of Port St. Lucie
City of South Pasadena
City of St. Cloud
City of St. Pete Beach
City of St. Petersburg
City of Tampa
City of Valparaiso
City of Wauchula
City of West Palm Beach
City of Winter Park
Clearwater Cay Community Development District
Collier County
Eastern Florida State College
Emerald Coast Utilities Authority
Escambia County Tax Collector
First Florida Governmental Financing Commission
Flagler County Property Appraiser
Florida Agricultural and Mechanical University (FAMU)
Florida Department of Financial Services, Division of Risk Management
Florida Department of State
Florida Gulf Coast University
Florida Hospital College of Health Science
Florida House of Representatives
Florida Insurance Guaranty Association
Florida Keys Aqueduct Authority
Florida Keys Mosquito Control District
Florida Lottery
Florida Prepaid College Foundation, Inc.
Florida State College at Jacksonville
Florida State University
Florida State University Research Foundation, Inc.
Gilchrist County School Board
Gulf County
Hallandale Beach Community Redevelopment Agency
Health Care District of Palm Beach County - District Hospital Holdings, Inc. d/b/a Lakeside Medical Center
Hideaway Beach District
Hillsborough County Aviation Authority
Highlands County Tax Collector
Hillsborough Area Regional Transit (HART)
Hillsborough County School Board
Indian River State College
Islamorada Village of Islands

Jackson County Property Appraiser	Sarasota Manatee Airport Authority
Jefferson County Clerk of Court	Sarasota Memorial Hospital
Lafayette County School Board	Sebastian Inlet District
Lake County	Secretary of State for Foreign & Commonwealth Affairs
Lakeland Downtown Development Authority	Seminole County Property Appraiser
Lee County	Seminole State College of Florida
Leon County	South Bay Community Development District
Levy County School Board	South Broward Hospital District d/b/a Memorial Health System
Madison County Property Appraiser	Southwest Florida Water Management District
Manatee Community College	St. Johns County Property Appraiser
Manatee County Property Appraiser	St. Lucie County
Manatee County School District	St. Lucie County Clerk of Court
Manatee County, Florida	St. Lucie County Property Appraiser
Marion County	St. Lucie County Tax Collector
Melbourne Airport Authority	St. Petersburg College
Miami Community Redevelopment Agency	Tampa Bay Water
Miami-Dade County Public Schools	Tampa Port Authority
Monroe County	Taylor County Property Appraiser
Monroe County Clerk of Court	Taylor County Supervisor of Elections
Monroe County Tax Collector	Taylor County Tax Collector
Monroe County Property Appraiser	The Villages
Munroe Regional Health System	Tohopekaliga Water Authority
Naranja Lakes Community Redevelopment Agency	Town of Atlantis
North Brevard Country Hospital District	Town of Belleair
North Brevard County Hospital District, d/b/a Parrish Medical Center	Town of Howey-in-the-Hills
North Broward Hospital District, d/b/a Broward Health	Town of Lantana
North Miami Beach Community Redevelopment Agency	Town of Longboat Key
North Miami Community Redevelopment Agency	Town of Manalapan
North Naples Fire Control District	Town of Medley
Orange County	Town of Melbourne Beach
Orange County Library District	Town of Montverde
Orange County Property Appraiser	Town of Palm Beach
Orange County Sheriff	Town of South Palm Beach
Osceola County Tax Collector	Town of Surfside
Palm Bay Utilities	Town of Windermere
Palm Beach State College	University of Central Florida
Pasco County Medical Center	University of Florida Board of Trustees
Pasco County, FL	University of North Florida
Pasco County Property Appraiser	University of South Florida
Pasco County School Board	University of South Florida Research Foundation
Pinellas County Housing Authority	Valencia College
Pinellas County Sheriff's Office	Village of Palm Springs
Pinellas Suncoast Transit Authority (PSTA)	Volusia County
Polk County	Volusia County Schools
Polk County Tax Collector	Volusia Growth Management Commission (VGMC)
Putnam County Property Appraiser	Workforce Central Florida
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Legal Writing Samples

Please see attached legal brief recently submitted to the United States Supreme Court on behalf of the City of Marathon, Florida.

Hourly Rates

If selected to serve as the Village Attorney we propose the following fee schedule with total fees not to exceed fiscal Year 2018-2019 budgeted amount for legal services.

Hourly Fee:

- \$225 per hour for attorneys
- \$150 per hour for paralegals
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- Research, copies, faxes, scans, and word processing will be charged the usual and customary rate.

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Subject to the approval of the Village as part of its annual budget process, this hourly rate may increase 2.5% on the anniversary date of engagement (rounded up to the nearest whole number).

As part of this proposal, and to encourage communication between the Village Commission and Village staff and the Firm, we will not charge for routine phone calls. Additionally, there will be no charge for travel to and from the Village.

Additionally, GrayRobinson will provide the following services to the Village at no charge:

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Electronic advisories and legal updates	GrayRobinson will identify and send updates on new case decisions, regulatory issues, and changing legislation that is timely and specific to the Village.
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Training programs	GrayRobinson will administer in-person and online training sessions on topics requested by the Village.

No. 17-393

In the Supreme Court of the United States

CHARLES N. GANSON, JR.,
as Personal Representative of
the Estate of Molly Beyer,
Petitioner,

v.

CITY OF MARATHON, FLORIDA,
and the STATE OF FLORIDA,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT
COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

JOINT BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether, applying this Court's well-established Takings Clause jurisprudence to the facts of this case, Florida's intermediate appellate court correctly determined that the City of Marathon's land-development regulations did not deprive Gordon and Molly Beyer of all economically beneficial use of their property.

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STATEMENT OF THE CASE

I. MONROE COUNTY'S RATE OF GROWTH ORDINANCES ("ROGO")

In 1972, Florida created the "Areas of Critical State Concern Program." *See Fla. Stat. § 380.05.* This program protects resources and public facilities of major statewide significance, within designated geographic areas, from uncontrolled development that, if not protected, would cause substantial deterioration of these limited and valuable resources. *See ibid.* Later, in 1985, Florida implemented the Comprehensive Plan to preserve, protect, and enhance the quality of life for all citizens. *See Fla. Stat. ch. 187, pt. II.* This required every local government to adopt a local comprehensive plan consistent with state statutory standards. *See Fla. Stat. ch. 163, pt. II.* The state statutory standards are designed to carefully balance competing pressures which include rapid growth in population and manageable development. *See Fla. Stat. ch. 187, pt. II.* Florida's natural environment is a key factor for many residents' quality of life, which is why protecting the natural environment is included in Florida's Comprehensive Plan. *See ibid.*

Florida designated its Keys, a string of uniquely situated tropical islands in Monroe County, as an area of critical state concern.¹ *See Fla. Stat. § 380.0552(2).*

¹ *See Areas of Critical State Concern Program*, FLA. DEP'T OF ECON. OPPORTUNITY, <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern> (last visited Dec. 17, 2017).

In 1992, Monroe County, Florida, implemented the Rate of Growth Ordinances (“ROGO”), which operate in conjunction with Monroe County’s Comprehensive Plan. *See* Monroe Cnty. Code §§ 9.5-121 through 9.5-129. Upon incorporation, Monroe County’s Comprehensive Plan and land-development regulations became the City of Marathon’s (“City”) interim comprehensive plan and land-development regulations, respectively.

ROGO is the primary tool used by the City to manage development and to control growth. *See ibid.* Due to the unique geographic nature of the Keys and the limited options for egress and ingress from the Keys to the mainland of Florida, the City, Monroe County, and all other municipalities in the Keys rely on the ROGO system to ensure the system does not interfere with public safety and welfare in the event of a natural disaster, such as a hurricane, by maintaining an established hurricane evacuation clearance time for permanent residents of no more than twenty-four hours. *See* Monroe Cnty. Year 2010 Comprehensive Plan, Objective 101.2, *available at* <http://www.monroecounty-fl.gov/DocumentCenter/Home/View/32> (“Monroe County shall reduce hurricane evacuation clearance times to 24 hours by the year 2010.”).²

For purposes of the ROGO system, landowners seeking to develop their land in the City compete against all other landowners seeking to develop their

² The “Monroe County Year 2010 Comprehensive Plan” available on Monroe County’s website and the “1996 Plan” discussed below are the same document.

land for a limited number of allocations for development established by the state's land planning agency as part of its role in outlining the state statutory standards for the overall Comprehensive Plan. *See* Fla. Stat. § 380.0552. Landowners seeking to develop less natural areas receive more fungible "points" towards their application while those seeking to develop natural areas or specially protected areas will receive fewer or no points at all. *See* Monroe Cnty. Code §§ 9.5-121 through 9.5-129. ROGO points are freely bought and sold by those seeking to develop in the City. *See generally* Pet. App. 3c, 6c. Those with the most points are the most likely to earn an allocation. *See* Monroe Cnty. Code §§ 9.5-121 through 9.5-129.

II. ZONING HISTORY OF BAMBOO KEY

In February 1970, Gordon Beyer and Molly Beyer ("Beyers") purchased an offshore island known as Bamboo Key ("Property"). Pet. App. 2a. The Property is almost nine acres. *Ibid.* At the time of purchase, the Property was zoned for General Use ("GU"), which allowed the building of one single-family home per acre. *See ibid.* On September 15, 1986, Monroe County's 1986 Comprehensive Plan and Land Development Regulations ("1986 Regulations") went into effect. *See id.* at 2a n.1. The 1986 Regulations changed the Property's zoning from GU to Offshore Island ("OS"), which, among other things, imposed a density limit of one dwelling unit per ten acres. *Id.* at 2c-3c. The Property's OS zoning permitted the following uses as of right (subject to compliance with all other applicable regulations): detached dwellings; camping for the personal use of the owner of the property on a temporary basis; beekeeping; accessory

uses and home occupations (special use permit required); and tourist housing and vacation rental uses if they existed prior to January 1, 1996.³ The Beyers did not challenge the adoption of the 1986 Regulations. *See* Pet. App. 4f.

In 1996, Monroe County adopted its new Comprehensive Plan (“1996 Plan”), which identified the Property as a bird rookery and prohibited future development of the Property. *Id.* at 2a-4a. The Beyers did not challenge the adoption of the 1996 Plan.

III. THE BENEFICIAL USE APPLICATION, HEARING, AND DETERMINATION

The City incorporated in November 1999, and the Property then became part of the City. *See id.* at 3a. The City adopted both the 1996 Plan and the Monroe County land-development regulations as its interim comprehensive plan and land-development regulations, respectively. *See id.* at 2e. Initially, the Beyers filed a Beneficial Use Determination (“BUD”)⁴ application with Monroe County.⁵ *Id.* at 3a. After the City’s incorporation, the Beyers filed a BUD application with the City, and a Beneficial Use Hearing

³ *See* Monroe Cnty. Code § 9.5-241.

⁴ *See* Monroe Cnty. Code §§ 9.5-171 through 9.5-179.

⁵ The BUD process is a mechanism designed to ensure that every landowner has beneficial use of his property. “[I]t accounts for both facial and as-applied takings,” as it provides for relief by “either outright purchase of the property (in the case of a per se taking) or grant of Transferable Development Rights (TDRs), Rate Of Growth Ordinance (ROGO) points, variances and building permits (in the case of an as-applied taking).” *Collins v. Monroe Cnty.*, 999 So. 2d 709, 716 (Fla. 3d DCA 2008).

Officer (“Hearing Officer”) conducted a BUD hearing. *See ibid.* The Beyers retained legal counsel to argue that the City’s land-development regulations, as applied to the Property, effected a taking for which the City was obligated to pay compensation. *See id.* at 1c.

Neither Gordon Beyer nor Molly Beyer attended or testified at the BUD hearing; nor did the Beyers’ legal counsel submit any testimony, affidavits, or sworn statements from the Beyers regarding their intended use of the Property, or how the City’s land-development regulations interfered with the Beyers’ investment-backed expectations. Simply stated—and contrary to Petitioner’s assertion—there is no evidence in the record that the Beyers acquired the Property with the intent of building anything, much less a single-family home. *See* Pet. 6-9 (asserting, without any supporting citation to the record, that the Beyers intended to build a single-family home and retire to the Property).

Thereafter, the Hearing Officer issued his written Beneficial Use Determination and Statement of Remedial Action. Pet. App. 1c-7c. Among the findings made by the Hearing Officer was that, under the 1996 Plan, Bamboo Key was a designated bird rookery, and therefore, the Property was undevelopable. *Id.* at 3c. Notwithstanding this finding, upon considering and evaluating all the evidence and testimony submitted at the BUD hearing, the Hearing Officer recommended denial of the BUD application. *Id.* at 6c-7c. In support of that recommendation, the Hearing Officer made, *inter alia*, the following findings:

- “There was a singular lack of any investment in the property [by the Beyers] after its acquisition.” *Id.* at 4c.
- “The [Beyers] waited 30 years before applying for any form of development on the property,” *id.* at 3c, which application was for “a single dock permit,” *id.* at 4c.
- “No evidence whatsoever of a plan for development of the property . . . existed [at] any time from the purchase of the property through the time of the Hearing.” *Id.* at 4c.
- “[I]t is not possible to determine the [development] expectations of the [Beyers].” *Id.* at 5c.
- “[T]he [Beyers] lacked a reasonable investment backed expectation that [they] would obtain the regulatory approval needed to develop the property at issue here.” *Ibid.*
- “The property has been . . . assigned 16 ROGO points which have substantial value . . . I compute . . . to be \$150,000.00.” *Id.* at 4c.⁶
- “Although the lot is . . . unusable for development, the issuance of 16 ROGO points [and the right to use the property for camping and recreational uses] under the circumstances of this case

⁶ The Beyers made no attempt to dispute the Hearing Officer’s finding that the ROGO points translated into \$150,000 of property value.

constitutes a reasonable economic use of the property.” *Id.* at 5c.

- “There must have been governmental action depriving the [Beyers]’ reasonable investment based expectations for use of the property, in order for the[m] . . . to establish a right to relief.” *Ibid.* (emphasis in original).
- “[The Beyers] sat on the investment in the property for 30 years watching the environmental restrictions on the use of the property become more and more strict,” which “restrict[ed] the expectations of the[m] . . . from reasonably anticipating a greater development value in the property than presently exists.” *Id.* at 6c.

Based upon the Hearing Officer’s recommendation, the City denied the BUD application. *See id.* at 4a.

IV. TRIAL-COURT PROCEEDINGS AND SUBSEQUENT APPEALS

The Beyers then sued the City and the State of Florida (“State”) for inverse condemnation. *See* Pet. App. 1g-5g. Initially, the trial court granted summary judgment in favor of the City and State, finding that the Beyers’ Complaint asserted a per se takings claim that was barred by the statute of limitations. *See id.* at 4a. The Beyers appealed the grant of summary judgment to the Third District Court of Appeal (“Third District”), *see id.* at 1e-6e, which reversed the trial court after determining the Beyers’ claim was ripe for review, *see id.* at 6e. The court also referenced the Hearing Officer’s finding that, because “the [Beyers]

sat on the investment in the [P]roperty for 30 years[,] . . . the award of ROGO points and recreational uses allowed [the Beyers], reasonably met [the Beyers'] investment-based expectations." *Id.* at 3e (alterations in original). The Third District remanded the case. *Id.* at 6e.

On remand, the trial court again granted summary judgment in favor of the City and State, concluding that the Beyers failed to produce any evidence that the 1996 Plan deprived them of reasonable economic use of their Property or frustrated their reasonable investment-backed expectations.⁷ *See id.* at 3b, 6b. In so doing, it "consider[ed] the frustration of [the Beyers'] investment-backed expectations as a necessary element of their taking claim." *Id.* at 3b. (citing *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104 (1978); *Collins*, 999 So. 2d at 713). Noting that "[t]he investment-backed expectations factor requires evidence that a particular regulation interfered with a plaintiff[]s 'reasonable, distinct, investment-backed expectations held at the time he purchased the property,'" Pet. App. 3b (citing *Dep't of Envtl. Prot. v. Burgess*, 772 So. 2d 540, 543 (Fla. 1st DCA 2000) (citing, in turn, *Penn Central*)), the trial court found that, "[f]or over 30 years, in the face of ever tightening regulation of this property, [the Beyers] made no effort to do anything to develop it." Pet. App.

⁷ In its Motion for Summary Judgment, the City advised the trial court the City repeatedly attempted to schedule the depositions of both Gordon Beyer and Molly Beyer. The Beyers, however, through their counsel, refused to make themselves available. Consequently, neither Gordon Beyer nor Molly Beyer gave any sworn testimony in support of their claims in this case.

5b. The court determined that the Beyers’ “failure to provide *any* evidence of investment-backed expectations in the face of the undisputed evidence cited by the Defendants makes summary judgment in favor of Defendants appropriate.” *Id.* at 6b (emphasis in original).

Once again, the Beyers appealed the summary judgment order. *See* 2a, 4a. Consistent with its prior ruling, the Third District determined that “the Beyers were not deprived of all economically beneficial use of the property,” *id.* at 8a, and had “provided no evidence of investment backed expectations at or since the time the property was purchased . . . ,” *id.* at 6a. Regarding the latter holding, the Third District reiterated that the “existence or extent of the Beyers’ investment-backed expectations to develop [the Property] is a fact-intensive question.” *Id.* at 5a.⁸

The Third District issued a per curiam denial of Petitioner’s Motion for Rehearing and Rehearing En Banc. *See id.* at 1f. Three members of the court dissented from the denial of rehearing en banc. *See id.* at 2f-27f (Shepherd, J., dissenting). In their view, the court’s disposition “dispense[d] with *applicable* Takings Clause precedent,” in contravention of the already-established “constitutional principle that

⁸ *See also* Pet. App. 6a (“They provided no evidence of investment-backed expectations at or since the time the property was purchased, nor demonstrated any reasonable expectation of selling the property for development. We therefore affirm the trial court’s conclusion on this issue.”).

excessive economic injuries caused by government action be compensated.” *Id.* at 2f (emphasis added).

Petitioner sought to invoke the Florida Supreme Court’s discretionary jurisdiction, asserting that the Third District’s decision conflicted with this Court’s per se categorical takings decision in *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). The Florida Supreme Court unanimously declined to review the case. *See* Pet. App. 1d.

REASONS TO DENY THE PETITION FOR A WRIT OF CERTIORARI

According to Petitioner, the Court should grant certiorari for one of two reasons: (1) the Florida court's opinion implicates two unresolved, important Fifth Amendment questions, *see* Pet. 14-19, and (2) a conflict among the lower courts exists that is ripe for harmonization, *id.* at 19-27. Petitioner is incorrect.

First, Florida's Third District applied well-settled Fifth Amendment law when it adjudicated Petitioner's case, and its disposition raised no unresolved legal issue, significant or otherwise. Instead, the petition for certiorari, distilled to its core, merely takes issue with the Florida court's fact-laden conclusion that no taking occurred in the particular circumstances of this case. Those circumstances, as the court below emphasized, included the highly unusual fact that the Beyers "provided *no* evidence of investment-backed expectations at or since the time the property was purchased, nor demonstrated *any* reasonable expectation of selling the property for development," Pet. App. 6a (emphases added). In addition, the factual record developed in the proceeding below established the "landowners' inactivity over thirty years despite increasingly strict land use regulations," the fact that the property retained "a value of \$150,000," and "current recreational uses [still] allowed on the property." Pet. App. 4a, 7a.

Applying settled law to "these facts," the court held, the Beyers failed to establish a regulatory taking. *Id.* at 7a-8a. That holding was correct as a matter of law; but, even more importantly for present purposes,

any arguable error arising out of the lower court's application of existing law to the unusual facts of this case is not sufficiently important to warrant this Court's review.

Second, Petitioner fails to establish a split among the lower courts, and still less does he establish the kind of split that calls for this Court's review. Since this Court decided *Penn Central*, 438 U.S. 104, nearly forty years ago, the lower courts have adhered to the Court's observation that the existence of transferable development rights (analogous to the ROGO points at issue here) "mitigate whatever financial burdens" a regulation imposes, and they have likewise heeded the Court's conclusion that the existence of such transferable rights may be "taken into account in considering the impact of regulation"—in other words, in determining whether a taking occurred, *id.* at 137. The cases Petitioner cites are not to the contrary, nor do they conflict with the decision below.

Third, this case is a poor vehicle for addressing the questions Petitioner presents. Among other considerations, the ruling below was predicated on the trial court's unusual factual finding that the Beyers had "fail[ed] to provide *any* evidence of investment-backed expectations in the face of undisputed evidence cited by the Defendants," Pet. App. 6b (emphasis in original). In addition, Petitioner's primary submission to this Court—that the challenged governmental conduct gave rise to a "total taking" that left the owners without *any* economically beneficial or productive options for its use, *see* Pet. 14-18—cannot be squared with the lower court's conclusion, in an earlier round of this same litigation, that Petitioner's "as-applied"

claim was not time-barred as a matter of state law *because*—and only because—his property *did* retain “additional beneficial economic value” for purposes of this Court’s Takings Clause cases, Pet. App. 4e (bold emphasis omitted).

Finally, this case does not raise issues of national importance. Petitioner offers no basis for concluding that the use of transferable development rights to avoid a taking is a significant, nationwide phenomenon. Indeed, the cases cited in the petition support just the opposite conclusion. In any event, the decision below is not apt to have broader implications because it was expressly predicated on a variety of highly unusual facts that are not likely to recur. In addition, the Third District’s decision is not binding on other district courts of appeal in Florida, and still less does it tie the hands of the Florida Supreme Court. Accordingly, any residual concerns regarding the fact-specific holding of the court below may be resolved without this Court’s review.

The petition for a writ of certiorari should be denied.

I. THE THIRD DISTRICT CORRECTLY APPLIED THIS COURT’S WELL-ESTABLISHED TAKINGS-CLAUSE JURISPRUDENCE TO THE FACTS OF THIS CASE.

A. This Case Turns On The Application Of Settled Legal Principles.

The dispositive issue in the Third District’s opinion was whether the City subjected the Beyers’ property to a “taking” for purposes of the Fifth Amendment. Fifth Amendment takings challenges

divide into three categories. See *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 537-38 (2005). Cases falling into the first category arise when the government forces an owner to succumb to a permanent physical occupation of his property. See *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982). When this happens, a per se taking occurs, no matter how slight the intrusion, and the property's owner must receive just compensation. See *id.* at 426-27. Petitioner makes no claim that any physical occupation occurred here.

Cases falling into the second and third categories arise when government "regulation goes too far" and, accordingly, will be "recognized as a taking." *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922); see also *Horne v. Dep't of Agric.*, 135 S. Ct. 2419, 2427 (2015). Regulatory takings cases, in turn, fall into two categories. The first type arises when—and only when—government regulation deprives a property owner of "all economically beneficial us[e] of her property." *Lingle*, 544 U.S. at 538 (quoting *Lucas*, 505 U.S. at 1019 (emphasis in both *Lingle* and *Lucas*)). In such cases, courts find that a taking occurs per se and, accordingly, the property owner is entitled to just compensation. See *id.*

But if a case involves a regulation that does not result in "complete extinguishment of [the] property's value," *Lucas*, 505 U.S. at 1009, a court must determine, as a threshold matter, whether a Fifth Amendment taking occurred. Resolution of this question is "governed by the standards set forth in *Penn Central*," *Lingle*, 544 U.S. at 538, an "ad hoc, factual inquir[y]" that instructs courts to consider

(1) the economic impact of the regulation; (2) the extent to which the regulation interferes with distinct investment-backed expectations; and (3) the character of the governmental action, *Penn Central*, 438 U.S. at 124. “The finding of no value *must* be considered under the Takings Clause by reference to the owner’s reasonable, investment-backed expectations.” *Lucas*, 505 U.S. at 1034 (Kennedy, J., concurring in the judgment) (emphasis added) (citing *Kaiser Aetna v. United States*, 444 U.S. 164, 175 (1979); *Penn Cent.*, 438 U.S. at 124 (1978)). As part of this inquiry, transferable property rights, such as transferable development rights (“TDRs”) or the ROGO points at issue here, “undoubtedly mitigate whatever financial burdens the law has imposed . . . and, for that reason, are to be taken into account” in considering whether a taking occurred. *Id.* at 137.

B. The Third District Correctly Applied This Court’s Well-Settled Law.

The petition for certiorari, distilled to its core, takes issue with the Florida court’s fact-laden conclusion that no taking occurred in the particular circumstances of this case. Those circumstances, as the court below emphasized, included the highly unusual fact that the Beyers “provided *no* evidence of investment-backed expectations at or since the time the property was purchased, nor demonstrated *any* reasonable expectation of selling the property for development,” Pet. App. 6a (emphases added). In addition, the factual record developed in the proceeding below established the “landowners’ inactivity over thirty years despite increasingly strict land use regulations,” the fact that the property retained “a

value of \$150,000,” and “current recreational uses [still] allowed on the property.” Pet. App. 4a, 7a.

Applying settled law to “these facts,” the court held, the Beyers failed to establish a regulatory taking. *Id.* at 7a-8a. That holding was correct as a matter of law; but, even more importantly for present purposes, any arguable error arising out of the lower court’s application of existing law to the unusual facts of this case is not sufficiently important to warrant this Court’s review. Petitioner’s argument also fails for the additional reasons set out below.

1. The Third District Correctly Applied *Penn Central* Rather Than *Lucas*.

i. As noted above, the *Lucas* categorical approach does not apply unless a regulation results in “*complete* extinguishment of [the] property’s value.” *Lucas*, 505 U.S. at 1009 (emphasis added). This Court has made plain that “complete” does in fact mean “complete” for purposes of regulatory takings cases. Indeed, *Lucas* expressly contemplated that, “in at least some cases[,] [a] landowner with 95% loss will get nothing, while the landowner with total loss will recover in full.” *Id.* at 1019 n.8. “Takings law,” as this Court observed, “is full of these ‘all-or-nothing’ situations.” *Ibid.* (emphasis omitted).

Here, the Third District determined that the Beyers had *not* experienced a “total regulatory taking,” *id.* at 1026. In the Third District’s first opinion, it reversed the trial court’s ruling that Petitioner’s claim was barred by the statute of limitations. Pet. App. 6e. This reversal was premised on the Hearing Officer’s conclusions that the City’s land-development

regulations did not deprive Petitioner of all reasonable economic use of the Property and that “the [Beyers] sat on the investment in the [P]roperty for 30 years watching the environmental restrictions on the use of the [P]roperty become more and more strict.” *Id.* at 3e, 4e. The Third District remanded the case to the trial court for further consideration. *Id.* at 6e.

In the Third District’s second opinion, the court had before it the trial court’s second order granting summary judgment in favor of the City. *Id.* at 4a. In affirming the trial court, the Third District expressly found that Petitioner’s claim was not a categorical *Lucas* taking, because the Beyers had not experienced a total deprivation of all economic use of their property and because “the landowners’ inactivity over thirty years despite increasingly strict land use regulations restricted any reasonable expectation that the property would hold a greater development value.” *Id.* at 3a-4a, 6a-8a. In other words, the lower court made a factual determination that the Beyers’ property retained economic value. It also resolved a second “fact-intensive question”—the existence *vel non* “of the Beyers’ investment-backed expectations”—when it found “[t]he record before [it] . . . devoid of fact evidence that the Beyers had any specific plan for developing the property, dating from the time of purchase in 1970, up to the present.” *Id.* at 5a. Based on these findings, it properly applied a mode of analysis consistent with the standards enunciated in *Penn Central*. *See id.* at 7a-8a.

That the property had significant economic value was well supported by the record. Specifically, the Third District found that the Beyers’ “undevelopable”

property nonetheless (1) retained \$150,000 in value (between two- and three-times the price the Beyers paid to purchase the nine-acre island), due to the Property's sixteen ROGO points; and (2) could be used for certain recreational purposes. *See id.* at 7a-8a. Taken together, the Third District correctly concluded that, notwithstanding the development restrictions, the Property still met the reasonable economic expectations the Beyers had when they purchased it.

ii. Despite the straightforward application of this Court's well-settled Takings Clause jurisprudence, Petitioner insists that the Florida court (incorrectly) answered an unresolved, certiorari-worthy question in rejecting his takings claim. In Petitioner's view, the Third District's conclusion—that "a total taking did not occur because the Beyers received" \$150,000 worth of ROGO points—"conflicts with *Lucas*." Pet. 17. According to Petitioner, the Beyers' property suffered a total deprivation of beneficial use (and, accordingly, a per se taking under *Lucas*), notwithstanding the property's substantial value, when the City restricted the ability to develop it.

Petitioner is wrong. In *Lucas*, "there was no question" that the landowner established "reasonable, investment-backed expectations of developing his land." *Good v. United States*, 189 F.3d 1355, 1361 (Fed. Cir. 1999). In addition, not once did *Lucas* suggest that, if a regulation renders a property "unbuildable" or "undevelopable," it means that the property has been rendered "valueless," and therefore "taken," for purposes of the Fifth Amendment. *See Lucas*, 505 U.S. at 1033. Central to *Lucas* was the trial court's determination, based upon the record developed in that

case, that the South Carolina Beachfront Management Act “render[ed]” the property at issue there “*valueless*.” *Id.* at 1009 (emphasis added). Because a property’s “value” is not limited to the extent of its “developable” or “buildable” nature, a finding that property is “undevelopable” does not, per *Lucas*, necessarily result in a categorical taking. Instead, *Lucas* held that a per se taking occurs only when a governmental regulation deprives a property owner of “*all* economically beneficial uses” of his property. *Id.* at 1019 (emphasis in original). And because the property at issue here retained substantial value—specifically, \$150,000 and the allowance of certain recreational activities; see Pet. App. 7a-8a—*Lucas* is inapposite.

iii. Petitioner takes issue with the Third District’s conclusion that the Property’s \$150,000 residual value in ROGO points meant that the property was not rendered “valueless” by the City’s development restriction. In Petitioner’s view, the ROGO points at issue here, and TDRs more generally, are “widespread schemes” that “often hide the take by cloaking it behind these credit exchanges, and then claiming that the exchange gives rise to economic use *of the res* by the landowner.” Pet. 15 (emphasis in original). That submission, however, cannot be reconciled with this Court’s decades-long recognition that TDRs count towards a land’s economic-use value.

In *Penn Central*, for instance, the petitioner argued that New York City’s Landmark Law effectuated a Fifth Amendment taking because the law deprived the petitioner of its previously recognized right to build on its property. *Penn Central*, 438 U.S. at 129-30. Finding this argument “untenable,” *id.* at 130,

the Court reasoned that “it is not literally accurate to say that [Penn Central] has been denied *all* use [of its property].” *Id.* at 137 (emphasis in original). In support, this Court expressly held that “the [transferable development] rights” afforded to the petitioner “are valuable.” *Ibid.* For that reason,” the Court held that they must “be taken into account in considering the impact of regulation.” *Ibid.*

Thus, the Third District properly applied *Penn Central*'s holding when it found that the Property's residual \$150,000 value, combined with the other facts found by the Hearing Officer, supported the conclusion that the City's land-use restriction did not constitute a per se, categorical taking under *Lucas*. Pet. App. 7a-8a. Petitioner fails to grapple with this rule from *Penn Central*, choosing instead to accuse the City of perpetuating a “scheme” that “disguise[s] [its] takings of land” and “that effectively swallow[s] the Fifth Amendment.” Pet. 14. The fact remains, however, that the Property has residual value in the ROGO point market (which, at \$150,000, is between two and three times the Beyers' purchase price of the land). See Pet. App. 3c. Under both *Penn Central* and *Lucas*, this residual value defeats Petitioner's argument that the City's land-use restrictions rendered the Property “valueless” and indicating that a per se *Lucas* taking had occurred.

2. The Third District Correctly Considered The ROGO Points When Determining Whether The City's Land-Use Restriction Constituted A Taking.

Petitioner’s additional argument—that the Third District should have considered whether the ROGO points constituted just compensation in exchange for a taking instead of considering whether their existence meant that no taking had occurred—fares no better. As noted above, this Court, in *Penn Central*—a case that addressed *solely* whether a city’s land-use restriction amounted to a regulatory taking—explicitly held that TDRs “undoubtedly mitigate whatever financial burdens the law has imposed . . . and, for that reason, are to be taken into account in considering” whether a taking occurred. *Penn Central*, 437 U.S. at 137. The Third District correctly applied *Penn Central*, and for that reason alone, certiorari is not warranted.

Petitioner’s reliance on *Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725 (1997), is misplaced. In holding that Suitum’s regulatory taking claim was ripe, the Court did not overrule or otherwise cast doubt upon *Penn Central*. To the contrary, it expressly declined to address the relevance of TDRs to the question whether a taking had occurred. *Id.* at 739. Justice Scalia’s separate concurrence suggested that *Penn Central* might, in an appropriate case, be distinguished from the kind of facts at issue in *Suitum* or else overruled. *See id.* at 748-49 (Scalia, J., concurring in part and concurring in the judgment). But neither Justice Scalia nor the Court addressed—or had any occasion to address—the merits question whether a claimant could establish a regulatory taking in the highly unusual and substantially different facts present here. *See* Pet. App. 4a-6a.

Petitioner’s reliance on *Horne* similarly fails to advance his cause. In *Horne*, the Court determined the

Department of Agriculture's implementation of the Agricultural Marketing Agreement Act of 1937 effected a physical appropriation of Horne's raisin crop without compensation. *See* 135 S. Ct. at 2428-31. Physical appropriation of property by the government constitutes a taking per se, which always triggers "a categorical duty to compensate the former owner" *Id.* at 2429. Once this duty is triggered—i.e., "once there is a taking," *ibid.*—then, according to the Court, "any payment from the Government in connection with that action goes, at most, to the question of just compensation." *Ibid.*

II. THE PURPORTED LOWER COURT CONFLICT IDENTIFIED BY PETITIONER IS ILLUSORY.

Notwithstanding the Court's clear language in *Penn Central* regarding the relevance of TDRs in takings cases, Petitioner asserts that this Court's intervention is needed because there is a conflict in how lower courts apply *Penn Central*. According to Petitioner, some courts consider TDRs in determining if a taking has occurred, while other courts only consider them in determining if governments have provided just compensation *after* a court determines a taking has occurred. Petitioner is incorrect.

Petitioner cites seven cases as examples of lower courts that, like the Third District in this case, follow the Court's pronouncement in *Penn Central* and consider the existence of TDRs when evaluating whether a taking occurred.⁹ Petitioner then lists three

⁹ *See* Pet. 22-24 (citing *Good v. United States*, 39 Fed. Cl. 81, *aff'd*, 189 F.3d 1355 (Fed. Cir. 1999); *Shands v. City of Marathon*,

cases that, in his view, show that some lower courts disagree and consider TDRs *after* concluding that a taking occurred and *only* to determine whether the requisite just compensation has been paid. Upon closer examination, however, the split Petitioner alleges is illusory; as explained below, the lower courts are in accord with each other regarding *Penn Central's* TDR holding.

A. The only state court of last resort cited by Petitioner is *Fred F. French Investing Co., Inc. v. City of New York*, 350 N.E.2d 381 (N.Y. 1976). In that case, the challenged City of New York regulation forced a property owner to perpetually open to the public two private parks. *Id.* at 382-83. In other words, the property owner was prohibited from any private use of the property. In this case, however, Petitioner retains the right to “exclude others” from the Property, he can use it for certain recreational activities, and he can sell it (or sell the ROGO points assigned to it). *See* Pet. App. 7a-8a. For this reason, *Fred F. French* is inapposite.

Aside from this factual distinction, Petitioner’s reliance on *Fred F. French* is flawed, for two additional reasons. The first is that *Fred F. French* was decided two years before this Court’s 1978 *Penn Central* decision. A case that predates *Penn Central* cannot indicate a lower-court split regarding the proper

999 So. 2d 718 (Fla. 3d DCA 2008); *Collins v. Monroe Cnty.*, 999 So. 2d 709 (Fla. 3d DCA 2008); *Matter of Russo v. Beckelman*, 204 A.D.2d 160 (N.Y. App. Div. 1994); *Shubert Org., Inc. v. Landmarks Pres. Comm’n of N.Y.*, 166 A.D.2d 115 (N.Y. App. Div. 1991); *Toussie v. Cent. Pine Barrens Joint Planning and Policy Comm’n*, 700 N.Y.S.2d 358 (N.Y. Sup. Ct. 1999); *City of Chicago v. Roppolo*, 447 N.E.2d 870 (Ill. App. Ct. 1983)).

application of *Penn Central*. Thus, even if *Fred F. French* supported Petitioner's favored use of TDRs (and it does not), *Penn Central*'s TDR holding would have abrogated any such ruling.

The second is the decision in *Fred F. French* did not turn on the takings analysis. Instead, the court resolved it under the due-process clause. Specifically, the court in *Fred F. French* concluded that “[s]ince there was no taking within the meaning of constitutional limitations, plaintiff’s remedy, at this stage of the litigation, would be a declaration of the amendment’s invalidity, if that be the case.” 350 N.E.2d at 386. For that reason, it found it necessary to determine “whether the zoning amendment was a valid exercise of the police power under the due process clauses of the State and Federal Constitutions.” *See also id.* at 387 (“[T]he zoning amendment is unreasonable and, therefore, unconstitutional because, without due process of law, it deprives the owner of all his property rights.”). For this reason, it says little about the proper role of TDRs in takings cases.

B. Petitioner’s reliance on *W.J.F. Realty Corp. v. State*, 672 N.Y.S.2d 1007 (N.Y. Sup. Ct. 1998), *aff’d*, 267 A.D.2d 233 (N.Y. App. Div. 1999), fares no better. This case, adjudicated by a New York state trial court, did not conclude, as a matter of Fifth Amendment Takings Clause law, “that TDRs could only be weighed when deciding whether just compensation for a taking has been afforded.” Pet. 26. In *W.J.F.*, the regulatory scheme at issue expressly defined “transfer of development rights (TDR)” as a type of “compensation provided under the act.” *Id.* at 1010. The question the *W.J.F.* Court answered was: “Assuming, *arguendo*,

that a taking exists, is a TDR sufficient compensation under the 5th Amendment?” *Ibid.*

In other words, *W.J.F.*’s holding says nothing about the question that, in Petitioner’s view, has split the lower courts—i.e., whether TDRs may be relevant for purposes of determining if a taking has occurred. Dicta from *W.J.F.*, on the other hand, suggest that the court in that case would join the Third District in this case had it been presented with the same issue. Specifically, the *W.J.F.* Court observed that TDRs “do assure preservation of the very real economic value of the development rights as they existed when still attached to the underlying property.” *Id.* at 1011 (emphasis in original). In other words, the existence of TDRs affects a property’s value, and if they remain despite land-use restrictions, then the property cannot be considered “valueless.” See *Lucas*, 505 U.S. at 1033. This reasoning is wholly consistent with the approach articulated in *Penn Central* and applied by the Third District here.

C. Finally, Petitioner’s reliance on *Corrigan v. City of Scottsdale*, 720 P.2d 528 (Ariz. Ct. App. 1985), *aff’d in part, vacated in part*, 720 P.2d 513 (Ariz. 1986), is misplaced. In *Corrigan*, the City of Scottsdale apparently *intended* an offer of TDRs to constitute compensation in exchange for a regulatory taking. See 720 P.2d at 538 (“The city . . . attempts a form of compensation by way of transfer of density credits.”). In other words, the Arizona Court of Appeals had no occasion to decide whether TDRs were more appropriately considered when determining whether a taking occurred.

Instead, given the posture of *Corrigan*, the Arizona Court of Appeals was tasked only with deciding a subsidiary question—“whether fair compensation can be given by transferring development rights.” *Id.* The Arizona Constitution, like the Fifth Amendment, prohibits a taking of property without just compensation, but unlike the Fifth Amendment it specifically requires compensation for a taking to be made by a payment of money. *See* ARIZ. CONST. art. II, § 17. The court held that, “under Section 17, article 2 of the Arizona Constitution[,] the transfer of density credits does not constitute just compensation for property taken”; instead, the “state constitution requires compensation for such a taking to be made by payment of money.” *Corrigan*, 720 P.2d at 565. That state-law holding does not conflict with the decision below.

In short, the cases Petitioner cites do not conflict with the decision below.

D. Assuming *arguendo* that the decision below is in tension with other lower-court decisions, Petitioner fails to establish a disagreement sufficiently entrenched or important to warrant this Court’s intervention.

The decision below was handed down by one of Florida’s intermediate appellate courts. The Florida Supreme Court then determined that it should decline to accept jurisdiction, and, as a matter of Florida law, that jurisdictional ruling does not constitute an adjudication on the merits. *See, e.g., Harrison v. Hyster Co.*, 515 So. 2d 1279, 1280 (Fla. 1987) (explaining that, where Florida Supreme Court declined to exercise

discretionary review, the lower court's decision "was never reviewed on the merits"). In other words, Florida's other district courts of appeal are not bound by the Third District's ruling;¹⁰ and, even more importantly, nothing prevents the Florida Supreme Court from coming to a different conclusion in a future case.

The other cases Petitioner cites likewise do not establish the kind of *authoritative* conflict sufficiently important to merit this Court's review. Petitioner cites only three cases that purportedly conflict with the decision below. *See* Pet. 25-26. Of those three cases, only one was decided by either a state court of last resort or a federal court of appeals. *See id.* And that case, *Fred F. French*, is not only consistent with the holding of Florida's intermediate appellate court, *see supra*; its purported teaching, according to Petitioner himself, has not yet attained the status of law in New York, as "multiple state courts in New York have [subsequently] held that TDR's *should be weighed* when determining whether the government effected a taking," Pet. 23 (emphasis added).

In sum, this is not a case in which "a state court of *last resort* has decided an important federal question in a way that conflicts with the decision of *another state*

¹⁰ Petitioner cites *Pardo v. State*, 596 So.2d 665, 666 (Fla. 1992), for the broad and unqualified proposition that "the Third District's decision is the law for all of the State of Florida." Pet. 13 & n.6. *Pardo* held that "in the absence of an interdistrict conflict, district court decisions bind all Florida *trial* courts." 596 So.2d at 666 (emphasis added). Under Florida law, however, the Third District's decision does not bind other district courts of appeal or the Florida Supreme Court. *See ibid.*

court of last resort or of a United States court of appeals,” U.S. Sup. Ct. R. 10(b) (emphases added); *see also Huber v. N.J. Dep’t of Envtl. Prot.*, 562 U.S. 1302, 1302 (2011) (statement of Alito, J., joined by Roberts, C.J., and Scalia and Thomas, J.J.) (“[B]ecause this case comes to us on review of a decision by a state intermediate appellate court, I agree that today’s denial of certiorari is appropriate.”); S. Shapiro, K. Geller, T. Bishop, E. Hartnett, & D. Himmelfarb, *SUPREME COURT PRACTICE* 180 n.50 (10th ed. 2013) (explaining that this Court “may be less willing to grant certiorari to review a decision from [a] state intermediate appellate court”). Thus, and assuming *arguendo* that the lower court decisions Petitioner cites are in tension, any such tension may be resolved without this Court’s intervention.

III. THIS CASE IS A POOR VEHICLE FOR ADDRESSING THE ISSUES PETITIONER PRESENTS FOR THIS COURT'S REVIEW.

In light of various eccentricities of the case—including certain factual findings credited by the court below and state-law rulings issued over the long course of this litigation—this case does not supply a good vehicle for considering the federal constitutional questions Petitioner asks this Court to resolve. At least four considerations support that conclusion.

First, the court below “consider[ed] the frustration of the Beyers’ investment-backed expectations as a necessary element of their taking claim,” Pet. App. 3b, and it credited the trial court’s finding that the Beyers had “fail[ed] to provide *any* evidence of investment-backed expectations in the face of the undisputed evidence cited by the Defendants,” *id.* at 6b (emphasis in original). Petitioner does not dispute the trial court’s factual finding; nor does his argument to this Court address the lower court’s legal ruling that at least *some* evidence of reasonable investment-backed expectations is “a necessary element” of the kind of takings claim at issue here. *See* Pet. 14-18.

Petitioner’s failure to engage that aspect of the ruling below is understandable in light of this Court’s precedents. *See, e.g., Lingle*, 544 U.S. at 538-39 (explaining that this Court has “identified ‘several factors that have particular significance’” in assessing whether there is a taking under *Penn Central*, and that “[p]rimary among those factors are ‘[t]he economic impact of the regulation on the claimant and *particularly*, the extent to which the regulation has

interfered with distinct investment-backed expectations” (quoting *Penn Central*, 438 U.S. at 124)) (emphasis added); *Lucas*, 505 U.S. at 1034 (Kennedy, J., concurring in the judgment) (citing *Kaiser Aetna*, 444 U.S. at 175, for the proposition that “[t]he finding of no value must be considered under the Takings Clause by reference to the owner’s reasonable, investment-backed expectations”); *id.* (“Where a taking is alleged from regulations which deprive the property of all value, the test must be whether the deprivation is contrary to reasonable, investment-backed expectations.”); *see also Good*, 189 F.3d at 1363 (affirming grant of summary judgment in favor of the government because the property owner “lacked the reasonable, investment-backed expectations that are necessary to establish that a government action effects a regulatory taking”).

Hence, and regardless of whether his claim is analyzed under *Lucas* or *Penn Central*, that claim must be adjudicated in the highly unusual context of a record in which the takings claimant “fail[ed] to provide *any* evidence of investment-backed expectations in the face of the undisputed evidence cited by the Defendants,” Pet. App. 6b (emphasis in original). That factual scenario is unlikely to recur often, and it might well implicate “vexing subsidiary questions,” *see Lingle*, 544 U.S. at 539, of a kind that would impede clean resolution of the questions Petitioner presents for this Court’s consideration.

Second, and somewhat relatedly, there is a conspicuous disconnect between the ruling below and Petitioner’s formulation of the first question presented. *See* Pet. i. As Petitioner sees it, “for the Third District

to conclude that a total taking did not occur *because* the Beyers received nonmonetary credits conflicts with *Lucas*.” *Id.* at 17 (emphasis added). As Petitioner himself acknowledges, however, the court below did not rely solely on the ROGO points attached to the Property. Instead, the Third District “held *the Beyers had no reasonable investment-backed expectations for the property, and that the award of ROGO points combined with the right to camp* precluded a conclusion that Marathon had taken the Beyers’ property.” Pet. 11 (citing Pet. App. 7a-8a (emphases added)); *see also id.* (noting that “[t]he court also counted the Beyers’ failure to develop their property against them”) (citing Pet. App. 5a n.5). Accordingly, the question in this case is whether, given all the facts and circumstances established in the proceedings below, the Third District properly concluded that Petitioner made the rare and extraordinary showing that the challenged regulations have completely deprived the Property of all economically viable use. That question is distinct from the question whether transferable development rights, standing alone, may be sufficient to prevent a taking.

Third, certain of the arguments that Petitioner might otherwise have been able to raise are intertwined with, and appear to be barred by, the lower court’s state-law ruling concerning the applicable statute of limitations. When the Beyers’ case first arrived at the Third District, it was on appeal from the trial court’s determination that, because the Beyers had advanced a “facial” takings claim, the limitations period began to run with the enactment of the 1996 Plan, and, accordingly, their 2005 inverse-condemnation complaint was time barred. *See* Pet. App. 3e-4e. Under Florida law, the Third District

explained, “[a] facial taking, also known as a per se or categorical taking, occurs when the mere enactment of a regulation precludes all development of the property, and deprives the property owner of all reasonable economic use of the property.” *Id.* at 4e (quoting *Collins*, 999 So. 2d at 713); *see id.* (quoting trial court’s consistent ruling that, as a matter of state law, a “facial taking claim accrues, and the statute of limitations begins to run, on the date of enactment of the regulation alleged to have caused the taking”). The Third District reversed the statute-of-limitations dismissal for purposes of the Beyers’ “as-applied” claim, but only because “[t]he Property . . . **has additional beneficial economic value**” in the form of “transferable development rights.” Pet. App. 4e (emphasis in original); *see id.* at 6e (finding that “the City’s adoption of the special master’s BUD denial on September 27, 2005 effectively started the limitations on the Beyers’ *as-applied* taking claim and, *therefore*, the inverse condemnation complaints against the City and the State of Florida were timely filed”) (emphases added).

Notwithstanding that state-law ruling, Petitioner’s primary submission to this Court is that the challenged regulations constitute a per se or categorical taking (what the state court termed a “facial” taking)—*i.e.*, that the challenged regulations have completely deprived the property of beneficial economic value of a kind germane to his claim. *See* Pet. 14-18; Pet. App. 4e. Assuming that argument has merit, any such holding would, in effect, reverse the very determination that allowed this case to progress in the first place—*i.e.*, the Third District’s ruling that, *because* the Beyers’ property had value and thus a

categorical or per se taking had *not* occurred, their inverse condemnation claim was not barred by the statute of limitations. *See* Pet. App. 4e. Right or wrong, this Court should not be asked to disturb that state-law ruling, and it should not have to adjudicate the merits of a constitutional claim no longer available to Petitioner as a matter of state procedural law.

Fourth, and notwithstanding Petitioner's heavy reliance on Justice Scalia's concurrence in *Suitum*, this case supplies a less than ideal vehicle for considering the view set out in that separate opinion. As Justice Scalia saw it, *Penn Central's* TDR holding "would deserve to be overruled" if that part of the Court's analysis could not be distinguished. *Suitum*, 520 U.S. at 749 (Scalia, J., concurring). Petitioner has not argued, in the alternative, that this Court should overrule *Penn Central*. *See* Pet. i, 14-27. Nor did he raise such a claim in the proceeding below. If and when this Court elects to consider the argument advanced by the *Suitum* concurrence, it should have the full range of options contemplated in that opinion. This is not that case.

IV. THE PETITION DOES NOT RAISE ISSUES OF NATIONAL IMPORTANCE.

This case does not have the level of national import suggested in the petition for a writ of certiorari. Although Petitioner claims that millions of Florida's property owners' constitutional rights are at risk, the land-development regulations Petitioner challenges are limited to the jurisdictional boundaries of the City, which has a population of approximately 9,000 residents. And although Petitioner mentions that there

are “at least 181 [TDR] programs in 33 states,” Pet. 5 n.1, he does not mention that this figure amounts to a fraction of the thousands of counties (3,031), municipalities (19,522), townships (16,364), and special districts (37,203) across America. *See Census Bureau Reports There Are 89,004 Local Governments in the United States*, U.S. CENSUS BUREAU, <https://www.census.gov/newsroom/releases/archives/governments/cb12-161.html> (Aug. 30, 2012).

It does not help Petitioner’s cause to assert that TDRs in general “play a major, widespread role in land use *planning*,” Pet. 14 (emphasis added; quotation marks and citation omitted). There is nothing “undesirable or devious about TDRs themselves,” as such rights “can serve a commendable purpose in mitigating the economic loss suffered by an individual whose property use is restricted, and property value diminished, but not so substantially as to produce a compensable taking.” *Suitum*, 520 U.S. at 749 (Scalia, J., concurring in part and concurring in judgment). Of particular relevance here, Petitioner offers no basis for concluding that the use of TDRs to avoid a taking is a significant, nationwide phenomenon. To the contrary, he cites only a handful of cases for the proposition that some jurisdictions have used TDRs in that manner at some point in the past. *See* Pet. 22-24. Of the seven cases cited, five were decided before the turn of the century; six involved alleged takings in only two of the Nation’s 50 states; and none sets out the settled law of the state as enunciated by a state court of last resort. *See id.* Indeed, three of the seven cases Petitioner cites were handed down by lower courts in New York; and Petitioner himself later cites a decision of “New York’s highest court” for the proposition that TDRs “do not

allow a government to avoid the finding of takings liability, but only count towards compensation for a taking," *id.* at 25.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

JOHN R. HERIN, JR.
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Fort Lauderdale, FL 33301
**Counsel of Record*
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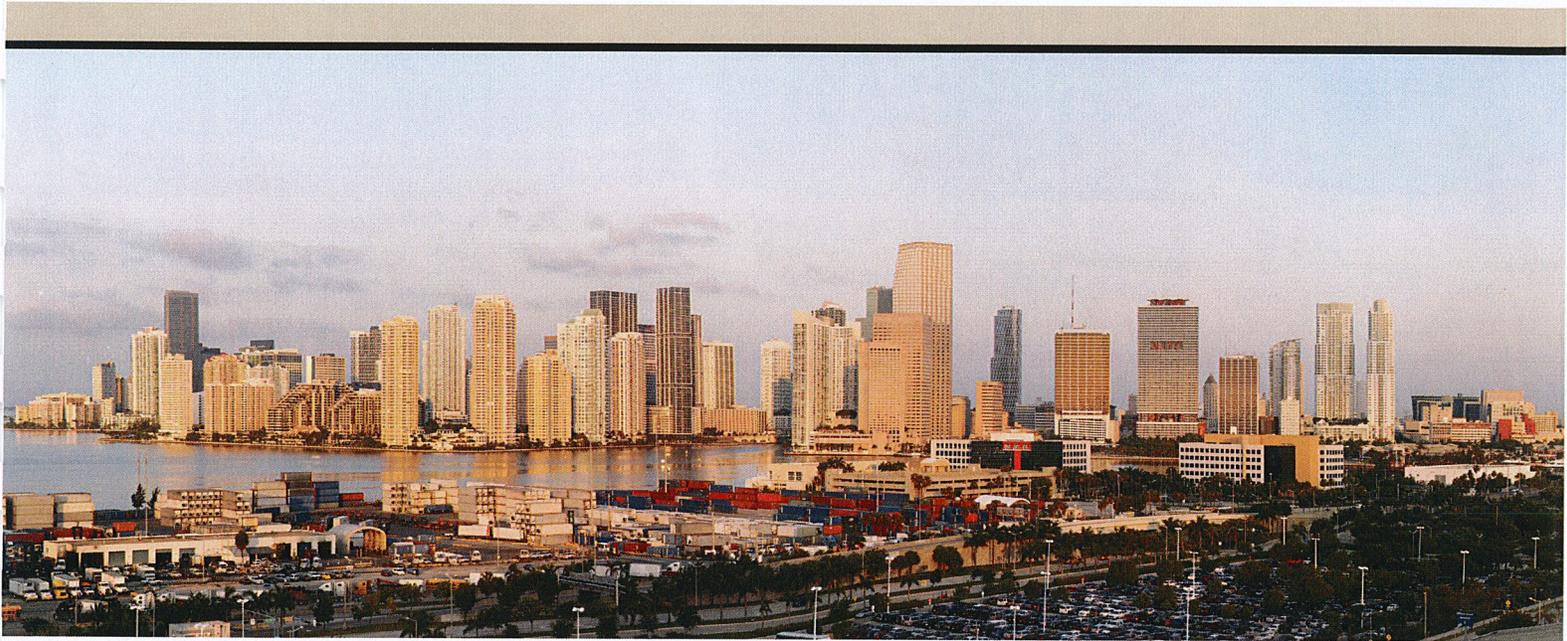
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DECEMBER 18, 2017



**WEISS SEROTA HELFMAN
COLE & BIERMAN**

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW



Response to Village of Biscayne Park's Request for Proposals

Village Attorney/Professional Legal Services

April 30, 2018

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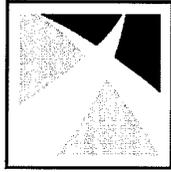
**Village of Biscayne Park
Village Attorney/Professional Legal Services**

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LETTER OF INTEREST



WEISS SEROTA HELFMAN COLE & BIERMAN

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

JOHN J. QUICK, PARTNER
jquick@wsh-law.com

April 30, 2018

Via Hand-Delivery

Krishan T. Manners, Village Manager
Village of Biscayne Park
600 N.E. 114th Street
Biscayne Park, Florida 33161

Re: **Village Attorney/Professional Legal Services RFP Response**

Dear Mr. Manners:

The law firm of Weiss Serota Helfman Cole & Bierman, P.L. (the “Firm”) is delighted to submit its proposal in response to the Village of Biscayne Park Request for Proposals for Village Attorney/Professional Legal Services (the “RFP”). Our Firm is the preeminent full-service municipal law firm in South Florida dedicated to serving as the “one-stop shop” for municipalities seeking the services of a city attorney as well as providing specialized legal services in virtually every legal discipline, from administrative law to zoning, that the Village might need from time-to-time.

The Firm was created with the idea that local governments need the same high level of professional legal representation as for-profit corporations and businesses. Similar to private companies, local governments are multi-million dollar businesses with large staffs, complex regulatory schemes and very demanding shareholders, namely, the citizens who elect them. Like corporate law, securities law and estate planning, municipal law is a highly specialized and complex area of the law. Our Firm is one of the few Florida law firms with a practice primarily focused upon the representation of local governments and public-sector entities.

As you can see in the practice area descriptions and attorney profiles enclosed, for more than 27 years, our AV rated Firm has provided the broadest possible range of high-quality legal services, constantly evolving to meet the needs of municipalities, counties, special districts and other governmental entities throughout Florida. Collectively, our 66 attorneys have centuries of experience in the many legal practice areas that are relevant to running cities and local government entities. Our practice areas are structured to interact seamlessly with staff and elected officials and to respond to virtually all of the legal needs of public entities and ensure that local governments effectively meet the legal responsibilities and mandates of local, state and federal law. We understand that our role is to counsel and assist the Village

Krishan T. Manners, Village Manager
Re: Village Attorney/Professional Legal Services RFP Response
April 30, 2018
Page 2 of 3

officials by providing a legal framework for decision making and thus enable them to meet their responsibilities and earn their constituents' confidence and trust.

Our Firm's full-service approach allows you to avoid the need to hire outside counsel on a case-by-case basis and the unnecessary expenditures of time, effort and resources, financial or otherwise, to compensate and educate new lawyers. Miami-Dade County and larger cities like Miami and Miami Beach employ large staffs of lawyers in order to respond to the multiple various complex legal issues that they and all municipal governments often face. We provide the same level of specialized knowledge to smaller municipalities in a cost-effective manner.

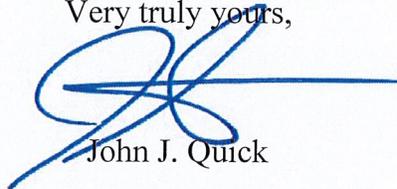
The general services that the Firm provides include, but are not limited to, all areas of general municipal law, land use and zoning, building, permitting, code enforcement and lien law, procurement and contract law, parliamentary law and procedure, constitutional and legislative issues, and economic development and redevelopment issues as well as litigation and dispute resolution in all administrative, state, federal and arbitral forums at every level. The Firm has attorneys admitted to practice in all levels of courts in Florida, including all federal district courts in the State. The specialized services that the Firm provides include, but are not limited to, drafting intergovernmental agreements, civil rights and police legal issues, labor and employment issues, eminent domain, litigation, appellate representation, utilities law, environmental and sustainability law, telecommunications, housing issues, municipal finance, real estate and construction law.

The Village will have access (cell phone and home number access seven days a week) to every lawyer at the Firm. However, in order to ensure that the Village receives the most complete, efficient and cost effective service available in a timely and easily accessible manner, we are proposing that I, John J. Quick will be the lead partner assigned to the Village with assistance from my partner Chad Friedman. In addition, we invite you to review the "Team Biscayne Park" section of our proposal which contains a more detailed description of the top tier group of attorneys that will have primary responsibility for handling Village matters. Enclosed you will find more detail regarding our Firm and individual attorneys' overall expertise. We acknowledge and warrant that we have read and agree with all of the terms and conditions contained in the RFP.

Krishan T. Manners, Village Manager
Re: Village Attorney/Professional Legal Services RFP Response
April 30, 2018
Page 3 of 3

We would be honored to serve as the Village Attorney and if you have any questions or concerns please do not hesitate to contact me or Chad Friedman at (305) 854-0800 or jquick@wsh-law.com/cfriedman@wsh-law.com.

Very truly yours,



John J. Quick

Enclosures

LAW FIRM

EXPERIENCE & QUALIFICATIONS

- 1. BACKGROUND – FIRM OVERVIEW**
- 2. PRESENCE IN FLORIDA &
USEFUL INFORMATION**
- 3. AREAS OF EXPERIENCE**

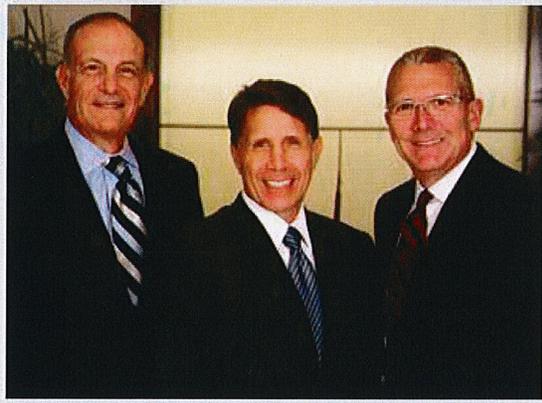


WEISS SEROTA HELFMAN
COLE & BIERMAN

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW



Firm Overview



Richard Jay Weiss, Joseph H. Serota, Stephen J. Helfman

The rationale for our founding in 1991 is even more relevant in today's fast-changing global community and with South Florida's growing stature as an international metropolis. Our founders saw a need in the legal marketplace for a high-end, boutique firm dedicated to a small number of integrated practice areas, where teamwork and a zealous commitment to our clients needs and problems was paramount.

More than 25 years later, our more than 60 attorneys are committed to the finest principles of traditional legal practice, while recognizing that there are innovative and forward-looking approaches to client problem-solving. We approach each of our matters with great respect for the traditional, and with enthusiasm for the innovative. As part of our culture, we abide by our founding [Unifying Principles](#) which stress ethical and humane behavior, and a business model that puts the client's interests and needs at the heart of our practice. As a result, we have been consistently recognized as an AV-rated firm, and have been selected for inclusion as a "Tier-1" firm in US News' Best Law Firm rankings in several of our core practice areas.

Many of our key partners began their careers and were trained at large international and national firms, and they are now leaders in the local community, with long-established relationships with South Florida's government officials, decision-makers, and judiciary. As a result, we offer our clients the legal acumen and influence associated with much larger firms, while providing the individual attention, personal client care, and cost-effective rates of a boutique firm.

Unique among our peers, our well-regarded local government practice gives us an appreciation and understanding of how government works. It is part of our DNA, and permits us to help business work well with government, and to help government with the "people's business."



Representative Clients

Governments and Non-Profits

- Bal Harbour Village
- Bay Harbour Islands
- Broward County School Board
- Broward Metropolitan Planning Organization
- Citizens Insurance
- City of Aventura
- City of Boca Raton
- City of Coconut Creek
- City of Cooper City
- City of Coral Gables
- City of Dania Beach
- City of Doral
- City of Deerfield Beach
- City of Delray Beach
- City Of Dunedin
- City of Hallandale Beach
- City of Hollywood
- City of Homestead
- City of Lauderdale Lakes
- City of Lauderhill
- City of Marco Island
- City of Miami
- City of Miami Gardens
- City of Miami Springs
- City of Miramar
- City of North Miami
- City of Port St. Lucie
- City of Weston
- Delray Housing Authority
- Florida Department of Environmental Protection
- Florida Department of Financial Services
- Florida Department of Transportation
- Florida Housing Finance Corporation
- Florida Metropolitan Planning Organization Advisory Council
- Green Corridor Property Assessment Clean Energy (PACE) District
- Hialeah Housing Authority
- Hollywood CRA
- Homestead Housing Authority
- Homestead CRA
- Lake Worth Drainage District
- Miami Dade Expressway Authority (MDX)
- Miami-Dade County School Board
- North Naples Fire Control District
- Space Coast Transportation Planning Organization
- The Collins Center for Public Policy, Inc.
- Town of Cutler Bay
- Town of Golden Beach
- Town of Gulfstream
- Town of Indian Creek
- Town of Lantana
- Town of Lauderdale by the Sea
- Town of Manalapan
- Town of Medley



**WEISS SEROTA HELFMAN
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AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

- Town of Miami Lakes
- Town of Palm Beach
- Town of Surfside
- Village of Indian Creek
- Village of Key Biscayne
- Village of Pinecrest
- Village of Royal Palm Beach
- Village of Virginia Gardens



Municipal Government Law

Local governments not only deserve the same high-level of professional legal services as "for profit" businesses, but they also need a firm sensitive to their public-interest emphasis. Like private companies, local governments are multi-million dollar "municipal corporations" with employees, staffs, complex regulatory systems and demanding stakeholders - namely, the residents and businesses within the community. Most importantly, and distinct from corporations that answer to shareholders, local governments must focus upon achieving the public good to which their very existence is dedicated.

Rather than be a full-service firm with dozens of unrelated practice areas, we instead have chosen to concentrate on a limited number of practice areas to build our expertise. Municipal law has been one of our core areas of practice since we opened our doors in 1991.

Our attorneys in the Local Government Law Division include many former city and county attorneys, and those that are Florida Bar Board Certified in this specialty. With more than 30 attorneys practicing day-to-day municipal law, our Group is one of the largest in the country. Our legal approach supports the twin mission of cities: to provide necessary services to the public and to govern in accordance with law. Our practice areas are structured to operate as a team and interact seamlessly with staff and elected and appointed officials as they strive to perform their public duties and to timely respond to virtually all of the legal needs of cities.

Our Concentration Translates into Client Savings

We don't just dabble in municipal law. Our lawyers have devoted their careers to providing legal services to municipalities, and they are knowledgeable in nearly every area of local government law. This means local government entities that select us as their general counsel almost never need to hire special outside counsel. This saves our clients - and taxpayers - money.

We draft thousands of resolutions and ordinances each year, saving our clients precious taxpayer money. We strive to draft legislation that is both understandable to the general public and able to survive legal challenge.

We keep abreast of the latest legislative and judicial developments in municipal law through a program of in-house training and continuing education. We are frequently requested to publish articles and make presentations to our peers, local bar associations, the Florida League of Cities and other prestigious organizations.

The Group focuses upon providing the full range of legal services at both city hall and the courthouse. We have experience in all aspects of:

- Affordable housing development;
- Animal control;
- Code enforcement and lien law;
- Community redevelopment agency law;
- Constitutional law;
- Construction;
- Contraband forfeiture;
- Elections;
- Eminent domain;
- Environmental law;
- Ethics;
- Foreclosure;
- General municipal representation and legal advice;
- Governmental litigation;
- Home Rule Law;
- Labor and employment;
- Municipal land use;
- Procurement;
- Public contracts;



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- Public-private partnerships;
- Public records;
- Real estate transactions;
- Red light cameras;
- Solid waste;
- Sunshine Law;
- Sustainable Development;
- Telecommunications;
- Urban Planning; and
- Utilities law.

There is virtually no legal issue affecting municipalities we have not already handled.

We understand our role is not to make policy, but to counsel and assist our clients by providing a legal framework for decision-making. Our services enable our local government clients to meet their constitutional responsibilities and to earn and retain their constituents' confidence and trust.



Labor and Employment Law

Employers and management in both the private and public sectors are challenged by the constantly evolving complexities of Labor and Employment Law. Our Labor and Employment Law attorneys are both seasoned counselors and trial attorneys. We provide clients with up-to-date guidance concerning labor and employment issues. Our focus is on providing prompt, creative, efficient and responsive legal guidance to our clients tailored to the specific issues that keep our clients up at night.

Labor and Employment is multidisciplinary and cuts across several practice areas and includes the collective knowledge and experience of our litigators, administrative and regulatory lawyers, as well as municipal, appellate and ethics attorneys. All work as a team to provide high-end legal representation.

Employment Litigation and Arbitration

As the laws prohibiting workplace discrimination, retaliation and harassment expand, our attorneys defend employers against these claims brought under various federal, state and local laws, including:

- Title VII of the Civil Rights Act of 1964;
- The Americans with Disabilities Act;
- The Age Discrimination in Employment Act;
- The Family Medical Leave Act;
- The Equal Pay Act;
- The Florida Civil Rights Act; and
- The Florida Whistleblower's Act.

We are, at heart, litigators as well as employment law counselors. We know how to win cases and how to reach favorable settlements. Our goal is to put each client in the best leveraged position at every phase of litigation to make the best decision whether to settle or to try the case.

We defend lawsuits in Federal and State courts across Florida, including class actions and multi-plaintiff cases. Our Group also regularly defends employers against discrimination charges brought before various state and local agencies, including the:

- U.S. Equal Employment Opportunity Commission; and
- The Florida Commission on Human Relations.

We also regularly handle arbitrations and civil service board and other administrative hearings for our public sector clients. We are results-oriented and have a track record of success in all forms of employment litigation.

Labor Relations and Collective Bargaining

Our experience is primarily "owner/management" oriented. Very few firms can match the breadth of our experience and success. We regularly represent both union and non-union employers in traditional labor law matters.

For clients whose employees are represented by a union, we focus on preserving management's right to manage its operations. Our attorneys serve as chief negotiators on behalf of management in collective bargaining or we advise the employer's chief negotiator on bargaining strategy and specific issues behind the scenes. This includes working with staff to help establish wage and benefit levels, developing proposals and making suggested changes to collective bargaining agreements.

We also conduct post-negotiation training of supervisory personnel to assist in ensuring that collectively bargained changes are properly implemented. During the term of an existing contract, we counsel management on the administration of their contracts, including progressive discipline and grievance processing, and provide representation during arbitrations concerning contractual and disciplinary disputes. We have a deep understanding of the inner workings of Federal and State law governing the collective bargaining process, and we work hard to ensure our clients do not run afoul of those laws. We also routinely represent our clients in administrative proceedings involving labor disputes before PERC and the NLRB.



WEISS SEROTA HELFMAN COLE & BIERMAN

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

For clients whose employees are not represented by a union and who desire to remain union-free, we provide guidance and counseling to management to ensure positive employee relations to preserve the non-union status.

Counseling and Preventative Services

We are also counselors providing valuable guidance to our clients to prevent claims from arising. We regularly:

- Draft employee handbooks, manuals, policies and procedures governing a wide array of workplace issues;
- Conduct training seminars to ensure employees understand policies and procedures and can protect their employers from employment claims;
- Advise on hiring, discipline and termination, harassment and discrimination complaints, employee compensation and benefit issues and compliance with Federal, State and local laws;
- Conduct internal investigations concerning claims of discrimination, harassment and/or policy violations in a professional, discreet manner;
- Advise our clients on employee drug testing and have been highly engaged in working with clients on how to address the legalization of medical marijuana in Florida; and
- Assist employers with complicated issues when employees request leaves of absence under the Family and Medical Leave Act (FMLA) and other accommodations as a result of their own or immediate family member's health issues.

Wage and Hour Law

Wage and Hour Law compliance can be vexing to even the most sophisticated clients. We have drilled down on this complex area and have had considerable success in ensuring client compliance and defending these matters. We have years of experience advising our clients regarding compliance with the Fair Labor Standards Act (FLSA). We also regularly defend our clients in single plaintiff and class action litigation arising from alleged FLSA violations. While we vigorously defend our clients in these cases, we take a pragmatic approach that focuses on our client's bottom line.

Non-Compete Agreements and Trade Secrets

The interconnectedness of the global economy is especially acute in the area of employee restrictive covenants and confidentiality/trade secret agreements. Our Group is at the forefront of the substantive requirements of such provisions and how to both draft them and ultimately defend them in courts of law.

We have drafted hundreds of non-compete and confidentiality agreements that comply with Federal, State and local law and that will ultimately be upheld should they be challenged. We also assist our clients in developing strategies to prevent employees from misappropriating trade secrets and other valuable, proprietary information. Where disputes arise, we regularly represent our clients in litigation to enforce or defeat these agreements, including the "trial within a trial" setting of injunction hearings.

Unemployment Compensation

We counsel employers on unemployment compensation with an eye toward providing cost-effective, quality representation. We provide human resources personnel with advice concerning everything from garden-variety issues to obscure matters unique to their organizations, and then advise them on how to contest claims for benefits. We also represent clients in appeal hearings or simply provide behind the scenes advice to management in preparation for hearings. Because these hearings often are a precursor to employment litigation on other grounds, we ensure all critical substantive and procedural defenses and evidentiary issues are preserved.

Accessibility and Accommodations (ADA)

The combination of nettlesome regulations and laws, coupled with opportunistic plaintiff's counsel, have made compliance with accessibility laws and regulations increasingly difficult. Consequently, painstaking planning and collaboration with experienced counsel is vital. Our attorneys regularly counsel clients on all aspects of disability-related employment and accessibility requirements under Federal, state and local law. This includes the integration and application of the ADA.

Occupational Safety and Health (OSHA)

We have participated in the full range of audits conducted by agencies of both Federal and State governments, including the U.S. Department of Labor and the Occupational Safety and Health Administration (OSHA). We represent management interests when citations are issued in proceedings before OSHA, including information conferences, formal evidentiary hearings and judicial appeals.



Land Use and Zoning (Public)

Our Public Land Use and Zoning Practice Group, led by Susan Trevarthen, includes attorneys who are certified planners and Board-Certified experts in the field. We have extensive experience in representing local governments in all aspects of land use, planning and zoning. Using a problem-solving and team approach, we provide advice and counsel to local governments on a range of issues from establishing and amending State-mandated comprehensive plans, small area plans, and land development regulations, to reviewing and approving applications for planned unit developments, plats, site plans and building permits.

We also counsel local governments when they act as developers, either alone or in partnership with a private developer. We pride ourselves on our creativity, knowledge and persistence in ensuring that our local government clients achieve the results that they desire in developing their communities.

We provide advice to local government staff such as planning directors, city managers, comprehensive planners, and building departments. We draft ordinances and resolutions, and sit with boards, councils and commissions dealing with land development matters, such as Planning and Zoning Boards, Local Planning Agencies and Zoning Boards of Adjustment. We advise these boards, individually and collectively, in their handling of public hearings, with particular attention to the quasi-judicial nature of many of the proceedings. When it is apparent that a particular regulation or application may result in a denial or a challenge, we work with our litigators and appellate lawyers to lay the groundwork for a successful outcome for the local government.

In addition to the full scope of land use and zoning advice provided in the general administration of government, we also provide comprehensive help to governmental agencies undertaking public development projects, such as police and fire stations, sports arenas and stadiums, commercial parks, industrial parks, marinas and water/sewer treatment facilities. Partnering with the firm's Real Estate Group and Private Land Use and Zoning Practice Group as needed, we are uniquely qualified in handling such matters, including the most sophisticated large-scale projects and Developments of Regional Impact. We are regarded locally as well as nationally for our knowledge of growth management issues and complex zoning issues, such as "takings," development exactions, impact fees, competitive plans, concurrency, rate of growth controls, urban growth boundaries, and other similar issues facing most governmental agencies.

Not only have we spent years providing advice and counsel to local governments on land use issues, but many of us have actually served as members or chairpersons of local and State planning boards charged with reviewing and evaluating comprehensive plans and land use issues. What these real-world experiences mean is we understand government and its demands and concerns inside and out, and we use these experience to come up with unique and ingenious solutions to vexing local government issues.

Our attorneys have years of experience preparing, interpreting and applying land development regulations, particularly zoning ordinances. We routinely prepare and amend land development regulations and zoning ordinances for local governments. We regularly provide advice to both the elected officials and administrative staff on the application, implementation and interpretation of local land development regulations. We have extensive experience with the regulation of First Amendment-related land uses, such as signs, religious uses, and adult uses, including defending challenges to such regulations in partnership with our Litigation Division. In relation to religious land use regulation, our experience also extends to the Federal Religious Land Use and Institutionalized Persons Act (RLUIPA) and the Florida Religious Freedom Restoration Act.

Examples of our work include:

Land Development Codes

- Advised municipal clients on the development of and/or drafted the first land development codes following incorporation in Villages of Islamorada and Key Biscayne, Cities of Aventura and Weston, and Towns of Cutler Bay and Miami Lakes.
- Revised land development codes.
- Part of consulting team that rewrote the City of Dania Beach Land Development Code, to incorporate several annexation areas and implement form-based principles.
- Currently working for a major city on a form-based code rewrite.



Impact Fees

- Reviewed and advised on the implementation and updating of impact fee ordinances in all of our client municipalities, including an affordable housing linkage fee in the City of Coconut Creek and Village of Islamorada, a transit impact fee for the City of Aventura, and police, public works and parks fees for the City of Homestead.

Comprehensive Plans

Comprehensive Plan Amendments

- Advised the City of Sunrise, and participated in the comprehensive plan amendment process for Tao residential high-rise development, Metropica Transit-Oriented Development and Westerra Local Activity Center.
- Advised the City of Coconut Creek on the Regional Activity Center for the MainStreet development.
- Advised various municipal clients on the development of the first comprehensive plans or plan amendments following incorporation in the Villages of Islamorada and Key Biscayne, the Cities of Aventura, Marathon and Weston and the Towns of Cutler Bay and Miami Lakes.
- Advised all municipal clients on Evaluation and Appraisal Reports and related plan amendments, and other plan amendments necessary to implement new state mandates including school concurrency, water supply planning and greenhouse gas reduction.

Small Area Plans

- Advised the City of Sunrise in the development and implementation of the Western Sunrise Area plan and land development regulations from 1995 to the present.
- Advised the City of Homestead on the adoption of neighborhood plans for redeveloping areas of the City.
- Advised the City of Dania Beach on issues related to a small area plan.

Developments of Regional Impact (DRIs)

- Advised and participated in the DRI review process for the creation or amendment of DRIs for Sawgrass Mills, the Broward County Civic Arena (the BankAtlantic Center), Amerifirst/Metropica/Tao, Sawgrass International Corporate Park and Harrison Park/Westerra for the City of Sunrise.
- Advised and participated in DRI review process for implementation and amendment of the Villages of Homestead for the City of Homestead.
- Developed new zoning districts, comprehensive plan amendments, development agreements and other associated approvals for these projects in Homestead and Sunrise.
- Advised on implementation of the DRI development order for the original area of the City of Weston.

Land Development Regulations

Regulation of First Amendment-protected land uses

Signs

- Updated and revised regulations of signs for City of Sunrise after challenge, and resulting regulations were upheld by the Eleventh Circuit.
- Updated and revised regulation of signs for City of Miramar and, working with our Litigation Division successfully defended the sign regulations in the Southern District of Florida.
- Working with our litigators, successfully defended the City of Boca Raton's sign regulations in the Southern District of Florida.
- Updated and revised regulations of signs for Cities of Dania Beach, Aventura, Homestead, Weston and Pasco County, without challenge.
- Part of consultant team revising City of Coconut Creek sign code.
- Revised sign code for Town of Lauderdale-By-The-Sea and Cooper City.
- Advised Village of Islamorada, cities of Dania Beach, Weston and Fort Myers on billboards on interstate highways.

Sexually-Oriented Businesses

- Updated and revised regulations concerning sexually-oriented businesses in City of Dania Beach. Also, assisted the City and its insurer in successfully enforcing the amortization requirement against three existing, nonconforming locations.
- Updated and revised regulations of sexually oriented businesses in the City of Hallandale Beach, and worked with our



WEISS SEROTA HELFMAN COLE & BIERMAN

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

litigators to defend two challenges related to the prior regulations.

- Updated and revised regulations concerning of sexually-oriented businesses for Villages of Wellington and Islamorada, and the Cities of Miramar, Sunrise, and Boca Raton, without challenge.
- Updated regulations of sexually oriented businesses and defended litigation for Village of Islamorada.

Places of Worship and Assembly

- Updated and revised regulations of places of public assembly, and working with our litigators and the Town's insurer, defended the Town of Surfside from challenge to the application of those regulations.
- Updated and revised regulations of places of public assembly and drafted administrative relief procedures for Cities of Cooper City, Sunrise, Miramar, Dania Beach, and Weston, without challenge.

Moratoria

- Drafted and advised on the implementation of targeted moratoria for various purposes in the Cities of Homestead, Hollywood and Hallandale Beach and Town of Cutler Bay, without challenge.

Zoning and Supplemental Regulations

- Developed Planned Unit Development regulations for the Cities of Homestead and Sunrise.
- Developed commercial design guidelines and special zoning districts for neighborhood plans in the City of Homestead.
- Developed specialty business zoning districts and regulations for hotels in the Cities of Dania Beach, Sunrise and Miramar.
- Advised on Joint Land Use Study, developed updated aircraft compatibility regulations and developed vested rights process for City of Homestead in relation to Air Reserve Base.
- Advised on changes to and implementation of regulations of agricultural uses in the City of Parkland, represented the City staff in related code enforcement matters and worked with City's insurer to defend a challenge to the application of its regulations to an agricultural use.
- Developed quasi-judicial hearing procedures for the Firm's municipalities.
- Worked with Village staff to develop and defend regulations of vacation rental properties and formula retail development in the Village of Islamorada, and drafted vacation rental regulations for Town of Lauderdale-By-The-Sea.
- Drafted noise regulations for City of Sunrise and Town of Lauderdale-By-The-Sea.

Areas of Critical State Concern

- Advised Village of Islamorada on building permit allocation system negotiated with state regarding approvals for plan amendments, development orders and development regulations, and defended challenges related to these efforts.

Contested Quasi-Judicial Hearings

- Represented municipal staff or governing bodies for contested quasi-judicial hearing in cities including Parkland, Weston, Hallandale Beach, Miramar, Deerfield Beach, Sunrise and North Bay Village.

Petitions For Certiorari And Consistency Challenges

- Advised our municipalities and defended challenges including projects such as the proposed SuperTarget and WalMart stores in the City of Miramar, the redevelopment of the Sonesta Beach Resort in the Village of Key Biscayne, the redevelopment of the Boca Beach Club at the Boca Raton Resort and Club, and various development decisions for the Village of Islamorada.

Some of our specific areas of practice include:

- Land Use Planning
- Comprehensive Plans
- Evaluation and Appraisal Reports
- Small Area Plans and District Plans
- Water Supply Planning
- Land Development Planning
- Historic Preservation Regulations and Standards
- Rate of Growth Ordinances
- Zoning in Progress and Moratoria
- Areas of Critical State Concern
- Platting
- Variances and Special Exceptions



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- Site Plans
- Regulation of Large Scale Commercial Uses and "Big Box" Development
- Transit-Oriented Development Regulations
- Design Guidelines for Commercial Development
- Development Procedures
- Notice and Hearing Requirements
- Land Use Plan Amendments
- Rezoning
- Development Agreements
- Regulations of First Amendment Land Uses
- Adult Use Regulations
- Sign Regulations
- Regulations of Places of Public Assembly, Including Religious Uses
- Exactions and Impact Assessments
- Impact Fees
- Linkage Fees
- Transportation and Transit Concurrency Regulations
- School Concurrency Agreements and Regulations
- Proportionate Share Mitigation Agreements
- Affordable/Workforce Housing Regulations and Programs
- Large Scale Developments
- Developments of Regional Impact
- Planned Unit Developments
- Joint Land Use Studies for Military Bases
- Watershed Planning
- Public-Private Development Ventures
- Litigation
- Bert J. Harris Act Claims (Chapter 70, Florida Statutes) for Compensation
- Part II Dispute Resolution Proceedings Before a Special Master
- Petitions for Certiorari Related to Quasi-Judicial Decisions
- Variances
- Special Exceptions
- Special Use Permits
- Religious Land Use and Institutionalized Persons Act (RLUIPA) Claims
- 42 U.S.C. § 1983 Claims Arising Out of Land Use Approvals
- Procedural and Substantive Due Process
- Equal Protection
- Regulatory Takings/Inverse Condemnation
- First Amendment Retaliation
- Comprehensive Plan Consistency Challenges
- School Facilities Planning
- School Collocation and Joint Use Agreements
- School Concurrency Agreements and Regulations

Reported Group Cases

- *Restigouche v. Town of Jupiter*, 845 F. Supp. 1540 (S.D. Fla. 1993), aff'd, 59 F.3d 1208 (11th Cir. 1995)
- *Schumacher v. Town of Jupiter*, 643 So. 2d 8 (Fla. 4th DCA 1994)
- *Section 28 Partnership, Ltd. v. Martin County*, 676 So. 2d 532 (Fla. 4th DCA 1996).
- *Woodrow Kantner, Trustee, Carolyn Weaver & YMCA v. Martin County*, 929 F. Supp. 1482 (S.D. Fla. 1993).
- *Town of Jupiter v. Michele Alexander*, 747 So. 2d 395 (Fla. 4th DCA 1998).
- *MediaNet of South Florida, Inc. v. City of Miramar*, Case No. 03cv61689 (S.D. Fla. 2002)
- *Florida Outdoor Advertising, LLC v. City of Boca Raton*, 266 F. Supp. 2d 1376 (S.D. Fla. 2003)
- *Renaissance Charter School, Inc. v. Department of Community Affairs and School Board of Miami-Dade County*, Case No. 1D09-2065 (Fla. 1st DCA 2010)
- *Seay Outdoor Advertising, Inc. v. City of Mary Esther, Florida*, 397 F.3d 943 (11th Cir. 2005) (amicus brief for Citizens for a Scenic Florida)
- *City Of Weston, Florida; Village Of Key Biscayne, Florida; Town Of Cutler Bay, Florida; Lee County, Florida; City Of Deerfield Beach, Florida; City Of Miami Gardens, Florida; City Of Fruitland Park, Florida, City Of Parkland, Florida, City Of Homestead, Florida; Cooper City, Florida; City Of Pompano Beach, Florida; City Of North Miami, Florida; Village Of Palmetto Bay, Florida; City Of Coral Gables, Florida; City Of Pembroke Pines, Florida; Broward County, Florida; Levy County, Florida; St. Lucie County, Florida; Islamorada, Village Of Islands, Florida; And Town Of Lauderdale-By-The-Sea, Florida, v. The Honorable Charlie Crist, Governor Of The State Of Florida; The Honorable Kurt S. Browning, Secretary Of State, State Of Florida; The Honorable Jeff Atwater, President Of The Senate, State Of Florida; The Honorable Larry*



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Cretul, Speaker Of The House, State Of Florida, Case No. 2009 CA 2639 (2nd Judicial Circuit, Fla. 2010)

- *Outdoor Media Group, Inc., and Chance Outdoor, LLC, v. City Of Beaumont, California*, Case No. No. 10-56081 (9th Cir. 2011) (amicus brief for Citizens for a Scenic Florida)



Litigation

We have more than 20 litigators and trial attorneys in the Litigation Division operating with a boutique, team-oriented approach to service our public and private sector clients. Our clients retain us to handle their most sensitive and high-profile matters. We represent private businesses and individuals, as well as municipalities, at every level of the justice system. We do not just litigate, we try cases, and we try them in front of juries, judges, administrative panels, arbitrators and appellate panels.

We know that regardless of the goal, our clients are most likely to obtain the best results if we are prepared and willing to try the case, and we live by that promise. We also maintain an active appellate and administrative law practice generated both by our own trial court litigation and by referrals from our peers. The Firm's mantra of "Integrity, Ingenuity, and Intensity" is part of the Division's DNA and influences every decision made.

Our clients benefit from our extensive knowledge of specialized substantive subject matters including government contracts, municipal law, zoning and land use, commercial law, business law, real estate, employment and labor law, civil rights, election law, eminent domain, environmental law and ADA accessibility, as well as a wide array of State and Federal constitutional challenges. And we are proud that over 150 times, courts have decided that our matters involved such challenging and novel legal issues that they have published their opinions about our cases. These reported court opinions have in turn helped shape the law at the local, State and National levels.

While we are zealous advocates, we always seek to obtain optimum results in a cost-effective manner. We are well-versed in the most current alternative dispute resolution (ADR) methods, and we frequently use them to our clients' financial and tactical advantage. We adopt a "team approach" to every one of our cases, combining our substantive knowledge in a given area being litigated with one of our skilled and accomplished trial attorneys.

Just this year, two of our trial teams simultaneously tried jury cases to successful conclusions in Palm Beach and Miami-Dade Circuit Courts. In one, we obtained a \$5 million settlement midway through the trial of a complex construction matter involving the City of Boca Raton's Library. In the other, we obtained a jury verdict in favor of one of the owners of the legendary Joe's Stone Crabs restaurant in a \$20 million lawsuit involving claims for breach of contract and breach of fiduciary duty. Few firms in the South Florida can claim the breadth of experience and talent to win two high-profile cases at the same time.

The most important member of our "team" is the client. The goal of our litigators is to devise a "winning strategy" with the client's close consultation and approval. Every tactic employed by us to accomplish this agreed-upon strategy is approved by the client in advance (along with the budget for the matter). Our focus on the client's needs sounds deceptively simple, but is only possible as a result of the dedicated team approach of our seasoned litigators. We put the client in a leveraged position at every interval in the life cycle of the litigation to make the key decision whether to obtain a favorable settlement or try the case. We strive to ensure that our client's position is never compromised and that the client is leaning forward, not back. This approach is not easy, but it's the only way we know how to practice law.

Business Dispute Resolution

We have prosecuted and defended a wide-variety of general commercial and business dispute issues in both individual and class action settings, including those establishing law in the areas of:

- Breach of contract
- Breach of fiduciary duty
- Fraud and RICO
- Business torts
- Intellectual property
- Construction defect and liens
- Environmental
- Franchise law
- Defamation/libel
- Securities
- Breach of warranties



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- Class actions
- Commercial Foreclosure
- Bankruptcy
- Hospitality
- Condo and Homeowner Association and Resort Law
- Election Law
- Deceptive and Unfair Trade Practices
- Truth in Lending
- Interstate Land Sales Act
- Viatical Sales
- Fraudulent Transfers
- Insurance
- Subrogation

Governmental Litigation

Our experience in municipal litigation is extensive. We defend municipalities and governmental agencies in all areas of liability. We also defend elected officials, employees, individual departments, branches and divisions in both State and Federal courts at the trial and appellate levels. We have successfully defended law enforcement personnel in the areas of false arrest, excessive force, malicious prosecution and battery, including in §1983 actions.

We also specialize in cases involving negligence, tort liability, complex constitutional law issues, sovereign immunity, qualified immunity, civil rights, torts and common law claims. Our litigators have extensive experience in a wide array of issues such as violations of constitutional rights, including the First, Fourth, Fifth, Eighth and Fourteenth Amendments, racial discrimination, gender discrimination and disability discrimination.

Our trial lawyers have litigated cases up to the Florida Supreme Court relating to:

- The imposition of municipal taxes
- Special versus general law
- Sovereign immunity
- Election law
- Special assessment
- Safe water issues
- Government health insurance plans
- County fiscal responsibility

Labor, Employment and Civil Rights Litigation

Because of the unique nature of our areas of practice, our attorneys often litigate key issues in the labor, employment and civil rights area. With regard to labor issues, we have addressed claims involving:

- Employment discrimination
- Sexual harassment
- Retaliation
- Family and Medical Leave
- ADA
- A union's waiver of statutory rights
- Due process claims relating to collective bargaining
- Pension issues
- Restraints on hiring smokers
- Fair Labor Standards Act
- Breach of employment contracts/non-compete provisions
- Police Liability
- Religious Practices and Worship
- Election Law

We participate in labor arbitrations on a regular basis and have also created law in the following areas:

- Challenges to arbitration reports
- Internal affairs investigations
- Employee discipline



- Employee termination

We have also successfully litigated, in jury and non-jury trials, key employment issues including:

- Enforceability of an ordinance providing for a pension to a mayor
- Enforcement of employment discrimination ordinances
- Enforcement of civil service codes
- Violations of the Florida Whistleblower Act
- Violations of the Florida Civil Rights Act
- Violations of Title VII

Alternate Dispute Resolution

We are experienced in a variety of alternative dispute resolution (ADR) techniques, including binding arbitration and non-binding mediation, and Florida's unique "Summary Jury Trial" process. These methods are often used to settle disputes without exposing clients to the risk, time and expense of a trial. But the most important quality we bring to bear on behalf of the client is that opposing counsel and parties know from our reputation that we are not afraid to try cases and win if we have to. The well-known fact that we thrive in the courtroom setting, helps get cases settled in our client's favor and in a cost-effective manner.

Select Reported Decisions

Labor, Employment and Civil Rights Litigation

- *Daniel v. Village of Royal Palm Beach*, 889 So. 2d 988 (Fla. 4th DCA 2004) [affirming grant of summary judgment for city in claim of false arrest where arresting officer had probable cause to arrest defendant]
- *Favuzza v. Wilton Manors Police Department*, 161 Fed. Appx. 911, 2006 WL 93232 (11th Cir. Jan. 13, 2006) [affirming denial of new trial for arrestee alleging § 1983 claim]
- *Femander v. Bonis*, 947 So. 2d 584 (Fla. 4th DCA 2007) [affirming dismissal of § 1983 claim for malicious prosecution, false imprisonment, negligence]
- *Goldberg v. Chong*, 2007 WL 2028792 (S.D. Fla. Jul. 11, 2007) [granting receiver's partial motion for summary judgment on the basis of fraudulent transfer made by employee]
- *Guess v. City of Miramar*, 889 So. 2d 840 (Fla. 4th DCA 2004) [holding that former assistant city police chief alleging retaliatory discharge under the FCRA could not avail himself of "participation clause" in anti-retaliation provision of FRCA]
- *Hames v. City of Miami Firefighters' and Police officers' Trust*, 980 So. 2d 1112 (Fla. 4th DCA 2008) [affirming Hearing Board determination which discontinued retirement benefits to officer convicted of obstruction of justice and that such discontinuation was not a forfeiture]
- *Hames v. City of Miami*, 281 Fed. Appx. 853 (11th Cir. May 20, 2008) [affirming lower court decision that officer whose retirement benefits were discontinued as the result of his conviction during employment for obstruction of justice was not deprived of due process rights with his forfeiture claim]
- *Kent v. City of Homestead*, 2002 WL 732109 (S.D. Fla. Mar. 14, 2002) [granting defendant's motion for summary judgment on claims of discriminatory failure to promote and retaliatory harassment]
- *Osten v. City of Homestead*, 757 So. 2d 1243 (Fla. 3d DCA 2000) [affirming dismissal of retaliatory discharge claim where plaintiff did not comply with statutory notice requirement and provisions of personnel manual did not give rise to contract]
- *Pritchett v. City of Homestead*, 855 So. 2d 1164 (Fla. 3d DCA 2003) [affirming grant of summary judgment to city in suit for negligent supervision of investigation of employee resulting in loss of earnings to employee for failure to promote]
- *Simcox v. City of Hollywood Police Officers' Retirement System*, 988 So. 2d 731 (Fla. 4th DCA 2008) [affirming forfeiture of former police officer's retirement benefits where former officer pleaded guilty in Federal court to conspiracy to possess heroin with intent to distribute]
- *Woods v. Paradis*, 380 F. Supp. 2d 1316 (S.D. Fla. 2005) [granting summary judgment for city in § 1983 claim for false arrest]

Governmental Law

- *Addison v. City of Tampa*, 33 So. 3d 742 (Fla. 2d DCA 2010) [affirming order excluding from defendant class



- members not from county in which suit originated pursuant to home venue privilege]
- *Bal Harbour Village v. Welsh*, 879 So. 2d 1265 (Fla. 3d DCA 2004) [reversing denial of injunctive relief to village where village ordinance could be constitutionally enforced under police power to abate nuisance]
 - *Bruckner v. City of Dania Beach*, 823 So. 2d 167 (Fla. 4th DCA 2002) [affirming defendant's motion for summary judgment where city's private meeting regarding settlement of lawsuit fell within exemptions of Sunshine Law and any possible violation was cured in subsequent public meetings]
 - *Castin .v Florida Department of Agriculture and Consumer Services*, 901 So. 2d 1020 (Fla. 4th DCA 2005) [affirming denial of class certification in action seeking damages for citrus trees destroyed by citrus canker eradication program]
 - *City of Marco Island v. Dumas*, 13 So. 3d 108 (Fla. 2d DCA 2009) [granting city writ of mandamus to appeal order declaring portions of ordinance unconstitutional with instructions to reinstate appeal from county court]
 - *Department of Agriculture & Consumer Affairs v. Borgoff*, 35 So. 3d 84 (Fla. 4th DCA 2010) [affirming award for damages to compensate for property loss caused by citrus canker eradication program]
 - *Feldman v. City of North Miami*, 973 So. 2d 647 (Fla. 3d DCA 2008) [affirming grant of summary judgment to city where ballot summary language is not clearly and conclusively defective so as to invalidate a Municipal Charter Amendment adopted by popular vote]
 - *Florida Department of Agriculture and Consumer Services v. City of Pompano Beach*, 829 So. 2d 928 (Fla. 4th DCA 2002) [affirming lower court's determination of appropriate measure of damages in inverse condemnation claim]
 - *Florida Dept. of Agriculture and Consumer Services v. Cox*, 54 So. 3d 1026 (Fla. 4th DCA 2011) [affirming lower court's determination that owners of destroyed citrus canker trees prevailed on issues of liability and damages]
 - *Florida Department of Agriculture and Consumer Services v. Cox*, 947 So. 2d 561 (Fla. 4th CA 2006) [affirming lower court's determination of appropriate measure of damages in inverse condemnation claim]
 - *Florida Outdoor Advertising, LLC v. City of Boca Raton*, 266 F. Supp. 2d 1376 (S.D. Fla. 2003) [holding for municipality in constitutional challenge to ordinance where no interest was acquired by municipality due to noncompliance with requirements governing notarization of application]
 - *Jasinski v. City of Miami*, 269 F. Supp. 2d 1341 (S.D. Fla. 2003) [holding ordinance imposing administrative fee in addition to towing and storage costs to owners whose automobiles were towed could be retroactively applied and administrative charge did not violate substantive due process or operate retroactive tax legislation.]
 - *Midrash Sephardi v. Town of Surfside*, 2003 WL 25728149 (S.D. Fla. Jul. 11, 2003) [denying plaintiff's motion for reconsideration where court enjoined plaintiff from violating town zoning code]
 - *Midrash Sephardi v. Town of Surfside*, 2003 WL 25728150 (S.D. Fla. Jul. 10, 2003) [order of entry of final judgment in favor of town in zoning code matter]
 - *Midrash Sephardi v. Town of Surfside*, 2003 WL 25728151 (S.D. Fla. Jul. 10, 2003) [enjoining synagogue from operating in tourist and business district in violation of town code of ordinances]
 - *Patchen v. Department of Agriculture and Consumer Services*, 906 So. 2d 1005 (Fla. 2005) [affirming decision where property owners were eligible for compensation under citrus canker eradication program]
 - *Sephardi v. Town of Surfside*, 2003 WL 25728153 (S.D. Fla. Jun. 9, 2003) [granting town's motion for reconsideration where plaintiffs admit to violation of town zoning code]
 - *Sephardi v. Town of Surfside*, 2003 WL 25728154 (S.D. Fla. May 1, 2003) [finding no discriminatory purpose in operation of code of ordinances forbidding synagogues and other religious establishments from operating in tourist and business district]
 - *Sephardi v. Town of Surfside*, 2003 WL 25728155 (S.D. Fla. Jan. 6, 2003) [denying plaintiff summary judgment in action alleging town zoning code was discriminatory]
 - *Sephardi v. Town of Surfside*, 2003 WL 25728163 (S.D. Fla. Jul. 31, 2000) [granting defendant's motion for summary judgment in action where plaintiffs alleged enforcement of zoning code prohibiting operation of religious establishments in tourist and business district discriminated against synagogue]
 - *Village of Islamorada v. Higgs*, 882 So. 2d 1009 (Fla. 3d DCA 2003) [holding marina serving both residents and nonresidents was entitled to ad valorem tax exemption]

Real Estate, Zoning and Land Use

- *City of Boca Raton v. Boca Raton Airport Authority*, 768 So. 2d 1191 (Fla. 4th DCA 2000) [holding city could challenge issuance of temporary injunction in breach of lease action on ground that it was without notice and allegations made by airport authority were insufficient to justify issuance of temporary injunction without notice]
- *City of Hollywood Community Redevelopment Agency v. 1843, LLC*, 980 So. 2d 1138 (Fla. 4th DCA 2008) [reversing dismissal of eminent domain petition where partial destruction of historically significant hotel did not demonstrate that the condemnation was not reasonably necessary]
- *Gil Ericksen Properties, LLC v. Pompano Beach Community Redevelopment Agency*, 997 So. 2d 522 (Fla. 4th DCA 2009) [affirming order stipulating values for property where owner had waived arguments as to fraud and subject



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matter jurisdiction]

- *GLA and Associates, Inc. v. City of Boca Raton*, 855 So. 2d 278 (Fla. 4th DCA 2003) [affirming grant of summary judgment to city where developer was collaterally estopped from alleging that ordinance was preempted and ordinance was not preempted by State Shore Preservation Act]
- *Miami-Dade County v. Redland Estates, Inc.*, 964 So. 2d 701 (Fla. 3d DCA 2006) [denying petition to county where park was not transformed into a nonconforming use by changes in setback requirements where park had no buildings erected during relevant time period]
- *Monroe County v. Ambrose*, 866 So. 2d 707 (Fla. 3d DCA 2003) [reversing grant of summary judgment for landowners where question of material fact existed as to whether landowners had vested developmental rights where land was designated as part of area of critical State concern and local government approved new land use regulations]
- *Sounds of Service Radio, Inc. v. Village of Islamorada*, 344 F. Supp. 2d 1376 (S.D. Fla. 2004) [denying plaintiff's motion to enjoin city from proceeding in case involving contractual lease dispute]
- *Sun Cruz Casinos, LLC v. City of Hollywood*, 844 So. 2d 681 (Fla. 4th DCA 2003) [holding that gaming boat operation was not a permitted accessory use to restaurant and thus zoning code prohibited operation and city was not equitably estopped from enforcing its zoning code as to third gaming boat]
- *Village of Key Biscayne v. Tesaurus Holdings, Inc.*, 761 So. 2d 397 (Fla. 3d DCA 2000) [holding developer was not denied due process when council denied approval of site plan after approving preliminary plan]
- *The Williams Island Synagogue, Inc v. City of Aventura*, 358 F. Supp. 2d 1207 (S.D. Fla. 2005), *aff'd*. 144 Fed .Appx .857, 2005 WL 2404981 (11th Cir. Sep. 30, 2005)
- *The Williams Island Synagogue, Inc v. City of Aventura*, 329 F. Supp. 2d 1319 (S.D. Fla. 2004)
- *The Williams Island Synagogue, Inc v. City of Aventura*, 2004 WL 2677164 (S.D. Fla. Nov. 17, 2004)
- *The Williams Island Synagogue, Inc v. City of Aventura*, 2004 WL 2278769 (S.D. Fla. Sep. 16, 2004)

General Litigation

- *O'Boyle v. Bradshaw*, 952 F. Supp. 2d 1310, (S.D. Fla. 2013)
- *City of Hollywood v. Diamond Parking, Inc.*, 950 So. 2d 472 (Fla. 4th DCA 2007) [reversing judgment for developer in breach of contract action where developer's obligation to obtain financing was a material term, covenant or condition of the agreement as to which the city was required to give notice and an opportunity to cure any defects]
- *Garcia v. Federal Insurance Company*, 508 F. 3d 1331 (11th Cir. 2007) [affirming dismissal of plaintiff's claim where plaintiff involved in automobile collision was not covered party under defendant's insurance policy]
- *Goldsmith v. Brockhouse*, 979 So. 2d 1135 (Fla. 3d DCA 2008) [holding plaintiffs had no enforceable rights as against vendor in breach of contract claim]
- *Milanese v. City of Boca Raton*, 2008 WL 3889580 (S.D. Fla. Aug. 20, 2008) [dismissing plaintiff's § 1983 and negligence claim for son's wrongful death without prejudice where plaintiff did not demonstrate a special relationship or intent existed, and could not state a claim under § 1983]
- *Osorio v. United States*, 2009 WL 2430889 (S.D. Fla. Aug. 6, 2009) [dismissing complaint without prejudice where plaintiff alleging negligence on part of city in slip-and-fall action was not owner of property where plaintiff allegedly fell]
- *The Palms v. Magil Construction Florida, Inc.*, 785 So. 2d 597 (Fla. 3d DCA 2001) [affirming denial of stay pending arbitration regarding termination of construction contract where statutory amendment precluding contractor from suing its unlicensed status and amendment did not apply retroactively]

Other (Affirming Lower Court Without Explanation)

- *Atlantic USA, Inc. v. Lopez*, 47 So. 3d 922 (Fla. 3d DCA 2010)
- *Jones v. City of Sunrise*, 44 So. 3d 1185 (Fla. 4th DCA 2010)
- *Perez-Gurri Corp. v. Village of Key Biscayne*, 41 So. 3d 228 (Fla. 3d DCA 2010)
- *Companion v. City of Hollywood Police Officers' Retirement System*, 1 So. 3d 1283 (Fla. 4th DCA 2009)
- *Skeel v. Department of Community Affairs*, 979 So. 2d 224 (Fla. 1st DCA 2008)
- *Pemas v. TMM Lines, Ltd., LLC*, 980 So. 2d 506 (Fla. 3d DCA 2008)
- *Halford v. City of Hallandale Beach*, 983 So. 2d 1159, 2008 WL 2513859 (Fla. 4th DCA 2008)
- *Bailey v. Village of Islamorada*, 874 So. 2d 729 (Fla. 3d DCA 2004)
- *City of Hollywood v. Diamond on the Beach, Inc.*, 855 So. 2d 87 (Fla. 4th CA 2003)
- *Merkin v. First Equitable Realty III, Ltd.*, 843 So. 2d 360 (Fla. 3d DCA 2003)



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- *Thompson v. Lincoln at Doral, LLC*, 786 So. 2d 605 (Fla. 3d DCA 2001)



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Code Enforcement

As part of our local government practice, we also handle the full gamut of code enforcement matters. We regularly serve as Special Magistrates, representing code enforcement boards and preparing code ordinances. Having handled thousands of code enforcement matters for our municipal clients, we keep up-to-date on pertinent legal developments, and assist our municipal clients concerning lien and code enforcement and handle appeals of code enforcement actions.

Code enforcement during weakened economic times can be a challenge. We have a clear understanding of modern municipal revenue-enhancement strategies, and we work with our clients to achieve the ultimate compliance goals of code enforcement while balancing against the need to maintain the aesthetic quality and fiscal health of our clients. Our code enforcement attorneys often find themselves immersed in issues dealing with bankruptcy and foreclosure law, and we have become expert advisors in these disciplines as well. Moreover, we are a leader in using code efficient powers to regulate the residency of sexual offenders as well as other safety measures designed to protect the health, safety and welfare of the residents of our municipal clients.



Constitutional Law

When their rights have been violated or when they have been falsely accused of violating another's constitutional rights, clients in Florida seek us out. We are experienced in representing the interests of our business clients in issues such as:

- Civil rights claims
- Defense of employment discrimination
- Free Exercise and Establishment of Religion Claims
- Eminent domain/government takings and private property rights
- Taxation
- First Amendment issues
- Election law
- Interstate commerce
- Public Forum Issues
- Selective enforcement of the law
- Separation of powers

We defend organizations and entities against constitutional challenges to their policies, procedures and practices, such as in §1983 cases, as well as businesses facing discrimination and retaliation claims.

As experienced constitutional litigators, we also mount constitutional challenges to legislative actions. We can analyze whether a law or government regulation results in depriving our clients of rights guaranteed by the Florida or U.S. Constitution and fight to change them when they do.

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TEAM BISCAYNE PARK

- 1. ATTORNEY RÉSUMÉS**
- 2. LIST OF ATTORNEYS**

TEAM BISCAYNE PARK

As with all of our municipal clients, the Village will enjoy the benefit of a team of more than 66 attorneys who have devoted their legal careers to serving the needs of local governments and government agencies. There is virtually no legal issue affecting municipalities that we have not handled in one form or another. After evaluating the particular needs of the Village, we have put together “Team Biscayne Park,” representing some of Florida’s top attorneys in their areas. We believe that this team of experienced and specialized attorneys will be able to serve all the legal needs of the Town.

Team Biscayne Park consists of the following experts from the Firm.

- John J. Quick – Lead Municipal Attorney, Day-to-Day Matters and Litigation.
- Chad S. Friedman – Land Use and Zoning Attorney.
- Haydee Sera – Procurement, Public Contracts and Day-to-Day Matters.
- Christopher Saunders – Back-Up Municipal.
- Brett J. Schneider – Labor and Employment.
- Jose L. Arango – Code Enforcement.
- Kathryn M. Mehaffey – Land Use and Zoning Attorney.
- Ashley Daniels – Back-Up Municipal, Labor and Employment.

Resumes for Team Biscayne Park can be found on the following pages.

In addition, the Firm has several highly skilled attorneys that it may deploy depending on the Village’s particular needs. Accordingly, a list of all of our attorneys has been enclosed and biographical and practice area information regarding all of our attorneys can be found on our website www.wsh-law.com.



John J. Quick

John is a Partner with the Firm and a member of our [Litigation Division](#). His trial practice focuses on complex business, commercial, municipal/governmental, transportation, construction, aviation, and real estate law before Federal and State courts, as well as mediation and arbitration. John's appellate practice includes cases before the Florida Supreme Court, all of the Florida District Courts of Appeal, as well as many of the United States Circuit Courts of Appeals. John is also experienced in handling international litigation, dealing with the laws of Germany, Switzerland, Costa Rica, Mexico, Cyprus, Italy and Norway, among others.

John also serves as the Independent Counsel to the City of Miami Civilian Investigative Panel, which oversees civilian complaints against police officers. John is one of the few attorneys in Florida to serve as a civilian oversight practitioner.

John's practice includes contract litigation, business torts, real estate litigation, bankruptcy and other creditor's rights issues, maritime litigation, aviation litigation, banking and secured transactions, and employment-related litigation, to name a few. He has:

- Successfully defended a Miami-Dade municipality in an alleged First Amendment violation;
- Successfully defended the development of a large mixed use project in South Miami-Dade anchored by one of the largest retailers in the State;
- Successfully enforced the ownership rights of a large, multi-building condominium association;
- Successfully defended multi-national corporate manufacturer of breath-alcohol testing instruments used by law enforcement throughout the State of Florida against declaratory judgment action challenging corporation's ownership of intellectual property associated with the instruments;
- Successfully represented a large bank in a series of multimillion dollar commercial foreclosures of hotel properties throughout the United States;
- Successfully represented a large international shipping company in a \$5 million arbitration claim against a former shipping agent;
- Successfully defended dozens of municipalities throughout Florida against a challenge to the home venue privilege;
- Successfully prosecuted pension forfeiture matters against police and firefighters engaged in felonious behavior;
- Successfully enforced contractual mining rights against both corporate defendant and environmental regulators;
- Successfully asserted a constitutional challenge to a municipal ordinance precluding private country club from fencing its property;
- Successfully opposed a competitive bid challenge concerning a municipality's stormwater system;
- Successfully defended a constitutional challenge to a municipal charter provision allowing for appointment of official to fill vacancy on elected body; and
- Successfully serves as an integral part of the Firm's team focusing on complex and high-profile issues of constitutional law who have, inter alia, successfully removed an unconstitutional question from the state-wide ballot, stricken an unconstitutional statute from the Florida records, and upheld the constitutional powers granted to various government officials.

Partner

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Practice Areas

- Appellate Law
- Civilian Oversight of Law Enforcement
- Election Law
- Foreclosures
- Governmental Litigation
- Litigation
- Litigation Division

Bar Admissions

- Florida, 2003
- District of Columbia, 2004 (inactive)
- U.S. District Court Middle District of Florida, 2004
- U.S. District Court Southern District of Florida, 2004
- U.S. District Court Northern District of Florida, 2004
- U.S. Court of Appeals 1st Circuit, 2004
- U.S. Court of Appeals 5th Circuit, 2004
- U.S. Court of Appeals 9th Circuit, 2004
- U.S. Court of Appeals 11th



Circuit, 2003

Education

- Boston University School of Law, J.D., 2003
- University of California at Los Angeles, B.A., 2000

John also provides a unique experience, having worked as in-house corporate counsel for Royal Caribbean Cruises Ltd. This representation included defending Royal's subsidiary brands, Celebrity Cruises, Azamara Club Cruises, TUI Cruises GmbH, Pullmantur Cruises, and Croisières de France. His experience at RCCL encompassed significant representations in fields as diverse as bankruptcy and creditor's rights, shipboard and land-based employment and labor defense, premises liability defense, privacy law, intellectual property, and international law. Additionally, John worked in close partnership with RCCL's revenue and accounting departments in implementing strategies and programs to capture and manage potential lost revenue.

John is also active in local professional organizations and civic affairs. He is a Past President of the Friends of the Miami-Dade Public Library and in 2014 he brought together community leaders to form the Coalition to Save Our Libraries. His efforts and those of the Coalition ultimately resulted in an increase of the initial proposed annual library budget from \$30 million to \$54.4 million. The budget increase put an end to four years of consecutive and crippling budget reductions and marked a turnaround for the library system. Through John's continued efforts, as well as those of the Coalition, the library's FY15-16 budget expanded by a further \$10 million. For the past 3 years, under John's leadership the Coalition has been able to successfully increase the library's budget each year for a total increase of almost \$35 million. This increase has served to expand the offerings of the library to include tech based education, makerspaces and other creative environments. The funds have also helped to expand the existing early childhood and adult reading and education programs, as well as other literary, cultural and educational programs. The stabilized budget also prevented further layoffs and provides for a solid foundation upon which the community can build.

John currently serves as the Immediate Past Chair of the Eleventh Judicial Circuit Historical Society. John also recently joined the Board of The Parks Foundation of Miami-Dade, and was appointed to serve on the Miami-Dade County Community Relations Board by Commissioner Daniella Levine Cava. John served for seven years on the Board of Trustees for HistoryMiami, including on the Board's Executive Committee. In addition, John was previously appointed by the Miami-Dade County Board of County Commissioners to serve on its Parks & Recreation Citizens' Advisory Committee. He was also appointed by the Village of Palmetto Bay to serve on its Charter Revision Committee. He was also instrumental in the incorporation efforts for the Town of Cutler Bay.

John has also undertaken pro bono representation of individuals in criminal, probate and family law matters.

Prior to joining the Firm, John served as a clerk to the Honorable Stephen P. Nugent of the State of Rhode Island Superior Court.

Awards and Recognitions

- Rising Star, Super Lawyers (2017)
- South Florida Legal Guide Top Lawyers (2016)
- Sun Sentinel Top Workplace Professionals (2016)
- South Florida Legal Guide, Top Up and Comer (2015-2017)
- Florida Super Lawyers, Rising Star (2009 – 2011, 2014 – 2016)
- South Florida Business & Wealth, Up and Comer Finalist (2016)
- South Florida Business Journal, 40 Under 40 (2015)



- Miami-Dade County League of Cities, President's Community Service Award (2014)
- Daily Business Review, Rising Stars 40 Under 40 (2014)
- Florida Library Association, Friends, Foundations & Boards Outstanding Member Award (2014)
- Florida Trend's Legal Elite, Up and Comer (2007 – 2010)

Published Works

- *Controlling Pandora's Box: The Need for Patent Protection in Transgenic Research*, 15 U. Miami Bus. L. Rev. 303, 2007
- *Genetic Discrimination and the Need for Federal Legislation*, 8 J. BioLaw & Bus. 22, 2005
- *Intellectual Property: Plants Patentable Under the Utility Patent Statute, PVA, and PVPA*, 30 J.L. Med. & Ethics 317, 2002

Professional Associations

- Miami-Dade County Community Relations Board, Chair (June 2018)
- The Parks Foundation of Miami-Dade Member, (2017-Present)
- Miami-Dade Community Relations Board, First Vice Chair (2017-Present), Member (2016-Present)
- Miami-Dade County Parks & Recreations Citizens' Advisory Committee - Member (2015-Present)
- Friends of the Miami-Dade Public Library – Immediate Past President (2014-Present), President (2012 – 2014), Vice President (2011-2012), Board of Trustees (2009 – Present)
- Eleventh Judicial Circuit Historical Society – Immediate Past Chair (2016-Present), Chair (2015-2016), Vice-Chair (2014 - Present), Secretary (2014), Board of Trustees (2011 – Present)
- Village of Palmetto Bay Charter Review Committee - Member (2015-2016)
- Miami-Dade County Mayor's Blue Ribbon Task Force for the Miami-Dade Public Library System - Member (2013- 2014)
- HistoryMiami – Secretary (2011-2014, 2015-2016), Treasurer (2014-2015), Board of Trustees (2009-2016), Education Chair (2010-2014), Audit Chair (2014-2016)
- Flagler Street Society – Chair (2007 – 2009), Councilmember (2005 – 2007)

Reported Cases

- *Mullen v. Bal Harbour Village*, 2018 WL 1403752 (Fla. 3d DCA March 21, 2018)
- *D'Agastino v. City of Miami*, 220 So. 3d 410 (Fla. 2017).
- *Brock v. Ochs*, 2016 WL 661203 (Fla. 20th Cir. Ct. Feb. 18, 2016).
- *Preserve Grove Isle, LLC v. Grove Isle Yacht & Tennis Club, LLC*, 2015 WL 5769084 (Fla. 11th Cir. Ct. Aug. 13, 2015).
- *Key Biscayne Gateway Partners, LTD. v. Village of Key Biscayne*, 172 So. 3d 499 (Fla. 3d DCA 2015).
- *E.H. ex rel. Moore v. City of Miramar*, 111 F. Supp. 3d 1307 (S.D. Fla. 2015)
- *Cutino v. Untch*, 2015 WL 1855788 (S.D. Fla. April 22, 2015).
- *Cutino v. Untch*, 79 F. Supp. 3d 1305 (S.D. Fla. 2015).
- *Cutino v. Untch*, 303 F.R.D. 413 (S.D. Fla. 2014).
- *Fernandez v. Bal Harbour Village*, 49 F. Supp. 3d 1144, (S.D. Fla. 2014).
- *Ulloa v. CMI, Inc.*, 133 So. 3d 914 (Fla. 2013).
- *O'Boyle v. Bradshaw*, 952 F. Supp. 2d 1310 (S.D. Fla. 2013).
- *Apothecary Development Corp. v. City of Marco Island, Fla.*, 517 Fed.



- Appx. 890 (11th Cir. 2013).
- *Lobegeiger v. Celebrity Cruises Inc.*, 869 F. Supp. 2d 1356 (S.D. Fla. 2012).
 - *Lobegeiger v. Celebrity Cruises Inc.*, 869 F. Supp. 2d 1350 (S.D. Fla. 2012).
 - *Lasky v. Royal Caribbean Cruises Ltd.*, 850 F. Supp. 2d 1309 (S.D. Fla. 2012).
 - *CMI, Inc. v. Ulloa*, 73 So. 3d 787 (Fla. 5th DCA 2011).
 - *Lobegeiger v. Celebrity Cruises, Inc.*, 2011 WL 3703329 (S.D. Fla. Aug. 23, 2011).
 - *Atwater v. City of Weston*, 64 So. 3d 701 (Fla. 1st DCA 2011).
 - *Apothecary Dev. Corp. v. City of Marco Island, Fla.*, 2011 WL 1071448 (M.D. Fla. March 18, 2011).
 - *Addison v. City of Tampa*, 33 So. 3d 742 (Fla. 2d DCA 2010).
 - *City of Weston v. Crist*, 2010 WL 4956375 (Fla. 2d Cir. Ct. Aug. 26, 2010).
 - *Flagler Retail Assoc., Ltd. v. Dep't of Cmty. Affairs*, 2010 WL 2948165 (Fla. Div. Admin Hrgs. July 23, 2010).
 - *Bloch-Mullen v. Bal Harbour Village*, 23 So. 3d 725 (Fla. 3d DCA 2009).
 - *Companion v. City of Hollywood Police Officers' Ret. Sys.*, 1 So. 3d 1283 (Fla. 4th DCA 2009).
 - *Simcox v. City of Hollywood Police Officers' Ret. Sys.*, 988 So. 2d 731 (Fla. 4th DCA 2008).
 - *Hames v. City of Miami*, 281 Fed. Appx. 853 (11th Cir. 2008).
 - *Hames v. City of Miami Firefighters' & Police Officers' Trust*, 980 So. 2d 1112 (Fla. 3d DCA 2008).
 - *Swerdlow v. Dep't of Cmty. Affairs*, 2007 WL 2253612 (Fla. Div. Admin. Hrgs. August 6, 2007).
 - *Hames v. City of Miami*, 479 F. Supp.2d 1279 (S.D. Fla. 2007).
 - *Mancini Enterprises, Inc. v. American Express Co.*, 236 F.R.D. 695 (S.D. Fla. 2006).
 - *United States v. Norwegian Cruise Line, Ltd.*, 2004 U.S. Dist. LEXIS 22585 (S.D. Fla. May 25, 2004).

Press Mentions

- "[Globe-trotting attorneys offer new-era strategies for efficient business travel](#)", *ABA Journal*, July 1, 2017
- "[Court: No Subpoena Power for Miami Civilian Review Panel](#)", *Daily Business Review*, 6/28/2017
- "[John Quick Interviewed on NBC](#)", NBC6, 2/15/2017
- "[Subpoena Power of Miami Police Probe Panel Faces Challenge](#)", *Daily Business Review*, 2/7/2017
- "[Miami's Independent Police Oversight Board Fights for Its Right to Investigate Rogue Cops](#)", *Miami New Times*, 2/7/2017
- "[John Quick - Board Member at Miami-Dade Parks Foundation](#)", *South Florida Business Journal*, Jan. 17, 2017
- "[2016 SFBW Up & Comers Finalist](#)", *South Florida Business & Wealth*, 2016, 2017
- "[John Quick Named a 2016 Sun Sentinel Top Workplace Employee](#)", *SunSentinel*, 9/13/16
- "[Third District Preserves Citizen Oversight of Miami Police](#)", *Daily Business Review*, 3/22/2016
- "[Miami Dade: Budget for Parks and Public Spaces Increases by 20%](#)", *Miami Diario*, 9/21/15
- "[Cutler Bay wins legal battle to build Publix in town center](#)", *Miami-Herald*, 9/11/15
- "[Cutler Bay Shopping Center Outmaneuvered by Publix](#)", *Daily Business Review*, 9/8/15



- ["Publix wins legal battle over new store in Cutler Bay"](#) *South Florida Business Journal*, 9/3/15
- ["Judge Grants Luxury Condo Owners Rights to Miami Club"](#) *Daily Business Review*, 8/14/15
- ["Miami Private Island Developer Ordered To Keep Club Open"](#) *Law 360*, 8/14/15
- ["Miami-Dade voters to decide courthouse tax, FIU growth, park rules."](#) *Miami Herald*, 10-15-14
- ["Rising Stars."](#) *Daily Business Review*, 9-26-14
- ["Save Miami-Dade Libraries Because an Educated Community is Priceless."](#) *Huffington Post*, 9-19-14

- ["Rising Star: John Quick."](#) *Daily Business Review*, 9-17-14
- ["Giving Back: Hallmark of Rising Star Lawyers."](#) *Daily Business Review*, 9-17-14
- ["John Quick interviewed by Danny Parra"](#) *The Danny Parra Experience WIOD*, 9-4-14
- ["Almuerzo en honor de History Miami"](#) *el Nuevo Herald*, 8/2/14

- ["Review to honor top 40 lawyers under age 40"](#) *Daily Business Review*, 7-25-14
- ["Preliminary library tax rate must survive"](#) *Miami Herald*, 7-24-14

- ["Miami-Dade commissioners raise property tax to pay for libraries"](#) *Library Journal*, 7/22/14
- ["Libraries lack LeBron's pull as Miami arena deal precedes cuts"](#) *Bloomberg*, 7/18/14
- ["Miami-Dade Commission raises taxes to help fund libraries"](#) *WLRN*, 7/18/14
- ["John Quick interviewed on 880 AM radio, Grant Stern Show"](#) *Sun-Sentinel*, 7/17/14
- ["Higher library tax in Miami-Dade "maintains the status quo"](#) *Miami Herald*, 7/16/14
- ["Save our library"](#) *WSVN* 7/15/14
- ["John Quick interviewed by Grant Stern"](#) *880 AM Bloomberg Radio*, 7/14/14
- ["John Quick featured on The Maggie Linton Show"](#) *Sirius XM*, 7/10/14
- ["Gimenez calls budget the "worst case" for Miami-Dade"](#) *Miami Herald*, 7/10/14
- ["How will libraries fare in Gimenez's budget?"](#) *WLRN*, 7/8/14
- ["How to Tell a World-Class City"](#) *Biscayne Times*, 7/14
- ["Programs and staffing are at great risk"](#) *The Miami Times*, 7/3/14
- ["Opinion: The Latest Chapter"](#) *Miami Herald*, 6/30/14
- ["John Quick interviewed for Topical Currents"](#) *WLRN*, 6/24/14
- ["John Quick interviewed for Issues"](#) *WPBT2*, 6/30/14
- ["Opinion: Fund Libraries"](#) *Miami Herald*, 6/7/14
- ["Piden busqueda nacional del nuevo director de bibliotecas"](#) *Diarios los Americas*, 6/7/14
- ["Opinion: Restore Miami-Dade's library budget to \\$64 million"](#) *Miami Herald*, 6/3/14
- ["Issues: Libraries on an August Referendum?"](#) *WPBT2 Interview with Helen Ferré*, 4/18/14
- ["Without more tax dollars, Miami-Dade library system would fire more than half its full-time staff,"](#) *Miami Herald*, 4/10/14

- ["Arts, library advocates push for higher taxes in Miami-Dade,"](#) *Miami Herald*, 4/7/14
- ["News and Notes,"](#) *The Florida Bar News*, 3/1/14



WEISS SEROTA HELFMAN
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AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

- "[Legal People](#)," *Daily Business Review*, 1/23/14
- "[John Quick of Weiss Serota Helfman Cole Bierman & Popok Elected Secretary of the 11th Judicial Circuit Historical Society](#)," *CityBizList South Florida*, 1/21/14
- "[People on the Move](#)," *South Florida Business Journal*, 1/21/14
- "[Legal People](#)," *Daily Business Review*, 11/8/13
- "[John Quick Appointed to the Mayor's Blue Ribbon Taskforce](#)," *CityBizList South Florida*, 10/28/13
- "[John J. Quick - People on the Move](#)," *South Florida Business Journal*, 10/25/13
- "[Miami-Dade Reduces Number of Libraries on Chopping Block to Four](#)," *Miami Herald*, 8/15/13
- "[Miami-Dade Public Libraries: Hundreds Rally to Save Local Branches \(PHOTOS\)](#)," *Huffington Post*, 8/5/13
- "[Library Closings in Miami-Dade Could Affect 250 Jobs](#)," *South Florida Business Journal*, 8/2/13
- "[Trustee Spotlight: John J. Quick](#)," *HistoryMiami*, 8/1/13
- "[Miami-Dade Libraries, Fire Stations to Bear Brunt of Proposed Budget Cuts](#)," *Miami Herald*, 7/18/13
- "[Miami Dade Library to Close Nearly Half of its Branches](#)," *Library Journal*, 7/18/13
- "[Miami-Dade Commissioners OK Flat Property-Tax Rate That Means Library, Fire Cuts](#)," *Miami Herald*, 7/16/13
- "[New Partners 2012-2013](#)," *Daily Business Review*, 3/11/13
- "[Friends of Library Names President](#)," *Miami Today*, 11/29/12
- "[People on the Move](#)," *Sun-Sentinel*, 11/20/12
- "[People on the Move](#)," *South Florida Business Journal*, 11/20/12
- "[After Hours](#)," *Daily Business Review*, 3/8/11

John Joseph Quick

Member in Good Standing

Eligible to Practice Law in Florida

Bar Number:

648418

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Personal Bar URL:

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vCard:

County:

Miami-Dade

Circuit:

11

Admitted:

09/16/2003

10-Year Discipline History:

None

Law School:

Boston University School of Law, 2003

Firm:

Weiss Serota Helfman Cole & Bierman, P.L

Firm Size:

51 to 100

Firm Position:

Partner/Shareholder



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Practice Areas

- Land Use and Zoning (Private)
- Land Use and Zoning (Public)
- Land Use and Zoning Group (Private)
- Public Finance
- Public Finance Practice Group
- Public/Private Transactions (P3)
- Sustainable Development
- Sustainable Development Group

Bar Admissions

- Florida, 2004

Education

- Stetson University College of Law
JD, *cum laude*, 2004
- University of Florida
BSBA, *with honors*, 2001

Chad S. Friedman

Chad focuses his practice on representing developers and governmental entities in the areas of land use and zoning. He is also a leading legal expert in the field of Property Assessed Clean Energy (PACE) programs.

Chad has extensive experience representing local governments in the drafting, adoption, and implementation of land development regulations, including green regulations. In addition, he has significant experience representing local governments in comprehensive plan amendment and quasi judicial hearings (i.e. variances, site plans, rezoning, and special exceptions). Chad has also successfully defended various governmental entities, such as the Village of Key Biscayne and Town of Cutler Bay, in land use related litigation. Chad is also the assistant Town attorney for the Town of Cutler Bay and the assistant Village attorney for the Village of Pinecrest.

Given Chad's unique local government experience, he has been successful in helping developers and private property owners navigate through the intricacies of the development review process. Over the years, he has assisted numerous private clients in securing the necessary development permits and other approvals required for the development of property.

In addition to Chad's land use and zoning practice, he is a leading legal expert in the creation of PACE programs pursuant to Section 163.08, Florida Statutes. Chad helped to create the Green Corridor PACE District, which was one of the first PACE programs established within the State of Florida. He currently is legal counsel to the Green Corridor PACE District and is also assisting private entities in the creation of other PACE programs across the State of Florida.

Chad, a frequent author and speaker on the subject of growth management and local government law, is currently the Co-Chair for the Environmental and Land Use Committee of the Dade County Bar.

Published Works

- "[Update on PACE: Litigation, Legislation, and New Initiatives](#)," *Smart Growth and Green Buildings Committee Newsletter*, August 2013
- "[Update on PACE One Year Later: Litigation, Legislation, and New Initiatives](#)," *The Environmental and Land Use Law Section Reporter*, December 2012
- "[Update on PACE One Year Later: Litigation, Legislation, and New Initiatives](#)," *The Environmental and Land Use Law Section Reporter*, September 2011
- "HB 7179 Keeps PACE with Green Initiatives," *Florida Real Estate Journal*, June 2010
- "Senate Bill 360: The Impact of the 2007 Legislative Session on Local Government Growth Management, Part II," *The Florida Bar Journal*, Volume 81, Number 11, 2007
- "Senate Bill 360: The Impact of the 2007 Legislative Session on Local Government Growth Management, Part I," *The Florida Bar Journal*, Volume 81, Number 10, 2007
- "Senate Bill 360: Growth Management Reform Arrives and It is All About Infrastructure," *The Florida Bar Journal*, Volume 79, Number 9, 2005

Awards and Recognitions

- "On the Rise", *Daily Business Review's Professional Excellence Awards*,



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AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

5/24/2017

- "Top 20 Professionals Under Forty", *Brickell Magazine* 2016
- "Florida Rising Star," *Florida SuperLawyers*, 2009-present
- Attorneys' Title Insurance Fund Award for Excellence in Land Use Planning
- William F. Blews Pro Bono Service Award

Professional/Civic Activities

- Dade County Bar Association Section, Co-Chair Environmental and Land Use
- Dade County Bar Association Young Lawyers Section
- Jackson Health System General Obligations Bond Citizens' Advisory Committee

Presentations

- "Water, Energy, and Climate Change," CLE International 2010
- "Form and Function Both Important to Zoning Codes," Florida American Planning Conference, 2007

Press Mentions

- "[Bayfront redevelopment brightens Grove's tourism picture](#)" *Miami Today* 2/18/16
- "[Insiders detail upward trend in Grove's residential market](#)" *Miami Today* 2/10/16
- "[Custom Home Projects Face Obstacles From Historic Preservation](#)" *South Florida Business Journal* 9/11/15
- "[Cutler Bay Wins Legal Battle to Build Publix in Town Center](#)" *Miami Herald* 9/8/15
- "[Cutler Bay Shopping Center Outmaneuared by Publix](#)" *Daily Business Review* 9/8/15
- "[Future of Golf Courses Relies on Cities Shooting for 'PAR'](#)," *Daily Business Review* 9/12/14
- "[Pinecrest Hires New Village Attorney](#)," *Miami Herald*, 9/5/13
- "[New Partners 2012-2013](#)," *Daily Business Review*, 3/11/13
- "[Program Will Help Homeowners Pay for Energy Efficiency](#)," *Miami Herald*, 10/8/11
- "[News and Notes](#)," *The Florida Bar News*, 7/15/11
- "[People on the Move](#)," *South Florida Business Journal*, 7/11/11

Chad Stuart Friedman

Member in Good Standing

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County:

Miami-Dade

Circuit:

11

Admitted:

09/28/2004

10-Year Discipline History:

None

Law School:

Stetson University College of Law

Sections:

Environmental & Land Use Law

Practice Areas:

City/County/Local Government

Zoning, Planning and Land Use

Firm:

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Practice Areas

- Land Use and Zoning (Private)
- Municipal Government Law

Bar Admissions

- Florida, 2009
- U.S. District Court, Southern District of Florida, 2012

Education

- University of Miami School of Law, JD 2009
- University of Miami, BBA 2006

Languages

- Spanish

Haydee Sera

Haydee is an associate in the Firm's Municipal Government Law practice, where she provides general representation to municipalities on a broad range of issues such as elections, ethics, public records, and sunshine law, including shade-sessions. As counsel to local municipalities, Haydee drafts and reviews proposed legislation, resolutions, and agreements on a variety of matters. Haydee also provides counsel to elected officials on legal matters, including compliance with state and local ethics laws.

Prior to joining the Firm, Haydee was the Assistant Town Attorney for the Town of Miami Lakes where, among other things, she served as counsel to the Town's Planning and Zoning Board, Charter Revision Commission, and advisory committees. Haydee represented the Town in various civil matters including Chapter 119 public records litigation and interpretation of the Town's Charter.

In addition to her municipal experience, Haydee has represented domestic and international clients in probate and guardianship administration and litigation, and commercial litigation matters.

Haydee is a South Florida native and long-term resident of the Town of Miami Lakes, where she is a parishioner of her life-long church, Our Lady of the Lakes. She has served on the Board of the Gramercy Park Homeowners Association and as Secretary of the Alumni Association of her high school alma mater, Saint Thomas Aquinas High School.

Reported Cases

- *Ruffa v. Saftpay, Inc.*, 163 So. 3d 711 (3d DCA 2015)
- *Slaton v. Pizzi*, 163 So. 3d 655 (3d DCA 2015)

Professional Associations and Memberships

- Miami Lakes Bar Association
 - *President* 2016, 2012
 - *President-Elect* 2015, 2011
 - *Vice-President* 2014
 - *Treasurer* 2013
 - *Director* 2010
- Hispanic National Bar Association (HNBA)
 - *Board Member, Florida Young Lawyers Division* 2015-2016
 - *Member*
 - *Mentor*, 2010 – Present
- Cuban American Bar Association (CABA)
 - *Member*
- University of Miami School of Law Alumni Association, Member 2009 – Present
 - *Young Alumni Committee, Events Committee Member* 2011

Awards

- "Women of Distinction", *Cultural Affairs Committee of Miami Lakes*, 3/3/2018
- "Top Lawyers Under 40", *Hispanic National Bar Association*, 4/1/2017

Press Mentions



WEISS SEROTA HELFMAN
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AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

- ["Fla. Mayor Urges Town To Sue Insurer For His Atty Fees,"](#) Law 360, 10/1/15
- ["Acquitted Fla. Mayor Sues City To Recoup Legal Fees,"](#) Law 360, 8/21/15

Haydee Stephanie Sera

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Personal Bar URL: <https://www.floridabar.org/mybarprofile/70600>

County: Miami-Dade

Circuit: 11

Admitted: 09/25/2009

Young Lawyers Division: Member

10-Year Discipline History: None

Law School: University of Miami School of Law, 2009

Sections: Young Lawyers, City, County & Local Govt Law

Practice Areas: City/County/Local Government Contracts Probate and Trust
Litigation

Languages: Spanish

Federal Courts: U.S. District Court, Southern District of Florida

Firm: Weiss Serota Helfman Cole & Bierman

Firm Size: 51 to 100

Firm Position: Associate

Firm Website: www.wsh-law.com



Christopher Saunders

Chris works with the Firm's Municipal Government Law and Public Land Use and Zoning Law Groups, focusing on land use, planning and zoning, and general municipal law.

Prior to joining the firm, he served as Assistant City Attorney for the City of Hallandale Beach. In addition to drafting legislation for presentation to the City Commission, Chris advised the City's departments on various legal issues as they arose. He drafted, reviewed, and negotiated agreements on behalf of the City. He also advised the City's Unsafe Structures Board and the Planning and Zoning Board as it reviewed development applications, variances, and other zoning matters.

Chris has experience in procurement law and policy, public private partnerships, land use and zoning issues, construction contracts, professional service agreements and utility easements, as well as developing municipal policies. He also has experience representing municipalities in general litigation, municipal violations, and code enforcement hearings. Prior to joining the City, Chris was an associate at an insurance defense litigation firm.

Chris is actively involved in the TJ Reddick Bar Association, serving as the Community Service Chair for 2016-2017, and is on the Board of Directors for the 3G Project, a non-profit organization that serves foster children in Broward and Dade Counties.

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Practice Areas

- Land Use and Zoning Group (Public)
- Municipal Government Law

Bar Admissions

- Florida, 2013
- U.S. District Court, Southern District of Florida, 2015

Education

- University of Miami School of Law, JD, 2013
 - *Honors: Dean's Merit Scholar 2010-2013*
 - *Kozyak, Tropin, & Throckmorton Award Winner for Litigation Skills, 2012*
- Suffolk University, M.Ed. Higher Education Administration, 2010
- University of Florida, B.A. 2008

Professional Associations and



**WEISS SEROTA HELFMAN
COLE & BIERMAN**

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

Memberships

- TJ Reddick Bar Association,
Community Service Chair,
2016-2017
- Broward County Bar Association
- Environmental and Land Use
Law Section of the Florida Bar
- City, County, Local Government
Law Section of the Florida Bar
- 3G Project, Board of Directors
- City of Sunrise Board of
Adjustment, 2014-2016

Leon Christopher Saunders

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County: Broward

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Admitted: 09/24/2013

Young Lawyers Division: Member

10-Year Discipline History: None

Law School: University of Miami School of Law, 2013

Sections: Young Lawyers, City, County & Local Govt Law, Environmental & Land Use
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Firm: Weiss Serota Helfman Cole & Bierman

Firm Size: 51 to 100



Brett J. Schneider

Brett is the Managing Director of the Firm's Palm Beach Office and chairs the Firm's [Labor and Employment Practice Group](#). Brett is Board Certified by The Florida Bar in Labor and Employment Law and he represents public and private sector employers in a wide array of labor and employment law matters.

For his public sector clients, Brett represents employers in collective bargaining negotiations, labor impasse hearings, unfair labor practice proceedings and labor arbitrations. In the last several years, he has successfully negotiated collective bargaining agreements on behalf of the Cities of Aventura, Bal Harbour, Deerfield Beach, Hallandale Beach, Homestead, Juno Beach, Key Biscayne, Lauderdale and North Miami. Brett recently has handled labor impasse proceedings for the Cities of Deerfield Beach, Hallandale Beach and Surfside. He also has achieved significant labor arbitration victories for the Cities of Bay Harbor Islands, Boca Raton, Coconut Creek, Deerfield Beach, Golden Beach, Hallandale Beach, Homestead, Key Biscayne, Lauderdale and Miramar.

Brett has successfully represented public and private sector employers in all phases of employment litigation, up to and including trial, on matters arising under Federal, State and local employment laws such as Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), the Fair Labor Standards Act, the Family and Medical Leave Act (FMLA) and the Florida Civil Rights Act (FCRA). Brett regularly defends employers in wage and hour suits brought under the Fair Labor Standards Act (FLSA) and has successfully navigated a number of employers through Department of Labor Wage & Hour Audits.

Brett represents public and private sector employers before Federal, State and local administrative agencies such as the U.S. Equal Employment Opportunity Commission (EEOC), the National Labor Relations Board (NLRB) and the Florida Public Employee's Relations Commission (PERC). In addition, Brett regularly consults with and advises employers on a wide array of human resources issues, including personnel policies and procedures, discipline and discharge matters, drug and alcohol testing, employee privacy rights and educational and training programs for managers and supervisors, and he has worked closely with employers to ensure that their practices do not run afoul of Federal, state or local law.

Brett is certified as a Senior Professional in Human Resources (SPHR) by the HR Certification Institute and as a Senior Certified Professional by the Society for Human Resource Management. Brett regularly lectures throughout Florida on various labor and employment law and human resources matters and has been on the cutting edge with regard to the impact of the legalization of medical marijuana on Florida employers.

Prior to joining the Firm, Brett practiced labor and employment law at large national law firms in Washington DC, New York and South Florida.

Published Works

- "Bills Would Reform Government Pension Plan," *South Florida Daily Business Review*, March 29, 2011
- "How Employers Can Keep Themselves From Being You-Tubed," *Workforce Management*, May 11, 2009
- "Acting Affirmative Against Harassment," *New York Law Journal Corporate Counsel*, February 4, 2002

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Practice Areas

- Labor and Employment Law
- Labor and Employment Law Group
- Police Legal Advisement

Bar Admissions

- Florida, 2005
- New York, 1999
- District of Columbia, 2000
- U.S. District Court, Southern District of Florida, 2005
- U.S. District Court, Middle District of Florida, 2006
- U.S. District Court, Southern District of New York, 2001
- U.S. District Court, Eastern District of New York, 2002
- U.S. District Court, Western District of New York, 2003
- U.S. Court of Appeals, 11th Circuit, 2005

Education

- George Washington University Law School
JD, *cum laude*, 1999



WEISS SEROTA HELFMAN COLE & BIERMAN

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

Journal of International Law & Economics

- University of Maryland, BA, Government and Politics, *with honors*, 1996
Honors: Golden Key National Honor Society

- "Employee Privacy 2001 A Review for Employers," *Lawyer Pilot's Bar Association Journal*, Fall, 2001

Professional Associations

- Human Resource Association of Broward County, 2008 - present
 - Past-President, 2015
 - President, 2014
 - President-Elect, 2013
 - Legislative Affairs Director, 2011-2012
- The Cooperative Feeding Program, Board-member, 2010 – 2014
- Jewish Federation of South Palm Beach County, Young Adult Division, Board-member, 2012 - 2014
- University of Maryland South Florida Alumni Association, 2010 – Present
- Anti-Defamation League, Glass Leadership Institute, 2008
- Leadership Broward Foundation, Class XXIV, 2005-2006
- South Florida Touchdown Club Foundation, 2005-2006
Board Secretary

Reported Cases

- *Aristyld v. City of Lauderhill*, Case No. 13-12235 (11th Cir. Oct. 23, 2013)
- *Amunraptah v. City of Deerfield Beach*, 93 So. 3d 1040 (Fla. 4th DCA 2012)
- *East Coast Karate Studios, Inc. v. LifeStyle Martial Arts, LLC*, 65 So. 3d 1127 (Fla. 4th DCA 2011)
- *World Rentals and Sales, LLC v. Volvo Construction Equipment Rentals, Inc.*, 517 F.3d 1240 (11th Cir. 2008)
- *Goldberg v. Chong*, 2007 WL 2028792 (S.D. Fla. Jul. 11, 2007)
- *Kaptan v. Danchig*, 796 N.Y.S.2d 706 (N.Y. 2nd Dept., 2005)

Awards and Recognitions

- "AV Preeminent Rating," *Martindale-Hubbell*, 2017
- "Power Leaders in Law & Accounting," *South Florida Business Journal* 2017
- "SHRM Senior Certified Professional (SHRM-SCP)," *Society for Human Resources Management*, 2015
- Florida Bar Board Certified in Labor and Employment Law, 2013
- "Senior Professional in Human Resources (SPHR)," *Human Resources Certification Institute*, 2012
- "Florida Rising Star," *Florida SuperLawyers*, 2011-2013
- "Top Up and Comer," *South Florida Legal Guide*, 2009

Presentations

- "2018 HR Insights 2018: HR in a [#Metoo](#) World", GMCC, April 2018
- "Employer Drug Testing in the Era of Legal Medical Marijuana", 2018 Connect Business & Leadership Conference
- "Minimizing Employer Liability for Sexual Harassment Claims & Employer Drug Testing in the era of Medical Marijuana", [HFTP Gold Coast Chapter](#) Educational Breakfast
- "Medical Marijuana from the Employer's Prospective", Palm Beach County League of Cities General Membership Meeting
- "Medical Marijuana from the Municipal Employer's Perspective", 36th Annual Florida Municipal Attorneys Association Seminar
- "Medical Marijuana and Your City: Facts, Fiction and Moving



- Forward", Florida League of Cities' Center for Municipal Research & Innovation (CMRI) Summer Research Symposium
- "Drug Alert - Medical Marijuana in the Work Place", 7th Annual TSG Labor & Employment Law Conference
 - "Medical Marijuana and Your City: Facts, Fiction and Moving Forward", FLC Medical Marijuana Symposium
 - "Medical Marijuana from the Municipal Employer's Perspective", Florida Municipal Attorneys Association, July 27, 2017
 - "Overcoming the Haze of Medical Marijuana in Florida", *Human Resource Association of Broward County's Legal Seminar*, May 11, 2017
 - "New Medical Marijuana Law", *Democratic Professionals Network*
 - "Legislative Changes – Medical Marijuana," *International Public Management Association for Human Resources (South Florida Chapter)*, December 1, 2016
 - "Overtime Payment Rules & ADA Accommodations," *International Public Management Association for Human Resources (South Florida Chapter)*, September 13, 2016
 - "New Overtime Rules Mean HR Professionals Will Be Working Overtime!!!", *Human Resource Association of Broward County*, May 6, 2016
 - "What Should You Do If Something Pops Up In A Background Check That Makes You Reconsider Hiring Them," *Florida Public Human Resources Association*, May 4, 2016
 - "What You Should Know About Collective Bargaining Before You Get There," *Palm Beach Counties League of Cities Newly Elected Officials Workshop*, April 27, 2016
 - "Legal Considerations in Performance Management," *International Public Management Association for Human Resources (South Florida Chapter)*, April 5, 2016
 - "Conducting Harassment Investigations," *Florida Public Employer Labor Relations Association*, February 23, 2016
 - "Issues & Pitfalls Associated with Negotiating & Drafting Employment Contracts for Municipal Officials, what Every City Attorney Needs to Know," *Miami-Dade Commission on Ethics & Public Trust Lunch Seminar*, February 18, 2016
 - "Planning for Employees Social Gatherings," *International Public Management Association for Human Resources (South Florida Chapter)*, September 9, 2015
 - "Solving the ADA/FMLA Compliance Mystery," *Florida Public Human Resources Association*, August 4, 2015
 - "EEOC & FLSA Overview," *Florida Public Human Resources Association*, August 1, 2015
 - "What Non-Union Employers Need to Know About the NLRA," *Human Resource Association of Broward County*, May 1, 2015
 - "Medical Marijuana – Workplace Impact," *International Public Management Association for Human Resources (South Florida Chapter)*, April 7, 2015
 - "Got Wellness? Labor Relations Trouble & Legal Pitfalls," *Florida Public Employer Labor Relations Association*, February 9, 2015
 - "Newsworthy HR Caselaw," *International Public Management Association for Human Resources (South Florida Chapter)*, December 9, 2014
 - "Labor Rights and How They Impact Your Crew," *Florida Public Employer Labor Relations Association 39th Annual Training Conference*, January 29, 2013
 - "Hiring and Terminating Employees in the Current Economy," *Fundamentals of Employment Law (Sterling Education Seminar)*, November 13, 2012



- "FLSA/Wage and Hour Critical Issues," *Fundamentals of Employment Law* (Sterling Education Seminar), November 13, 2012
- "FLSA 101," *Florida Public Personnel Association Annual Conference*, July 29, 2012
- "Legal Updates," *Florida Public Personnel Association Annual Conference*, July 29, 2012
- "HR Case Update," *International Public Management Association for Human Resources (South Florida Chapter)*, June 28, 2012
- "Avoiding Liability for overtime under the FLSA," *Certipay HR Seminar*, May 15, 2012
- "HR Update," *International Public Management Association for Human Resources (South Florida Chapter)*, March 15, 2012
- "EEOC Investigations," *Florida Public Employer Labor Relations Association 38th Annual Training Conference*, February 6, 2012
- "What's Up with the Supremes and other Must-Know Legal Developments for HR Professionals," *Human Resource Association of Broward County*, October 14, 2011
- "Conducting Investigations from A to Z," *Florida Public Personnel Association Annual Conference*, July 25, 2011
- "How to Effectively Redesign Benefit Plans," *Florida Government Finance Officers' Association*, June 27, 2011
- "What Constitutes an Enforceable Past Practice," *International Public Management Association for Human Resources (South Florida Chapter)*, May 12, 2011
- "Mandatory vs. Permissive Subjects of Collective Bargaining Negotiations," *Florida Public Employer Labor Relations Association 36th Annual Training Conference*, February 9, 2010
- "Labor Relations Update," *Miami-Dade County City Manager's Association Luncheon*, November 20, 2009
- "The Specifics of Ricci v. DiStefano," *International Public Management Association for Human Resources, South Florida Regional Meeting*, August 25, 2009
- "Recent Legal Developments Affecting Florida Public Employers," *International Public Management Association for Human Resources (South Florida Chapter)*, April 28, 2009
- "What is New with Labor Law," *Miramar / Pembroke Pines HR Consortium*, April 16, 2009
- "Conducting Investigations from A to Z," *Florida Public Employer Labor Relations Association 35th Annual Training Conference*, February 3, 2009
- "Bargaining in Times of Fiscal Crisis – How to Pull a Rabbit out of an Empty Hat," *Florida Public Employer Labor Relations Association 34th Annual Training Conference*, February 5, 2008

Press Mentions

- ["Zero Tolerance: Be Proactive About Sexual Harassment Policies"](#), *Construction Today*, 2/2018
- ["Employers Reinforce Anti-Harassment Policies"](#), *Sun Sentinel*, 12/10/2017
- ["Attorney Brett Schneider Presents at Three Conferences"](#) - (1) 36th Annual Florida Municipal Attorneys Association Seminar - "Medical Marijuana from the Municipal Employer's Perspective", (2) Florida League of Cities' Center for Municipal Research & Innovation (CMRI) Summer Research Symposium - "Medical Marijuana and Your City: Facts, Fiction and Moving Forward", (3) 7th Annual TSG Labor & Employment Law Conference - "Drug Alert - Medical Marijuana in the Work Place", *Attorney At Law Magazine*, 9/1/2017
- ["Delivery Dudes expands despite growing pains"](#) *Sun Sentinel* 8/1/16



WEISS SEROTA HELFMAN
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AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

- ["New OT rules to hit Retail Hospitality Cos. hardest"](#) *Law 360* 5/19/16
- ["Will Gay Weddings Lead to Fewer Domestic Partnership Benefits?."](#) *Sun-Sentinel*, 1/22/15
- ["Medical Marijuana Could Cost Employees Their Jobs."](#) *Sun-Sentinel*, 10/30/14
- ["News and Notes,"](#) *The Florida Bar News*, 2/1/14
- ["Legal People,"](#) *Daily Business Review*, 1/16/14
- ["Weiss Serota Helfman Attorney Brett Schneider Becomes Board Certified in Labor & Employment Law,"](#) *CityBizList*, 6/19/13
- ["People on the Move,"](#) *South Florida Business Journal*, 6/19/13
- ["People,"](#) *Daily Business Review*, 1/3/13
- ["Business Monday: Movers,"](#) *Miami Herald*, 12/31/13
- ["People on the Move,"](#) *South Florida Business Journal*, 12/26/12
- ["News & Notes,"](#) *The Florida Bar News*, 10/1/11
- ["Bills Would Reform Government Pension Plans,"](#) *Daily Business Review*, 3/29/11
- ["People on the Move,"](#) *Sun-Sentinel*, 8/13/07

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County: Palm Beach

Circuit: 15

Admitted: 05/26/2005

10-Year Discipline History: None

Law School: George Washington University Law School, 1999

Board Certifications:

Area	Year
Labor and Employment Law	2013

Committees:

Committee	Office	Term
Labor and Employment Law EEOC and FEPA Liaison Committee		08/31/2018

Sections: Labor and Employment Law

State Courts: District Of Columbia, Florida, New York

Firm: Weiss Serota Helfman Cole & Bierman

Firm Size: 51 to 100

Firm Position: Partner/Shareholder

Firm Website: www.wsh-law.com



**WEISS SEROTA HELFMAN
COLE & BIERMAN**

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW



Jose L. Arango

Jose L. Arango is assigned to the Local Government Division where he focuses on code enforcement and general government law. Prior to joining the Firm, Jose served as an Assistant City Attorney with the City of Miami where he worked in the divisions of General Government, Land Use and Transactional and General Litigation. Jose's extensive experience includes drafting legislation and amendments to the city code, drafting legal opinions for city departments, drafting municipal contracts including land use agreements and professional service agreements. Jose also served as counsel for the Emergency Operations Center for the City of Miami.

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Practice Areas

- Municipal Government Law

Bar Admissions

- Florida Bar, 2007

Education

- Juris Doctorate (2006), St. Thomas University School of Law
- Bachelor of Arts (2001), Florida State University

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Circuit: 11

Admitted: 09/25/2007

10-Year Discipline History: None

Committees:

Committee	Office	Term
11th Judicial Circuit Grievance Comm "E"	Attorney Member	10/31/2019

Sections: City, County & Local Govt Law
Firm: Weiss Serota Helfman Cole & Bierman P.L.



Kathryn M. Mehaffey

Kathy represents municipalities and works directly with planning directors, city managers and elected officials on land use, planning, zoning and general municipal matters. Her practice is focused on developing and applying land use and zoning tools to help local governments effectively and efficiently manage development and long range planning issues.

Kathy is experienced in drafting and reviewing land development regulations addressing routine zoning issues, such as conditional uses, procedures, development standards, nonconformities, and variances, as well as sensitive, constitutionally protected land uses such as signs, adult uses, and religious uses. She has researched, developed documentation and legislative backgrounds necessary to create defensible First Amendment regulations providing protections for local governments and residents while preserving constitutional rights.

In addition, Kathy works closely with local government elected officials and staff to implement their local codes effectively, consistently and cost efficiently. She has drafted and assisted with the implementation of transportation and school concurrency programs, as well as numerous development approval procedures and requests.

Prior to joining us, Kathy worked as a litigator handling pre-trial matters and appeals. Her efforts included the successful appeal of an illegal insurance practice charge to the Fourth District Court of Appeal and a successful contract award including fees on a motion for summary judgment.

Kathy has also worked as a municipal planner in Texas and Florida developing and implementing comprehensive plans and neighborhood plans to encourage and guide redevelopment in deteriorating and mixed use neighborhoods. She developed a neighborhood traffic program to address cut through and high speed traffic issues in residential neighborhoods which lacked traditional zoning and land use protections and helped create the neighborhood planning program in Houston, Texas. As a planner, she has also worked on intergovernmental coordination and consistency teams and with State agencies and local boards and agencies to address the development, adoption and approval of comprehensive plans, comprehensive plan amendments, rezonings and land development regulations.

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Practice Areas

- Land Use and Zoning (Public)
- Land Use and Zoning Group (Public)

Bar Admissions

- Florida, 2007
- U.S. District Court, Southern District of Florida, 2007

Education

- Nova Southeastern University, Shepard Broad Law Center JD, 2006
- Iowa State University BS, Community and Regional Planning, 1984

Professional/Civic Activities

- Environmental and Land Use Law Section of The Florida Bar
- American Planning Association
- Florida Chapter of the American Planning Association
- School Board, Our Savior Lutheran School
- P.E.O. Sisterhood

Presentations

- "Medical Marijuana", 2017 Florida Association of Counties Annual Conference, 6/29/2017
- *Planning for Medical Marijuana: Is Florida Ready*, presented at the 2014 Florida Planning & Zoning Association

Kathryn Marie Mehaffey

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County: Broward

Circuit: 17

Admitted: 03/23/2007

10-Year Discipline History: None

Law School: Nova Southeastern University - Shepard Broad Law Center, 2006

Sections: Environmental & Land Use Law

Practice Areas: Zoning, Planning and Land Use

Federal Courts: U.S. District Court, Southern District of Florida

State Courts: Florida

Firm: Weiss Serota Helfman Cole & Bierman

Firm Size: 51 to 100

Firm Position: Partner

Firm Website: www.wsh-law.com



Ashley Daniels

Ashley is an Associate in the firm's Municipal Government Law practice and represents municipalities on a breadth of issues including ethics, Sunshine and public records law. Ashley previously represented local governments in the Florida panhandle at a general practice Tallahassee law firm where she provided counseling on internal personnel matters and represented these entities in employment litigation disputes. Additionally, Ashley advised several local governments in general municipal law.

In addition to her municipal experience, Ashley has represented private and government clients in utility regulation, transactional, health law, and commercial litigation matters.

A Miami native, Ashley received a Bachelor of Arts in Economics with minors in African Studies and International Humanitarian Assistance from the University of Florida and is a graduate of the University of Michigan Law School. In law school, Ashley served as a legal fellow at the World Health Organization (WHO) in Geneva, Switzerland, where she advised the general assembly on procedural matters and the admission requirements of new member states to the international organization. During law school Ashley also received both the Alden J. "Butch" Carpenter Memorial Scholarship and Jenny Runkles Award, for her contributions to the student body.

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Practice Areas

- Municipal Government Law

Bar Admissions

- State of Florida
- United States District Court for the Northern District of Florida

Education

- University of Michigan Law School
JD, 2011
- Honors: Dean Academic Scholarship (2008-2011); Alden J. "Butch" Carpenter Memorial Scholarship; Jenny Runkles Award
- University of Florida, B.A., Cum Laude, in Economics; minors in African Studies and International Humanitarian Assistance, 2008
- Honors: Presidential Scholar (2004-2008); Golden Key Honor Society; J. Wayne Reitz Scholar

Ashley Michelle Daniels

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County: Miami-Dade

Circuit: 11

Admitted: 05/08/2012

Young Lawyers Division: Member

10-Year Discipline History: None

Law School: University of Michigan Law School, 2011

Sections: Young Lawyers, City, County & Local Govt Law, Labor and
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Firm: Weiss Serota Helfman Cole & Bierman

Firm Size: 51 to 100

Firm Position: Associate

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Ashley Daniels
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7

RELATED EXPERIENCE AND REFERENCES

1. REFERENCES

2. WRITING SAMPLES

PROFESSIONAL REFERENCES

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RECEIVED, 11/1/2017 9:35 AM, Mary Cay Blanks, Third District Court of Appeal

IN THE THIRD DISTRICT COURT OF APPEAL
STATE OF FLORIDA

CASE No. 3D17-1144
L.T. CASE No. 17-3330 CA 01

LYNNE BLOCH MULLEN, BETH BERKOWITZ and
GOOD GOVERNMENT FOR BAL HARBOUR,

Appellants,

v.

BAL HARBOUR VILLAGE and DWIGHT DANIE, in his official capacity as
Village Clerk,

Appellees.

ANSWER BRIEF
OF BAL HARBOUR VILLAGE AND VILLAGE CLERK DWIGHT DANIE

ON APPEAL FROM A NON-FINAL ORDER ENTERED IN THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

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Counsel for Bal Harbour Village

WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.

ABBREVIATIONS USED IN BRIEF

References to the appellants, Lynne Bloch Mullen, Beth Berkowitz and Good Government for Bal Harbour, will appear as “Appellants.”

References to the record on appeal will appear as “R.”

References to the supplemental appendix filed by Appellants will appear as “Supp. Ap.”

References to the initial brief will appear as “IB.”

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INTRODUCTION

While the initial brief relies on rhetoric and makes sweeping invocations of democratic principles, it is short on substance and lacks grounding in an evidentiary record that would support the granting of an injunction. As such, the trial court's denial of injunctive relief should be affirmed.

STATEMENT OF THE CASE AND FACTS

A. The commencement of the action.

Appellants commenced this action on February 13, 2017, when they filed a complaint against appellee, Bal Harbour Village ("Village"), seeking declaratory, injunctive and mandamus relief.¹ R. 7-22. Although Appellants included a request for temporary injunctive relief in the complaint (R. 7), no hearing was held on a temporary injunction. Appellants later sought permanent mandatory injunctive relief. R. 61-96.

In their complaint, Appellants alleged they were entitled to relief because they had submitted two petitions to the Village Clerk, which purported to amend section 81 of the Village Charter and to create a new section 82 to the Village Charter. R. 10. The complaint alleged that these two petitions – hereafter, the Section 81 and Section 82 Petitions – met the requirements of section 166.031,

¹ Inasmuch as Appellants presented virtually no evidence in support of their request for either temporary or permanent mandatory injunctive relief, many of the facts set forth here are derived from Appellants' *allegations*. The only sworn evidence Appellants submitted in support of their motion for permanent mandatory injunction (R. 61-69) consisted of the sworn interrogatory responses of the Village Clerk, Dwight Danie. R. 87-96.

Florida Statutes, because they contained the requisite signatures of 10 percent of the registered voters in the Village. R. 10.

Section 166.031, Florida Statutes – on which Appellants rely exclusively – reads, in pertinent part, as follows:

(1) The ... electors of a municipality may, by petition signed by 10 percent of the registered electors as of the last preceding municipal general election, submit to the electors of said municipality a proposed amendment to its charter, which amendment may be to any part or to all of said charter except that part describing the boundaries of such municipality. The governing body of the municipality *shall place the proposed amendment contained in the ordinance or petition to a vote of the electors* at the next general election held within the municipality or at a special election called for such purpose.

(2) Upon adoption of an amendment to the charter of a municipality by a majority of the electors voting in a referendum upon such amendment, the governing body of said municipality shall have the amendment incorporated into the charter and shall file the revised charter with the Department of State. All such amendments are effective on the date specified therein or as otherwise provided in the charter.

§§ 166.013(1) & (2), Fla. Stat. (emphasis added).

Attached as Exhibit C to the complaint was a purported “group affidavit,” signed by a number of individuals alleged to have been involved in the effort to collect signatures for the two petitions. R. 22. The complaint explains that this “affidavit” was submitted to the Village on January 27, 2017, to address the Village Clerk’s concerns about how the signatures for the petitions had been

collected. R. 12 (describing the collection method as “not circulated in the traditional manner”).²

The “affidavit” is not notarized; nor is there any indication that the signatures on the “affidavit” were, in fact, those of the individuals listed.³ The “affidavit” reflects that the individuals involved had virtually no control over the signing of the petitions. The petitions “were not circulated,” but rather were “handed to voters,” who *later* signed and returned them either in person or by mail. R. 22. There is no indication how the signatories to this “affidavit” knew that the persons being handed the petitions were “voters” or that the signatures that were returned were actually the signatures of *registered* electors, as required by section 166.031.

Inexplicably, the “affidavit” goes on to state: “We the undersigned *believe* the signatures on the petitions to be the genuine signatures of the persons whose

² In the trial court, Appellants’ insisted that section 166.031 created a “ministerial duty” on the part of the Village Clerk “to immediately turn over the petitions to the Miami-Dade Elections Department for certification.” R. 54. Section 166.031, however, does not expressly address on its face how the Village Clerk is to process the petitions once received.

³ In every affidavit containing sworn testimony, there is a jurat section in which a notary attests to the identity of the individuals signing in her or his presence. *See, e.g.*, §§ 92.50, Fla. Stat. (setting forth the requirements for affidavits and stating that “[t]he jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of such officer or person taking or administering the same[.]”); 117.05(4) and (5), Fla. Stat. (setting forth the requirements for a jurat and notarizing a signature) Appellants’ “affidavit” lacks this critical component.

names they purport to be as they were either returned in person or were mailed back by the same Bal Harbour voter to which they were *mailed* to.” R. 22 (emphasis added). No explanation is given as to how the petitions previously described in the “affidavit” as having supposedly been “handed to voters” suddenly became petitions that “were mailed to” the voters.⁴

B. The nature of the petitions and the Village Clerk’s review.

According to the complaint, the Section 81 Petition ostensibly proposed to amend section 81 of the Village Charter so that it would read as follows:

Sec. 81. - Sale lease or disposal of any real property owned by the Village.

Commencing on November 1, 2016, the Village shall not sell, lease or otherwise dispose of any real property owned by the Village, unless the Village council determines that said sale, lease or disposal is in the best interest of the Village and such sale, lease or disposal is approved by a majority vote of at least sixty (60) percent of the Village electors voting on such proposed sale, lease or disposal.

R. 19.

The complaint further alleged that the Section 82 Petition sought to include a new section 82 in the Village Charter to read as follows:

Sec. 82. - Large scale commercial expansion.

⁴ Had the signatures been collected in the “traditional” manner, with the individual collecting the signatures asking for identification of the signatories and observing the actual signatures, the Village Clerk might have had fewer concerns.

Any proposed development plan for an existing commercial property that increases the existing commercial retail space by more than thirty (30) percent of the current amount of retail space, must be submitted for approval to the electors in Bal Harbour Village and approved by a vote of at least sixty (60) percent of the Village electors voting on such referendum.

R. 20.

When the Village Clerk reviewed the petitions that had been submitted, he noticed a number of discrepancies. The Village Clerk explained in his sworn interrogatory responses:

On the petition for Charter Section 81 there were 250 signatures instead of 248 as stated on the petition cover letter submitted by Mr. Planas, and on Charter Section 82 there were 241 signatures instead of 239. During the counting I noticed that each petition had two formats, a single signature page, and a multi-signature page, and that the petition language for the Charter Section 82 differed, one version saying “Any proposed development order...” and another version saying “Any proposed development plan...” I also noticed that none of the pages contained an Affidavit of Circulator.

R. 129-30.⁵ As the Village Clerk would later explain to Appellants regarding his concerns about the signatures:

To illustrate, *Attachment 2* is a sample of copies from the petitions originally submitted for Charter Section 82. They clearly show how

⁵ Much of the initial brief is dedicated to protesting the Village Clerk’s request for an affidavit of circulator. IB at 3, 4, 5, 6, 9-12, 13. This is a red herring. At no time in the trial court did the Village argue that the absence of a circulator’s affidavit constituted a legal basis for invalidating either petition. The same is true now on appeal. The factual background on the subject is provided merely to provide context to the Village Clerk’s comments to Appellants.

the lack of control over a petition process can lead to questionable outcomes. As you can see, Mr. Daniel Holder of 24 Bal Bay Drive signed the petition four (4) times, and his wife, Amanda Holder, signed the same petition three (times). Additionally, they both signed the petition for Section 81 the same number of times.

In Florida Election law, to knowingly sign a petition more than once violates Florida Statutes 104.185 and is considered a misdemeanor. There [are] at least a dozen ... similar instances in the petitions submitted for both Charter sections, that put the good residents of Bal Harbour in similar awkward positions of having to explain whether or not they knew what they were doing.

R. 83-84.

C. The relief sought.

The complaint contains what appear to be two counts: one seeking declaratory relief, coupled with a request for mandatory injunction (R. 13-14); and the other seeking mandamus relief (R. 14).⁶ There is a single prayer for relief asking that the trial court (i) affirmatively declare “that the petitions submitted by the [Appellants] met the requirements of the Florida Statutes regarding petitions for Charter Amendments within municipalities”; (ii) require the Village Clerk “to submit the petitions to the Elections Department for verification of the signatures of the voters that signed them”; and (iii) order and enjoin “the clerk from destroying any petition and ensuring that they are secure and not tampered with in

⁶ On July 5, 2017, this Court granted in part the Village’s motion to dismiss the appeal for lack of jurisdiction with respect to the trial court’s denial of declaratory and mandamus relief, but allowed the appeal to proceed with respect to the denial of Appellants’ request for injunctive relief.

Village Hall.” R. 15. Neither the counts nor the prayer for relief differentiates between the two petitions in terms of the relief sought.

Appellants also submitted along with the complaint an emergency motion for temporary injunction. R. 23-26. The motion, however, merely sought that the Village Clerk be required to preserve the petitions. R. 26. The Village agreed to entry of an order requiring the Village Clerk to preserve the petitions. R. 34.

D. The Village’s response to the complaint.

The Village moved to dismiss the complaint.⁷ R. 45-52. In its motion, the Village explained that the two petitions were motivated by a desire to thwart the expansion of the Bal Harbour Shops, an upscale commercial retail complex located in the Village, for which proposed development plans had already been submitted. R. 45. The motion also pointed out that the Section 82 Petition

creates an obligation for the Village to require voter approval of certain development approvals, a requirement which is specifically prohibited under Florida law. Accordingly, Plaintiffs lack a clear legal right to amend the Village Charter, and the Complaint must be summarily dismissed. Furthermore, the relief sought through the proposed charter amendments would alter landowner rights and the Village’s statutory and caselaw-driven process for development order review.

⁷ Since the Village Clerk was sued in his official capacity, for purposes of this answer brief, the Village and Village Clerk should be considered one and the same. *De Armas v. Ross*, 680 So. 2d 1130 (Fla. 3d DCA 1996). References to the Village, therefore, should be read to include the Village Clerk, except where the context requires otherwise.

R. 46. The motion to dismiss also alerted Appellants to their failure to differentiate between the two petitions in terms of the relief sought. R. 46.

Finally, the Village's motion to dismiss advanced its primary substantive argument that the Section 82 Petition was explicitly prohibited by section 163.3167(8), Florida Statutes. R. 48-50. The Village noted that section 163.3167(8) provides, in pertinent part, as follows:

(a) *An initiative or referendum process in regard to any development order is prohibited.*

* * *

(c) *It is the intent of the Legislature that initiative and referendum be prohibited in regard to any development order. ... Therefore, the prohibition on initiative and referendum stated in paragraph[] (a) ... applies ... to any initiative or referendum process commenced after June 1, 2011, and any such initiative or referendum process commenced or completed thereafter is deemed null and void and of no legal force and effect.*

R. 50-51 (emphasis added).

Appellants filed a response to the Village's motion. R. 53-56. In their response, Appellants first raised a contention they continue to advance on appeal. They argued that, despite their prayer for relief asking the trial court to declare "that the petitions submitted by the [Appellants] *met the requirements of the Florida Statutes regarding petitions for Charter Amendments within municipalities*" (R. 15; emphasis added), the Village was nonetheless obligated to file a separate declaratory judgment action, after the fact, in order to have the Section 82 Petition declared unlawful. R. 55 ("If the Defendants have an issue

with the legality of one of the petitions, they can sue for declaratory relief AFTER, the Elections Department certifies the signatures but not before.”) (emphasis original).

The trial court denied the motion to dismiss (R. 59), and the Village filed its answer and affirmative defenses to the complaint on April 17, 2017. R. 137-45. At the heart of the Village’s various affirmative defenses were two legal points. First, the Section 82 Petition is expressly prohibited by section 163.3167(8), Florida Statutes; and second, allowing development approvals to be decided by “neighborhoodism,” rather than the quasi-judicial processes long recognized by Florida law, would effectively deny due process to property owners. R. 141-44.

E. Appellants’ motion for permanent injunction and hearing.

On April 13, 2017, Appellants moved, in relevant part, for *permanent* mandatory injunctive relief. R. 61-96. The Village filed its response in opposition (R. 167-85), and Appellants filed a brief reply. R. 186-90. In its response, the Village made the following acknowledgment:

To date Plaintiffs have insisted that the two Petitions be treated and considered together. To the extent that Plaintiffs are now willing to separate the two Petitions and treat them individually, Defendants agree that the Section 81 Petition can be properly forwarded to the Miami-Dade County Elections Department for its consideration and potential placement on a ballot. If Plaintiffs continue to insist that the Petitions be treated together, then they both fail as a result of the illegality of the Section 82 Petition (as set forth below).

R. 169. Notwithstanding the Village's acknowledgment, Appellants' reply ignored the Village's invitation to amend the complaint and separate the petitions.⁸ R. 186-90.

On May 3, 2017, the trial court held a hearing on Appellants' motion. Supp. Ap. 37-60.⁹ At the hearing, Appellants, as the movants seeking affirmative relief, presented no witnesses and moved no documents into evidence. Not even a proffer was made as to the essential elements of an injunction. The Village noted this lack of evidence as an independent basis to deny the requested injunctive relief. Supp. Ap. 46. Instead, the hearing consisted solely of the argument of counsel and counsel's assertions as to how "obvious" the entitlement to injunctive relief was:

We can go through the motions of injunction. There is *obviously* a likelihood of success on the merits, especially, since the clerk admitted that there is no statute in the Charter or in the statute [sic]. It is *obviously* in the public interest. As you can see, we have people who signed the petition here, *who believe there should be an affirmative injunction issued*. There really is no prejudice to the city, at all, or the Village, at all, because, again, it would go to the council. *So if there is any sort of illegality, they have the ability to pull the reins, themselves, at the proper time.*

⁸ The same invitation was ignored during the March 27, 2017 hearing on the Village's motion to dismiss. Supp. Ap. 8. Eventually, at the hearing on the motion for permanent injunction, Appellants' counsel indicated they were independent petitions, but did not move for leave to amend the complaint to separate the counts. *Id.* at 56. As a result, the separate deficiencies of the Section 82 Petition remained intertwined with the Section 81 Petition claims.

⁹ Since the transcript of the hearing was not included in the record on appeal, Appellants included it in their supplemental appendix. References to the transcript will track the pagination of the supplemental appendix.

Id. at 43-44 (emphasis added).

The trial court pressed Appellants to explain what evidence they had to support their request, since they had filed no affidavits. *Id.* at 53. Appellants responded that Ms. Bloch Mullen was present and could testify “as to the factual basis of what the clerk told her of why he was denying the petitions.” *Id.* at 54. No other proffer of evidence was made regarding the essential components of Appellants’ claim of entitlement to relief.

As the trial court noted in its order denying injunctive relief (R. 213), Appellants conceded they did not know whether their petitions contained the requisite number of valid signatures. *See* Supp. Ap. 42 (“We don’t even know if there’s 10 percent of the signatures[.]”). Appellants also seemed to concede that it was entirely proper for the Village to refuse to place a referendum on the ballot if the referendum was unlawful, but insisted that the *only* mechanism for raising that illegality was by a separate declaratory judgment action brought by the Village. Supp. Ap. 41-42.

The Village responded to this argument by pointing out, first, that it was *Appellants* who had affirmatively requested in their complaint that the trial court declare the petitions to be in compliance with Florida law – not just with a specific statutory provision, but with all Florida Statutes governing municipal referenda. *Id.* at 45; *see also* R. 9 (asking trial court to declare “that the petitions submitted by the Plaintiffs met the requirements of the Florida Statutes regarding petitions for Charter Amendments within municipalities.”). The Village then explained to the

trial court that section 163.3167(8), Florida Statutes, constituted one such statutory requirement governing referenda, and that that statutory provision expressly prohibits referenda relating to development orders.¹⁰ Supp. Ap. 47-49. Finally, the Village next argued that section 166.031 compelled the Village to place the referendum petition on the ballot if it met the criteria, and therefore, there was no intermediate step that allowed for the Village to “pull the reins.” Supp. Ap. 58.

F. The trial court’s ruling.

On May 5, 2017, the trial court entered the order on appeal, denying Appellants’ request for a permanent mandatory injunction.¹¹ The trial court based its ruling on the following:

1. Appellants failed to present any evidence to establish that their petitions qualified under section 166.031, Florida Statutes. R. 206.
2. Appellants failed to rebut the Village’s affirmative defenses. *Id.*
3. The Section 82 Petition violates section 163.3167(8), Florida Statutes, in that it attempts to present a referendum addressing development orders. R. 206-07.
4. Because Appellants sought a declaration from the trial court that their petitions complied with all Florida statutes governing

¹⁰ These arguments are more fully elaborated later in this brief.

¹¹ The trial court’s order also addressed Appellants’ requests for declaratory and mandamus relief, but those aspects of the order are not jurisdictionally before the Court. In the record on appeal, page 5 of the trial court’s order is blank (R. 207). However, it is undisputed what that page contains. A copy of the entire order is included in the Village’s appendix for ease of reference by the Court.

municipal referenda, the legality of the Section 82 Petition was properly before the trial court. R. 208.

5. Because section 166.031 mandates that the Village hold an election on the Section 82 Petition if the signatures are verified, thus resulting in an illegal petition being submitted to the voters, it became necessary for the trial court to consider the ultimate legality of the petition. R. 208.

Appellants thereafter timely appealed the trial court's non-final order. As previously noted, upon the Village's motion to dismiss the appeal for lack of jurisdiction, this Court allowed the appeal to proceed, but only as to the request for injunctive relief.

SUMMARY OF ARGUMENT

The trial court correctly denied Appellants' request for injunctive relief for multiple reasons. First, and most conspicuously, Appellants failed to present *any* evidence in support of the criteria needed to obtain injunctive relief. While Appellants assert in conclusory fashion in their initial brief that there was sufficient evidence to support an injunction (IB at 7), they cite to no record evidence to substantiate their assertion. This is undoubtedly because no evidence was presented to substantiate Appellants' claims that their petitions qualified for mandatory injunctive relief. Appellants did not even insist on an evidentiary hearing, either when they filed their motion for injunctive relief or during the hearing on the motion. It was Appellants' burden to come forward with evidence to justify entry of an injunction. As the trial court correctly observed in its order, Appellants failed to meet their evidentiary burden; and on this basis alone, the Court should affirm the denial of injunctive relief.

Second, it was Appellants' burden, in requesting mandatory injunctive relief, to demonstrate that they had a clear legal entitlement to such relief. In attempting to initiate a referendum to create a new section 82 to the Village Charter, Appellants were attempting to accomplish something specifically *prohibited* by Florida statute. While Appellants would have this Court believe that the only statutory provision relevant to the charter referendum process is section 166.031, Florida Statutes, that is simply not the case. Section 163.3167(8), Florida Statutes – a provision inexplicably ignored in the initial brief given that it was argued at length below – presents a threshold barrier to commencement of any referendum initiative the ultimate objective of which is to control how development orders are approved. The general charter revision mechanism set forth in section 166.031, which constitutes the sole basis for Appellants' claim for relief, is insufficient to compel the Village to submit to its residents an unlawful referendum, when section 163.3167(8) makes the *entire* referendum *process* unlawful. Florida law is clear that an injunction cannot issue to compel the performance of something that is contrary to law. Appellants never argued below – and even now, still do not argue – how the Section 82 Petition could ever be deemed lawful under section 163.3167(8).

Finally, with respect to the Section 81 Petition, the Village gave Appellants multiple opportunities before the trial court to disassociate that petition from the Section 82 Petition. Despite these opportunities, Appellants never sought leave to amend their complaint to consider the two petitions separately and enter relief

solely as to the Section 81 Petition. Had they done so, *and had they presented evidence* to substantiate their claim that they had presented a qualifying petition to the Village – rather than rely on their mere assertions to that effect – the Village would have acknowledged that the Section 81 Petition should be submitted to the County Supervisor of Elections.

ARGUMENT

I. STANDARD OF REVIEW.

Ordinarily, this Court reviews trial court decisions granting or denying injunctive relief for abuse of discretion. *Miranda v. Pacheco Entertainment Prod. Enterprises, Inc.*, 220 So. 3d 523, 527 (Fla. 3d DCA 2017) (citing *Simonik v. Patterson*, 752 So. 2d 692, 692-93 (Fla. 3d DCA 2000)). The Court, however, reviews *de novo* a trial court’s interpretation of statutes in connection with issuing or denying an injunction. *Telemundo Media, LLC v. Mintz*, 194 So. 3d 434, 435 (Fla. 3d DCA 2016) (citing *City of Miami Beach v. Kuoni Destination Mgmt., Inc.*, 81 So. 3d 530, 532 (Fla. 3d DCA 2012)).

The general rule is that mandatory injunctions “should be granted only in ‘rare cases where the right is clear and free from reasonable doubt.’” *Bull Motors, LLC v. Brown*, 152 So. 3d 32 (Fla. 3d DCA 2014) (citing *Spradley v. Old Harmony Baptist Church*, 721 So. 2d 735, 737 (Fla. 1st DCA 1998) (quoting *Am. Fire & Cas. Co. v. Rader*, 36 So. 2d 270, 271 (Fla. 1948)); *see also Blue Earth Solutions v. Fla. Consolidated Props., LLC*, 113 So. 3d 991, 992 (Fla. 5th DCA 2013) (“A

mandatory injunction should be issued in only the rarest of circumstances where the rights are clear and certain.”).

A permanent injunction – which Appellants sought in the final hearing below – is granted only upon a showing of a clear legal right to the relief requested. *Liberty Counsel v. Florida Bar Bd. of Governors*, 12 So. 3d 183, 186 n. 7 (Fla. 2009) (“To obtain a permanent injunction, the petitioner must ‘establish a clear legal right, an inadequate remedy at law and that irreparable harm will arise absent injunctive relief.’”)

II. BECAUSE APPELLANTS FAILED TO PRESENT ANY EVIDENCE TO SUPPORT THE CRITERIA FOR INJUNCTIVE RELIEF, THE TRIAL COURT’S DENIAL SHOULD BE AFFIRMED.

It is axiomatic under Florida law that a party seeking injunctive relief must present competent substantial evidence to support each component of the injunction test. *See, e.g., Concerned Citizens for Judicial Fairness, Inc. v. Yacucci*, 162 So. 3d 68, 72 (Fla. 4th DCA 2014) (denying injunctive relief where party “offered no evidence to support the injunction, only the unsworn argument of counsel” and noting that such argument does not constitute evidence); *SunTrust Banks, Inc. v Cauthon & McGuigan, PLC*, 78 So. 3d 709, 711 (Fla. 1st DCA 2012) (explaining that the party seeking injunctive relief “has the burden of providing competent, substantial evidence satisfying each” of the four elements). This Court in *Chevaldina v. R.K./FL Mgm’t, Inc.*, 133 So. 3d 1086 (Fla. 3d DCA 2014), reversed an injunction because the record failed to reveal evidence as to a critical

component of the claim. *Id.* at 1090. The Court reached this conclusion even though actual testimony had been taken at the injunction hearing, finding that the remainder of the “evidence” fell “woefully short of competent, substantial evidence.” *Id.* at 1090-91. *See also Planned Parenthood of Greater Orlando, Inc. v. MMB Props.*, 211 So. 3d 918, 929 (Fla. 2017) (vacating temporary injunction where the party seeking the injunction failed to establish by competent substantial evidence a substantial likelihood of success on the merits).

In this case, Appellants presented no evidence whatsoever to substantiate their entitlement to injunctive relief.¹² No witness was called and no affidavit was submitted. No documents were admitted in evidence, and the complaint and motion for injunctive relief were unsworn. And while Appellants informed the trial court of Ms. Bloch Mullen’s presence at the hearing and her willingness to testify regarding what the Village Clerk told her, Appellants did not actually call her to testify. Moreover, to the extent Appellants’ announcement of Ms. Bloch Mullen’s presence could be construed as a proffer, it related *solely* to the statements of the Village Clerk, rather than the components of Appellants’ entitlement to injunctive relief under section 166.031.

¹² The trial court’s decision to treat Appellants’ motion as a motion for summary judgment, therefore, was appropriate; and the denial was justified because if the defendant “can conclusively establish that the plaintiff will be unable to prove an essential element for this relief at trial, then the trial court has the authority to deny the mandatory injunction at summary judgment as a matter of law.” *Shaw v. Tampa Elec. Co.*, 949 So. 2d 1066, 1069 (Fla. 2d DCA 2007).

The trial court alluded to this shortcoming in its order denying relief. The trial court observed:

Plaintiffs have not submitted any affidavits or sworn testimony in support of their Motion that the Petitions contain the required 10% of the Village's voters (as required by section 166.031, Florida Statutes). In fact, Plaintiffs' counsel, on the record, stipulated that they do not even know if they have even met this mandatory threshold for either petition.

R. 206. *See Chevaldina*, 133 So. 3d at 1090 (rejecting injunction because of lack of competent substantial evidence as to component of underlying claim). The record confirms the trial court's conclusions, as does Appellants' initial brief, which cites to no record evidence at all.¹³

In the absence of any competent substantial evidence to support the components of a valid injunction – particularly a mandatory injunction that is disfavored, *Bull Motors*, 152 So. 3d at 35 – the trial court's decision should be summarily affirmed.

¹³ Even absent the trial court's findings, this Court may affirm the denial of injunctive relief under any theory that is supported by the trial court record. *State Farm & Cas. Co. v. Levine*, 837 So. 2d 363, 365 (Fla. 2002) (holding that a trial court order reaching the right result with erroneous or incomplete reasoning can be affirmed under the "tipsy coachman" doctrine so long as the alternative ruling is supported by the record before the trial court); *CT Miami, LLC v. Samsung Elec. Latinoamerica Miami, Inc.*, 201 So. 3d 85, 93 (Fla. 3d DCA 2015) (same holding).

III. THE SECTION 82 PETITION IS BARRED BY SECTION 163.3167(8), FLORIDA STATUTES, AND AN INJUNCTION CANNOT ISSUE TO COMPEL THE PERFORMANCE OF SOMETHING UNLAWFUL.

As this Court observed in *Bull Motors*, mandatory injunctions “should be granted only in ‘rare cases where the right is *clear and free from reasonable doubt.*’” 152 So. 3d at 35 (emphasis added; citing *Spradley v. Old Harmony Baptist Church*, 721 So. 2d 735, 737 (Fla. 1st DCA 1998) (quoting *Am. Fire & Cas. Co. v. Rader*, 36 So. 2d 270, 271 (Fla. 1948)); see also *Blue Earth Solutions v. Fla. Consolidated Props., LLC*, 113 So. 3d 991, 992 (Fla. 5th DCA 2013) (“A mandatory injunction should be issued in only the rarest of circumstances where the rights are clear and certain.”). In fact, even a temporary injunction may be dissolved if it “is illegal in its nature.” *Sunplus Credit, Inc. v. Office of Att’y Gen., Dep’t of Legal Affairs*, 752 So. 2d 1225, 1226 (Fla. 4th DCA 2000).

These holdings are consistent with the general rule governing permanent injunctions – which is the relief Appellants sought in their April 13 motion. “A mandatory injunction is proper where *a clear legal right* has been violated, irreparable harm has been threatened, and there is a lack of an adequate remedy at law.” *Shaw*, 949 So. 2d at 1069 (emphasis added); see also *Liberty Counsel*, 12 So. 3d at 186 n. 7 (quoting *K.W. Brown & Co. v. McCutchen*, 819 So. 2d 977, 979 (Fla. 4th DCA 2002)).¹⁴

¹⁴ Even if analyzed under the standard for a temporary injunction, the trial court’s decision should be affirmed since Appellants could not demonstrate a substantial likelihood of success on the merits or that entry of an injunction (continued . . .)

A. Section 163.3167(8) precludes the Section 82 Petition.

It is apparent from Appellants' motion and the wording of the Section 82 Petition that the petition seeks to take the decision on proposed development orders out of the hands of the Village Council, in quasi-judicial proceedings, and put it into the hands of the Village residents speaking through the ballot box. This, however, is directly contrary to Florida law, which specifically states: "An initiative or *referendum* process in regard to *any development order* is prohibited." § 163.3167(8)(a), Fla. Stat. (emphasis added). This same prohibition is echoed in section 163.3167(8)(c), which states, in pertinent part:

It is the intent of the Legislature that initiative and referendum be prohibited in regard to any development order. ... Therefore, the prohibition on initiative and referendum stated in paragraph[] (a) ... is remedial in nature and applies retroactively to any initiative or referendum process commenced after June 1, 2011, and any such initiative or referendum process commenced or completed thereafter is deemed null and void and of no legal force and effect.

§ 163.3167(8)(c), Fla. Stat.

The term "development order" is defined in section 163.3164(15), Florida Statutes, as "any order granting, denying, or granting with conditions an application for a development permit." "Development permit," in turn, is defined in section 163.3164(16) as "any building permit, zoning permit, subdivision

(... continued)

would not result in a disservice to the public interest by allowing an illegal referendum. *Telemundo Media, LLC v. Mintz*, 194 So. 3d 434, 435-36 (Fla. 3d DCA 2016).

approval, rezoning, certification, special exception, variance, *or any other official action of local government having the effect of permitting the development of land.*” (emphasis added).

In *Archstone Palmetto Park, LLC v. Kennedy*, 132 So. 3d 347 (Fla. 4th DCA 2014), the Fourth District considered the statutory language at issue here. In doing so, the *Archstone* court determined that the legislative intent behind section 163.3167(8) was to limit the referendum process and specifically prohibit any referenda relating to development orders. *Id.* at 352. As a result, the Court held that section 163.3167(8) serves “to bar referendum for development orders unless exempted by specific [local] authorization that existed before June 1, 2011.”¹⁵ *Id.* at 353. The Fourth District also had occasion in *Preserve Palm Beach Political Action Committee v. Town of Palm Beach*, 50 So. 3d 1176 (Fla. 4th DCA 2010), to consider the predecessor language to section 163.3167(8). Anticipating the invocation of democratic principles by Appellants here, the Fourth District considered the 2009 version of section 163.3167(12), Florida Statutes, which contained the same prohibition on development order referenda. *Id.* at 1178 (noting statutory language: “An initiative or referendum process in regard to any development order ... is prohibited.”). The court went on to conclude:

The right of the people to vote on issues they are entitled to vote on is one of utmost importance in our democratic system of government.

¹⁵ Appellants have not asserted, nor could they, that any authorization existed before June 1, 2011, to allow for placement on the ballot of a referendum on a development order.

But there are issues – such as the right of a small landowner to use his property subject only to government regulations – which should not be determined by popular vote. Section 163.3167(12) rightfully protects the small landowner from having to submit her development plans to the general public and ensures that those plans will be approved or not, instead, by the elected officials of the municipality in a quasi-judicial process.

Id. at 1179.

The Fifth District Court of Appeal reached a similar decision interpreting section 163.3167(12) in *Town of Ponce Inlet v. Pacetta, LLC*, 63 So. 3d 840 (Fla. 5th DCA 2011). In that case, town residents had by referendum petition sought to transform the land use restrictions already associated with the defendant’s property into immutable charter provisions. *Id.* at 840. Then-Judge Lawson, writing for the court, noted that the statutory prohibition in section 163.3167(12) rendered the referendum invalid. *Id.* at 842.

In the trial court and again on appeal, Appellants rely exclusively on section 166.031, Florida Statutes, to support their entitlement to an injunction. The general procedure in section 166.031 for amending charters cannot overcome the more specific language of section 163.3167(8) prohibiting all referenda on development orders. *See Archstone*, 132 So. 3d at 352. As the Fourth District correctly observed, “In Florida, the availability of the referendum is constrained to those situations where ‘the people through their legislative bodies decide it should be used.’” *Id.* at 350 (quoting *Fla. Land Co. v. City of Winter Springs*, 427 So. 2d 170, 172–73 (Fla. 1983)).

The plain language of section 163.3167(8) provides that a referendum on a development order is prohibited and that any “initiative or referendum process commenced or completed [after June 1, 2011] is deemed null and void and of no legal force and effect.” § 163.3167(8)(a) and (c), Fla. Stat. A conclusion that the Florida Legislature no longer prohibits referenda on development orders simply because section 166.031 generally permits charter amendments directly contravenes *Archstone*, and would render the statutory prohibition against development order referenda superfluous.

It is a basic tenet of statutory construction that a court should first examine the plain language of the statute, and that an interpretation of the plain language that renders a statutory provision superfluous is “and should be, disfavored.” *Hawkins v. Ford Motor Co.*, 748 So. 2d 993, 1000 (Fla. 1999) (citing *Johnson v. Feder*, 485 So. 2d 409, 411 (Fla. 1986)); *see also Fla. Police Benevolent Ass’n v. Dept. of Agric. and Consumer Servs.*, 574 So. 2d 120, 122 (Fla. 1991). In arguing that the *general* authorization in section 166.031 allowing for non-specific charter amendment referenda permits a referendum on commercial development orders in the Village, Appellants are seeking to render meaningless the prohibition expressly stated in section 163.3167(8). Reading the language of section 163.3167(8), with its *specific* prohibition against development order referenda or initiatives, *in pari materia* with the general provisions of section 166.031, it necessarily follows that referenda on development orders are prohibited. *See Florida Virtual School v. K12, Inc.*, 148 So. 3d 97, 102 (Fla. 2014) (“[T]he rules of statutory construction

provide that a specific statute will control over a general statute and a more recently enacted statute will control over older statutes.”¹⁶

B. The cases Appellants rely on are inapposite.

Appellants cite *City of Riviera Beach v. Riviera Beach Citizens Task Force*, 87 So. 3d 18 (Fla. 4th DCA, 2012) in support of the proposition that before a referendum may be blocked, it must be shown that the endeavor is statutorily void. IB at 17. In fact, nowhere in the cited decision is there any mention of “voidness” as a governing standard. Rather, the Fourth District held that piecemeal consideration of different parts of a public measure should not occur, and that such a measure *may* be determined “invalid” if it is “entirely invalid.” *Id.* at 24. That is precisely what occurred here.

City of Riviera Beach did not involve consideration of a statutory prohibition against the subject matter of the referendum at issue in that case, such as exists here with sections 163.3167(8)(a)-(c). The plain language of sections 163.3167(a) and (c) indicates that the entire referendum *process* related to development orders is prohibited and “null and void.” Accordingly, Appellants reliance on *City of Riviera Beach* is misplaced.

Equally misplaced is their reliance on *Shulmister v. City of Pompano Beach*, 798 So. 2d 799 (Fla. 4th DCA 2001). Like *City of Riviera Beach*, *Shulmister* did

¹⁶ The specific prohibition against such referenda was added more recently to section 163.3167 in 1995. See Ch. 95-322, § 1, Laws of Fla. (1995). In contrast, the general language in section 166.031 has existed since 1973. See Ch. 73-129, § 1, Laws of Fla. (1973).

not involve consideration of section 163.3167(8) or any comparable statutory prohibition on the referendum process. The Fourth District concluded, instead, that the obligation to provide a ballot summary under section 101.61, Florida Statutes, rested with the city commission, rather than the initiative committee, and therefore, the absence of a ballot summary did not prevent inclusion of the initiative on the ballot. *Id.* at 802. In contrast here, there exists an express, statutory prohibition against any referendum or initiative process involving development orders.

Finally, *Miami-Dade County Bd. of County Comm'rs v. An Accountable Miami-Dade*, 208 So. 3d 724 (Fla. 3d DCA, 2016), provides no refuge for Appellants. Like the other cases cited by Appellants, *An Accountable Miami-Dade* did not involve consideration of any outright statutory prohibition limiting the referendum process. Rather, the decision turned entirely – and ironically – on the trial court's improper issuance of a writ of mandamus without allowing the County to present evidence that “a sufficient petition” had been presented. *Id.* at 731-32, 733. This decision is, therefore, inapposite.

IV. THE SECTION 82 PETITION IS ALSO UNLAWFUL BECAUSE IT WOULD AUTHORIZE REFERENDA ON GOVERNMENTAL DECISIONS THAT MUST BE MADE QUASI-JUDICIALLY IN ORDER TO PROTECT PROPERTY OWNERS' DUE PROCESS RIGHTS.

In seeking to implement a charter provision that requires electoral validation of certain development orders – orders which are required for a landowner to develop its commercial property – Appellants are seeking to revoke landowners'

due process rights that have been recognized in Florida for decades. In the seminal case of *Board of County Commissioners of Brevard County v. Snyder*, 627 So. 2d 469 (Fla. 1993), the Florida Supreme Court determined that zoning decisions are to be made quasi-judicially (after affording due process), and that judicial review of zoning decisions is to be by writ of certiorari, whereby a reviewing court can determine whether competent, substantial evidence supported the zoning decision and the essential requirements of the law were observed. *Id.* at 474.

Snyder and its progeny stand for the proposition that property-specific decisions on zoning and development orders, as opposed to policy-setting decisions such as adopting or amending comprehensive plans, should *not* be decided by plebiscite or popular vote. *Snyder*, 627 So. 2d at 474-75; *Park of Commerce Associates v. City of Delray Beach*, 636 So. 2d 12, 15 (Fla. 1994); *see also Friends of Everglades, Inc. v. Bd. of County Commissioners of Monroe Cnty.*, 456 So. 2d 904, 911 (Fla. 1st DCA 1984) (“The concept of due process contemplates that before constitutionally recognized rights of life, liberty and property are infringed upon, the individuals having such rights must be given reasonable notice of the proposed action and an opportunity to appear and to be heard on the issue. ... [D]ue process does not require that the local zoning authority hold a plebiscite or poll the neighborhood on the issue.”); 3 Rathkopf’s *The Law of Zoning and Planning* § 40:23 (4th ed.). Allowing zoning decisions to be made by referendum is inconsistent with the legal principles underlying evidence-based, quasi-judicial decision-making.

In *Snyder*, a property owner sought to obtain a development order rezoning his property. The county planning director and zoning board recommended approval of the rezoning application. 627 So. 2d at 471. However, at the hearing before the county commission, “a number of citizens spoke in opposition to the zoning request,” and the commission voted to deny the request, without stating a reason for the denial. *Id.* The *Snyder* court recognized that zoning decisions in Florida had until then been considered “legislative” acts of local governments, required to be upheld by the courts if the decision was “fairly debatable.” *Id.* However, the court noted that many land use experts had been critical of the effect of “neighborhoodism” on the local decision-making process. *Id.* at 472. Accordingly, the Florida Supreme Court announced that future decisions on requests for property-specific development orders must be made in quasi-judicial proceedings. *Id.* at 474-75.

Allowing a referendum on development orders would wholly undermine these concepts. Subjecting development orders relating to private property to the electoral process is the quintessential example of the “neighborhoodism” criticized in *Snyder*. It is one thing to permit a vote on the sale or other disposal of *publicly* owned property, but it is entirely another to allow the arbitrary will of the majority to thwart legitimate private property rights governed by objective criteria. *See Miami-Dade County v. Omnipoint Holdings, Inc.*, 863 So. 2d 375, 376 (Fla. 3d DCA 2003) (“To deny a quasi-judicial application, a local government agency must show by competent substantial evidence that the application does not meet

the published criteria. Neither a quasi-judicial body nor a reviewing circuit court is permitted to add to or detract from these criteria (the local regulations) when making its assigned determination.”).

V. THE VILLAGE WAS NOT OBLIGATED INDEPENDENTLY TO SEEK DECLARATORY RELIEF REGARDING THE LEGALITY OF THE SECTION 82 PETITION.

Much of Appellants’ initial brief is dedicated to arguing why the trial court was required to compel the Village to submit the Section 82 Petition to the County Supervisor of Elections *without* considering the ultimate legality of the proposed Section 82 in the first instance. According to Appellants, it was incumbent on the Village to initiate a declaratory judgment action to challenge the Section 82 Petition *after* it was approved by the County Supervisor of Elections. There are multiple reasons why this argument fails.¹⁷

First, and most conspicuously, Appellants are the ones who requested in their complaint that the trial court determine that their proposed petitions were in compliance with all Florida statutes governing the municipal referendum process.

¹⁷ As a passing note, Appellants’ suggestion that it was necessary for the Village Council to direct the Village Attorney to file a motion for declaratory judgment before raising the issue of the substantive validity of Question 82 in this action (IB at 19 n. 6) is mistaken. First, for the reasons articulated herein, the Village has not sought declaratory relief – rather, the Appellants asked for sweeping declarations regarding the legality of the petitions, and the Village was obligated to respond to them. Moreover, no law or rule requires undersigned counsel, acting as the Village Attorney, to obtain Village Council approval before advancing a particular legal theory in defending litigation filed against the Village.

Now, Appellants insist that the only pertinent determination is whether their petitions comply with section 166.031, Florida Statutes. A party cannot invite the court to make a determination and then insist that the making of the determination was error. *See, e.g., Sheffield v. Superior Ins. Co.*, 800 So. 2d 197, 202 (Fla. 2001) (“Under the invited-error doctrine, a party may not make or invite error at trial and then take advantage of the error on appeal.”) (quoting *Goodwin v. State*, 751 So. 2d 537, 544 n. 8. (Fla. 1999)).

Second, the clear and certain right that Appellants contend entitles them to mandatory injunctive relief is a right arising under section 166.031, which – in accordance with the plain language of that provision – would have *compelled* the Village to place on the ballot the Section 82 Petition language. § 166.031(1), Fla. Stat. (“The governing body of the municipality *shall place the proposed amendment contained in the ordinance or petition to a vote of the electors* at the next general election held within the municipality or at a special election called for such purpose.”) (emphasis added). As a result, if Appellants are unable to demonstrate, from the outset, that the Village *could*, in fact, be compelled to place the proposed Section 82 on the ballot, then they have failed to demonstrate a “clear right” to mandatory injunctive relief. For all the reasons already articulated, the Village could not be compelled to place an illegal referendum on the ballot.

Third, Appellants needed to demonstrate a “clear legal right” in order to obtain the *permanent* injunctive relief they sought. *Liberty Counsel*, 12 So. 3d at

186 n. 7. Appellants have failed to demonstrate that they have a “clear legal right” to require the Village to submit the proposed Charter Section 82 to the electorate.

Finally, and perhaps most conclusively, section 163.3167(8) makes the entire referendum *process* relating to development orders unlawful and void from inception. §§ 163.3167(8)(a), Fla. Stat. (“An initiative or referendum *process* in regard to any development order is prohibited.”) (emphasis added); 163.3167(8)(c) (“[A]ny such initiative or referendum *process* ... is deemed null and void and of no legal force and effect.”) (emphasis added). Collecting the signatures and submitting them to the County Supervisor of Elections is merely *part of the process* that ultimately results in the matter being presented to the voters. If the entire *process* is prohibited, then logically, so is the initial step of submitting the petitions.

The trial court properly considered the legality of the Section 82 Petition as part of its determination of whether injunctive relief should be granted. Since Appellants did not below (and do not here) even attempt to argue that the Section 82 Petition would be legal under any set of circumstances, there was no reason for the trial court to forestall its analysis of the legality of the Section 82 Petition.

CONCLUSION

Appellants have not carried their burden of demonstrating entitlement to mandatory injunctive relief, whether temporary or permanent. They presented no evidence that would have allowed the trial court to conclude they could satisfy the

elements of their claim for relief. As such, the denial of injunctive relief should be affirmed on this basis alone.

The trial court's decision should also be affirmed because the Section 82 Petition referendum process was precluded by state statute. As such, Appellants lacked a clear legal right to relief that could be enforced through injunctive relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this answer brief was served via e-mail this 1st day of November, 2017, on Juan-Carlos Planas, Esq. (Counsel for Appellants; jcplanas@kymplaw.com; aserrano@kymplaw.com), KYMP, 600 Brickell Avenue, Suite 1715, Miami, Florida 33131.

/s/ Edward G. Guedes

Edward G. Guedes

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

/s/ Edward G. Guedes

Edward G. Guedes

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO: 15-cv-23403-UNGARO/OTAZO-REYES

CLAUDIA MARIACA, FELIPE E. MADRIGAL,
and NORBERTO SPANGARO,

Plaintiffs,

v.

THE CITY OF DORAL, FLORIDA, a Florida
municipal corporation, and LUIGI BORIA, as
Mayor of the City of Doral,

Defendants.

DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT

Defendants, City of Doral ("City"), and Luigi Boria, in his official capacity as Mayor of the City ("Mayor") (collectively, "Defendants"), pursuant to Federal Rule of Civil Procedure 12(b)(6), move for entry of an order dismissing, with prejudice, the Amended Complaint [ECF No. 37] filed by Plaintiffs, Claudia Mariaca, Felipe E. Madrigal, and Norberto Spangaro ("Plaintiffs"). In support thereof, Defendants state as follows:

INTRODUCTION

This case involves claims by the Plaintiffs against the City and its Mayor¹ for alleged violations of their federal constitutional and state statutory rights regarding their ability to offer

¹ The language of the Amended Complaint makes clear that the Mayor is being sued "for declaratory and injunctive relief solely in his official capacity." [ECF No. 37, ¶ 9]. To the extent that the Amended Complaint contains any allegation that the Mayor is liable in his individual capacity, such claims would be barred by qualified immunity. *See Seegmiller v. Sch. Bd. of Collier Cnty.*, 2015 WL 3604608, at *4 n.2 (M.D. Fla. June 7, 2015) (explaining that the chairperson of a school board was entitled to qualified immunity regarding allegations that she

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public comments during City Council meetings in Doral, Florida. The allegations in the Complaint fail to state a cause of action and should be dismissed *in toto*.

Counts I and II raise federal claims, pursuant to 42 U.S.C. § 1983, for violation of Plaintiffs' First Amendment constitutional rights. Neither state a cause of action upon which relief can be granted.

Count I alleges that the City violates the First Amendment by: (a) holding some special and zoning meetings without allowing for public comment; and (b) limiting public comment at special meetings to the agenda items under discussion. There is no constitutional obligation for a public entity to allow for public comment at all of its meetings and such meetings may be designated as non-public forums. When the City allows for public comments, however, it creates a limited public forum in which the City may subject public comments to reasonable restrictions that are content-neutral, narrowly tailored to achieve a significant government interest, and allow for alternative channels of communication. Plaintiffs do not dispute that the City ordinance which directs commenters to relate their comments to the agenda item under discussion meet the first three elements of a constitutional restriction on speech. Additionally, the Amended Complaint makes no allegation that general public comment is unavailable at each of the eleven regular Council meetings held a year. These general public comment periods provide sufficient alternative channels of communication for individuals who wish to address the Council about items that are not up for discussion on an agenda at a special Council meeting. For these reasons, Count I fails to state a cause of action for violation of Plaintiffs' First Amendment rights.

In Count II, Plaintiffs allege that the Council has an unwritten policy to censor public comments when a speaker speaks negatively about an individual councilperson and enforces this

prevented plaintiff from fully expressing himself during public comment at a board meeting "because no constitutional violation occurred").

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policy by asking the speaker to direct his or her comments to the Council as a whole. Plaintiffs offer the conclusory allegation that this practice is “so widespread, persistent, or repetitious as to constitute municipal policy or custom of Doral.” Although the Amended Complaint lists 21 instances of conduct it claims support the existence of a custom or practice, only 4 of those instances, spread over the course of 14 months, are even pertinent to their claim. These isolated incidents are insufficient to allege the existence of a widespread municipal policy or custom under *Monell v. Dep't of Soc. Services of City of New York*, 436 U.S. 658 (1978). Accordingly, Count II should also be dismissed for failure to state a cause of action.

Counts III and IV raise state law causes of action for purported violations of the Doral Code of Ordinances. Because the Complaint does not adequately allege any federal causes of action, this Court should decline to exercise supplemental jurisdiction over the state law claims. However, if the Court does exercise jurisdiction it should dismiss both claims for failure to state a cause of action.

Count III should be dismissed because it inadequately pleads a cause of action under Florida’s Declaratory Judgment Act and because it fails to allege any purported violation of the Doral Code. Count III makes no allegations of any constitutional violations, yet in the wherefore clause, it requests that the Court enjoin the City’s “unconstitutional practices.” Because the Amended Complaint fails to make a definite and concrete assertion of a constitutional right in Count III, it fails to state a cause under section 86.01, Florida Statutes. Count III also fails to allege that the City is in violation of its Code. Section 2-72(c) states that there must be a public comment section at “any regular or alternate meeting” of the City Council. The Amended Complaint offers nothing more than conclusory statements to allege that an “alternate meeting” is a “special meeting.” Conversely, basic rules of statutory construction and the doctrine of

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administrative deference together compel the conclusion that an “alternate meeting” is simply a meeting held in place of a regular meeting. For these reasons, the Court should dismiss Count III.

Count IV, like Count II, alleges that the City is employing an unwritten unconstitutional policy to censor negative remarks before the Council and requests that this Court grant injunctive relief to permit speakers before the Council to make negative comments about individual councilmembers while addressing the body as a whole. Count IV is wholly derivative of Count II and should be dismissed on the same grounds: namely, that the Amended Complaint fails to allege sufficient facts to establish that the City is engaged in a widespread policy or custom designed to censor free speech at Council meetings.

All four counts of the Amended Complaint fail to state a cause of action and it should therefore be dismissed with prejudice.

ALLEGED FACTS²

1. Plaintiffs, a group of citizens residing in the City of Doral, assert claims against the City and the Mayor for allegedly having been deprived of their rights to speak on matters of public interest before the City Council in violation of their rights under state and federal law and that they have been subjected to impermissible content based restrictions on their speech before the Council.

2. First, the Complaint alleges there are special and zoning meetings of the City Council where no public discussion is allowed and that this is an “ongoing practice” of the City [ECF No. 37 at ¶ 19]. Specifically, Plaintiffs allege that the agendas for special meetings held on February 3, 2015 and September 8, 2015 and a zoning meeting held on February 18, 2015 contained no section for public comments and that no public comments were allowed at those

² For the limited purpose of this Motion only, the Defendants accept all properly pled allegations within the Amended Complaint as true.

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meetings. *Id.*, ¶¶ 21-24. They further allege the agenda for the special meeting held on August 18, 2015, did not contain a public participation section and that when Plaintiffs attempted to speak at that meeting, they were asked to limit their comments to the specific agenda item under discussion. *Id.*, ¶ 23.

3. The Complaint makes no allegation that any regular meeting of the City Council did not contain a section for general public comment or that Plaintiffs have ever been deprived of their ability to offer general public comment at any regular meeting of the City Council.

4. Second, Plaintiffs allege that, at City Council meetings, the Mayor “allows speakers to mention council members by name when comments by the speaker are positive in nature,” but that the Mayor “does not allow speakers to mention council members by name when the comments by the speaker are negative in nature.” *Id.*, ¶ 31. Plaintiffs allege that this is “an ongoing practice of Boria which is so widespread, persistent, or repetitious as to constitute municipal policy or custom of Doral.” *Id.*

5. In support of these allegations, the Complaint lists 21 instances which it states are examples of meetings “where Boria refused to allow Plaintiffs and others mention council members by name when the speakers have negative comments by name but allows the speaker to mention council members by name when the comment is positive in nature.” *Id.*, ¶ 32(a)-(u).

6. Third, Plaintiffs state that, pursuant to section 2-72(c) of the Doral Code, the “general order of any regular or alternate meeting” must include a section for “Public Comments,” and imply that an “alternate” meeting is a special council meeting. *Id.*, ¶¶ 37-39. Plaintiffs allege that the City is in violation of this ordinance based on it previous allegation that the City held a few special council meetings whose agendas did not include sections for general

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public comments. *Id.*, ¶ 40. Plaintiffs allege that they will suffer irreparable harm if this “unconstitutional practice” is not restrained and enjoined. *Id.*, ¶ 42.

7. Finally, Plaintiffs state that a controversy has arisen between the parties regarding the meaning of section 2-73(b)(5) of the City Code, which provides that “All remarks shall be addressed to the city council as a body through the mayor, and not to any member thereof.” *Id.*, ¶ 45. Plaintiffs allege that it is the City’s contention that this ordinance “prohibits speakers at city council meetings from making negative references about council members and requires that all such negative remarks be addressed to The Council as a whole without naming the individual council member who is the subject of the remark.” *Id.*, ¶ 47.

STANDARD OF REVIEW

Under the plausibility standard applicable to federal complaints, pleaders must allege sufficient facts of each element to move beyond mere speculation, thereby “nudg[ing] their claims across the line from conceivable to plausible[.]” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This plausibility standard requires more than labels and conclusions or formulaic recitation of the elements that amount to “an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Indeed, allegations that only show the mere possibility of misconduct will not survive a motion to dismiss. *Id.* at 679. Rather, “[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 678. Then, after determining whether the factual allegations in the complaint state a plausible claim, the Court must also “draw on its judicial experience and common sense” to consider whether there is a more plausible explanation for the defendant’s conduct than the one offered by the plaintiff. *Id.* at 679.

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ARGUMENT

I. Plaintiffs' Section 1983 Claims Should Be Dismissed Because The Amended Complaint Fails To State Any Causes Of Action For Violation Of The First Amendment.

Section 1983 has three main elements: First, a deprivation of a federal right. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). Second, the right was deprived under color of state law. *Id.* Third, when suing a municipal entity, the plaintiff must also allege that a policy or custom of the City was the “moving force” of the deprivation. *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 694, 98 S.Ct. 2018, 2037 (1978). The Amended Complaint does not (and cannot) allege facts to support these elements. There is no basis for section 1983 liability against the Defendants because none of the proffered theories of liability demonstrate that Plaintiffs have been deprived of a federal right or that the City of has any unconstitutional policies or customs.

A. Count I Should Be Dismissed Because There Is No General Constitutional Right To Be Heard At All City Council Meetings.

Prevailing law does not recognize a First Amendment claim based on the purported inability to provide comment at a council meeting that is not designated as a public forum. Plaintiffs complain that the City has an ongoing practice of disallowing public comments at special and zoning meetings of the City Council meetings and that this deprives them of “the right to address The Council at each regular and special meeting of the The City Council” (ECF No. 1 at ¶ 27). Although a city council designates its meeting a public forum when it intentionally opens it to the public and permits public discourse on agenda items, a commission “need not have created this forum in the first place.” *Jones v. Heyman*, 888 F.2d 1328, 1331 (11th Cir. 1989). City council meetings where public comments are not invited are nonpublic forums and restrictions in speech in such nonpublic forums will be upheld if they are “reasonable and not merely the result of disagreement with the speaker’s point of view.” *Id.*; see also *Wood*

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v. Marston, 442 So. 2d 934 (Fla. 1983) (“The public has no authority to participate in or to interfere with the decision making process.”).

Plaintiffs make no allegation that the Council’s decision not to permit public comment at select special or zoning meetings has anything to do with censoring their or any other person’s points of view. Additionally, it is reasonable for the City not to allow general public comment at some Council meetings, such as special Council meetings and zoning meetings, which are held solely to deal with discrete issues on a particularized basis. Because there is no federal right to speak at a Council meeting that has not been designated as a public forum, Plaintiffs have failed to allege the deprivation of any federal rights with regard to the City’s alleged practice of not allowing public comments at some special and zoning meetings. *See City of Madison, Joint School Dist. v. Wisconsin Employment Relations Comm’n*, 429 U.S. 167, 176 n.8 (1976) (“Plainly, public bodies may confine their meetings to specified subject matter and may hold . . . sessions to transact business” without public involvement); *I.A. Rana Enters., Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 924-25 (N.D. Ill. 2009) (holding that a City Council’s “City Committee of the Whole meeting” that did not intend to allow for public participation was a nonpublic forum at which councilpersons could prevent individuals from offering public comments) (citing *Ark. Educ. Television Comm’n*, 532 U.S. 666, 679, 118 S.Ct. 1633 (1998)). Count I of the Amended Complaint should be dismissed on this basis.

B. Count I Should Also Be Dismissed Because The City Does Not Violate The First Amendment When It Limits Comments At Special Council Meetings Solely To The Agenda Items Being Discussed.

At those meetings where the City does allow for public comment limited only to agenda items under discussion, such as special Council meetings, it creates a limited public forum. *See Crowder v. Housing Auth. of City of Atlanta*, 990 F.2d 586, 591 (11th Cir. 1993) (“A limited

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public forum is a forum for certain groups of speakers or for the discussion of certain subjects.”). “The government may restrict access to limited public fora by content-neutral conditions for the time, place, and manner of access, all of which must be narrowly tailored to serve a significant government interest.” *Id.* Plaintiffs complain that the City Council is limiting public comments solely to agenda items at some special council meetings without providing a public participation section for general comments. Plaintiffs have failed to state a cause of action for violation of their First Amendment rights because the Complaint fails to set forth sufficient facts indicating that: (1) this restriction is not content-neutral; (2) that it is not narrowly tailored to serve a significant government interest, and that alternative channels of communication are not available.

1. The Restriction Is Reasonable.

First, Plaintiffs have represented to the Court that “it is settled law that the right of the public to speak at a limited public forum such as a city council meeting is not unbridled and is subject to reasonable restriction” (ECF No. 5 at 9) (quoting *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37 (1983)). In their Motion for Preliminary Injunction, Plaintiffs explain that

[r]egulations limiting speakers at a city council meeting to specified subject matter have been upheld because the presiding officer has the authority to regulate irrelevant debate and disruptive behavior at a meeting. With regard to the limitation of public discussion solely to the agenda item being discussed, such is a permissible content neutral restriction . . . It follows that Boria’s actions in enforcing Code § 2-73(b)(3) which limits public comments to the agenda item before The Council is content neutral.

Id. at 10-11. The City agrees that the restriction at issue here is content-neutral. *See Jones v. Heyman*, 888 F.2d 1328, 1331 (11th Cir. 1989) (concluding that commission’s decision to limit public comments to the agenda item under discussion was content neutral).

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2. The Restriction Furthers A Significant Government Interest.

Second, Plaintiffs have represented to the Court that “the limitation on the public speech to the agenda item being considered furthers a significant government interest” [ECF No. 5 at 13]. Indeed, United States Supreme Court Justice Stewart “recognized the significance of the government’s interest in conducting orderly, efficient meetings of public bodies.” *Id.* at 1332 (citing *Wisconsin Employment Relations Comm’n*, 429 U.S. at 180 (Stewart, J., concurring) (“A public body . . . has broad authority to structure the discussion of matters that it chooses to open to the public. Such a body surely is not prohibited from limiting discussion at public meetings to those subjects that it believes will be illuminated by the views of others and in trying to best serve its informational needs while rationing its time.”); *see also Rowe v. City of Cocoa, Fla.*, 2003 WL 22102150, at *7 (M.D. Fla. July 22, 2003) (“In dealing with agenda items, the Council does not violate the first amendment when it restricts public speakers to the subject at hand, for the government has a substantial interest in maintaining orderly, efficient Council meetings”). Accordingly, this limitation furthers a significant government interest.

3. The Restriction Is Narrowly Tailored.

Third, Plaintiffs have represented to the Court that “where the mayor’s actions constituted ‘a reasonable attempt to confine the speaker to the agenda item in question,’ the Narrowly Tailored Means element is satisfied” [ECF No. 5 at 13]. The Eleventh Circuit explained what it means for such a regulation to be narrowly tailored as follows:

the means adopted by the government need not be the least-intrusive or least-restrictive means to satisfy this prong of the analysis. Instead, “the requirement of narrow tailoring is satisfied ‘so long as the ... regulation promotes a substantial government interest that would be achieved less effectively absent the regulation.’” The analysis does not hinge on the “‘judge's agreement with the responsible decisionmaker concerning the most appropriate method for promoting significant government interests’ or the degree to which those interests should be promoted.”

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Jones, 888 F.3d at 1333 (citations omitted). Plaintiffs' sole factual allegation regarding this claim is that, at a special meeting held on August 18, 2015, Plaintiffs "attempted to address The Council on the issue of whether the meeting had been properly called and whether proper notice was given," and that the Mayor "refused to allow them to speak on the issue, maintaining that any public comment was limited to the specific agenda item before The Council" [ECF No. 37, ¶ 23]. Even if this allegation were true, it is clear that "[t]he mayor's actions in this case constituted a reasonable attempt to confine the speaker to the agenda item in question, and that conclusion should end the inquiry." *Jones*, 888 F.2d at 1334.

4. Adequate Alternative Channels Of Communication Exist.

Finally, the Complaint demonstrates that "there remain ample alternative channels of communication." *Id.* at 1334. Plaintiffs' Amended Complaint proceeds on a theory that limiting comments to specific agenda items at special council meetings is only constitutional if there is also an opportunity for general public comment at that same meeting. [ECF No. 37, ¶ 25]. This is not the law. "Alternative channels of communication" need only be "satisfactory;" that is, they should be of a similar quality, involve similar costs, be as likely to reach the intended audience, and be similarly effective at conveying the intended message. *See Linmark Assocs., Inc. v. Willingboro Twp.*, 415 U.S. 85, 93, 97 S.Ct. 1614, 1618 (1077).

The City provides a satisfactory alternative channel of communication at each of its regular council meetings. Plaintiffs admit that there are eleven regular council meeting per year and that, under Doral's Code, there is a "public participation section of the meeting" where "the public can make comment on matters of public interest that are not on the agenda" [ECF No. 37, ¶¶ 12, 15]. The Amended Complaint makes no allegation that the City is not permitting general public comment at each and every one of these regular council meetings or that Plaintiffs are

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unable to address their City Council on all issues of public concern at these open public forums. Accordingly, the public participation section at the regular council meetings, among others, provides an ample alternative channel of communication. *See Cosac Foundation, Inc. v. City of Pembroke Pines*, 2013 WL 5345817, at *20 (S.D. Fla. Sept. 1, 2013) (concluding that ordinance that banned right-of-way canvassing and solicitation on some of a City's public roadways left open many other places for individuals to hand out literature and solicit donations and did not stop plaintiffs from employing different but sufficient methods to convey their message to their intended audience). Of course, additional alternative channels of communication also exist in the form of agenda-specific comments, phone calls to elected officials, emails and other written communications with elected officials, and meetings with elected officials.

Even taking all of the alleged facts in the light most favorable to the Plaintiffs, there is no meaningful difference between this case and *Jones*, 888 F.2d at 1331-1334. In *Jones*, the Eleventh Circuit concluded that a mayor acted reasonably in regulating the time, place and manner of a citizen's speech before a City Council, much like what has taken place here. Accordingly, Plaintiffs fail to state a cause of action for violation of the First Amendment and prevailing law dictates that Count I should be dismissed on this basis.

C. **Count II Should Be Dismissed Because It Fails To State A Cause Of Action Under Monell.**

Plaintiffs allege that, at City Council meetings, the Mayor "allows speakers to mention council members by name when comments by the speaker are positive in nature," but that the Mayor "does not allow speakers to mention council members by name when the comments by the speaker are negative in nature." [ECF No. 37, ¶ 31]. Plaintiffs allege that this is "an ongoing practice of Boria which is so widespread, persistent, or repetitious as to constitute municipal policy or custom of Doral." *Id.* In support of these allegations, the Complaint lists 21 purported

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instances which it states are examples of meetings “where Boria refused to allow Plaintiffs and others mention council members by name when the speakers have negative comments by name but allows the speaker to mention council members by name when the comment is positive in nature.” *Id.*, ¶ 32(a)-(u). These allegations are insufficient to state a claim under *Monell*, 436 U.S. at 694, 98 S.Ct. at 2037.

Monell holds that local governments (and branches thereof) may not be held liable for constitutional deprivations on the theory of respondeat superior. *Id.* Rather, they may be held liable only if such constitutional torts result from an official government policy, the actions of an official fairly deemed to represent government policy, or a custom or practice so pervasive and well-settled that it assumes the force of law. *See id.* at 694, 98 S.Ct. at 2037–38; *Sewell v. Town of Lake Hamilton*, 117 F.3d 488, 489 (11th Cir. 1997); *Church v. City of Huntsville*, 30 F.3d 1332, 1343 (11th Cir. 1994). In order for the actions of a government official to be deemed representative of the municipality, the acting official must be imbued with final policymaking authority. *See Pembaur v. City of Cincinnati*, 475 U.S. 469, 481, 106 S.Ct. 1292, 1299 (1986).

Plaintiffs do not allege that there is an official, written policy of the City Council that authorizes its conduct and therefore proceed solely on a theory that a policy has been established by custom or practice. *See Cuesta v. Sch. Bd. of Miami Dade Cnty.*, 2000 WL 33174398, at *4 (S.D. Fla. Oct. 18, 2000). In order for the City to be held liable under the custom or practice prong of *Monell*, Plaintiffs must demonstrate that a custom or practice of not allowing speakers to mention council members by name when the comments by the speaker are negative in nature is so well-settled and pervasive that it assumes the force of law. *See Sewell v. Town of Lake Hamilton*, 117 F.3d 488, 489 (11th Cir. 1997). Put another way, Plaintiffs must show a “persistent and widespread practice” of unjustifiably prohibiting negative comments about

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councilmembers at Board meetings, because “[n]ormally random acts or isolated incidents are insufficient to establish a custom. . . .” *Church v. City of Huntsville*, 30 F.3d 1332, 1345 (11th Cir.1994) (quoting *Depew v. City of St. Marys*, 787 F.2d 1496, 1499 (11th Cir.1986)).

Plaintiff’s Amended Complaint fails to meet this standard. Plaintiffs identify 21 “instances” which they allege support their claim of a widespread practice or custom of the City. [ECF No. 37, ¶32.] But nearly all of these instances fail to lend any support to their claims.

To begin, thirteen of the examples given are instances where an individual is alleged to have made a “positive comment” which named an individual councilmember and that individual was not asked to stop and refer to the Council as a whole. *Id.*, ¶ 37 (b)-(d), (f)-(i), (m), (p)-(s), (u). But Plaintiffs make no allegation that it is unconstitutional to allow individuals to make positive comments about councilmembers. Instead, their allegation is that “Doral’s policy of not allowing the public to address The Council and make negative remarks about City Council members is an impermissible content oriented restriction which is violative of the First Amendment.” *Id.*, ¶33. None of these thirteen instances provide any evidence a policy or practice of not allowing negative comments about City Council members.

Consequently, the Amended Complaint contains only eight instances where an individual is alleged to have made a negative comment and was asked to refer to the Council as a whole. Reference to the publicly-available videos of these meetings, of which this Court may take judicial notice in ruling on a motion to dismiss,³ indicate that many of these instances are justified by reference to section 2-73(b)(5) of the Doral Code.

³ When ruling on a motion to dismiss, “the minutes and recordings of the City Council meetings are matters of public record and therefore they are they are the types of materials of which a court may take judicial notice.” *Schubert v. City of Rye*, 775 F. Supp. 2d 689, 696 n.3 (S.D.N.Y. 2011) (emphasis added); Fed. R. Evid. 201(b)(2) (“The court may judicially notice a

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Section 2-73(b)(5) of the Doral Code of Ordinances indicates that “all remarks shall be addressed to the city council as a body through the mayor, and not to any member thereof.” Plaintiffs make no allegation that this ordinance is unconstitutional; in fact, they ask this Court to declare that the City must enforce it as written. *See* ECF No. 37, ¶¶ 44-48. The following chart demonstrates how four of the remaining eight instances identified in the Amended Complaint are examples of the Mayor implementing that ordinance:

Paragraph No.	Characterization by Amended Complaint.	Justification Under City Code For Mayor’s Action.
¶ 32(a)	At the Council Zoning Meeting held on August 5, 2015, at 0:10:29 into the meeting, Plaintiff Mariaca makes a negative comment naming Vice Mayor Sandra Ruiz, and is interrupted and asked to refer to Council as a whole, not any individual.	Plaintiff directly addresses Vice Mayor Ruiz individually, instead of the Council as a whole.
¶ 32(e)	At the Regular Council Meeting held on June 9, 2015, at 2:34:15 into the meeting, an unidentified resident makes a negative remark naming Councilman Pete Cabrera and is interrupted and asked to refer to Council as a whole, not any individual.	Speaker directs her comments at the City Attorney, instead of the Council as a whole.
¶ 32(k)	At the Regular Council Meeting held on March 18, 2015, at 0:41:56 into the meeting, Madrigal makes a negative comment naming Councilman Pete Cabrera and is interrupted and asked to refer to the Council as a whole, not any individual.	Madrigal reads from a report which contains facts concerning Councilman Cabrera. The Mayor asks him to direct his comments to the Council as a whole, but the City Attorney clarifies that Madrigal is allowed to make these comments because he is only stating facts about Councilman Cabrera. Madrigal is then allowed to complete his comments in full.
¶ 32(l)	At the Regular Council Meeting held on January 13, 2015 at 0:16:17 into the meeting, Luz Marina Rosenfeld makes a negative comment naming Vice Mayor	Rosenfeld directly addresses Vice Mayor Ruiz individually, instead of the Council as a whole.

fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned.”)

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	Sandra Ruiz and is interrupted and asked to refer to the Council as a whole, not any individual.	
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As in *Church v. City of Huntsville*, 30 F.3d 1332, 1343-44 (11th Cir. 1994), these video clips submitted by the Plaintiffs actually “undermine[] the plaintiff’s case” because they are examples of the Council attempting to uphold the law.

The final four examples are all instances where an individual made personally disparaging remarks about a Councilperson and the Mayor asked that person to direct his or her remarks to the Council as a whole. *See* ECF No. 37, ¶32(j), (n), (o), (t). Even if these four isolated incidents, spread over the course of more than 14 months, can be viewed as constituting “a pattern . . . more is required to show that the pattern was ‘sufficiently persistent or widespread as to acquire the force of law.’” *Phelan ex rel Phelan v. Mullane*, 512 Fed. App’x 88, 92 (2d Cir. 2013) (holding that “five separate acts of omission” spread “over the course of a month” failed to “demonstrate deliberate indifference” by two public hospitals); *Cason Enters., Inc. v. Metropolitan Dade Cnty.*, 20 F. Supp. 2d 1331, 1343 (S.D Fla. 1998) (concluding that, where official Board policy was lawful and plaintiffs’ only theory of municipal liability was based on existence of an unwritten retaliatory policy against African-Americans, a few isolated incidents of alleged discriminatory conduct by the county “fail to constitute a custom or policy of retaliation ‘so permanent and well settled . . . with the force of law’”). Under these circumstances, Count II of the Amended Complaint should be dismissed. *See Seegmiller v. Sch. Bd. of Collier Cnty.*, 2015 WL 3604608, at *4 (M.D. Fla. June 8, 2015) (dismissing municipal liability claim for violation of a speaker’s First Amendment rights because the “First Amended Complaint lacks factual allegations to support any finding that the Board’s policy was a deliberate indifference to [plaintiff’s] First Amendment rights, or that the policy motivated the alleged infringement on his

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free speech rights”); *Garrison v. Yeadon*, 2003 WL 21282115, at *8 (E.D. Pa. Jan. 6, 2003) (dismissing a section 1983 claim against a municipality based on the conclusion that the allegations “do not establish a policy officially adopted by defendant or an informally-approved custom under *Monell*” but instead “[at] best . . . describe isolated incidents”).

II. Plaintiffs’ State Law Claims Should Be Dismissed Because They Fail To Adequately Allege That The City Is Acting In Violation Of Any State Law.

A. Count III Should Be Dismissed Because It Fails To Adequately Allege A Declaratory Action For Violation Of Any Constitutional Rights.

Although Count III is styled as a claim for “Violation of City of Doral Code of Ordinances §2-72(C),” the “wherefore” section requests “appropriate declaratory relief regarding the unlawful and *unconstitutional* acts and practices of the Defendants” [ECF No. 37, ¶ 42] (emphasis added). Nothing in Count III or its incorporated paragraphs, however, states that the City has engaged in any constitutional violations by purportedly violating section 2-72(b)(5) of the Doral Code of Ordinances. To adequately plead a cause of action under Florida’s Declaratory Judgment Act, there “must be a bona fide controversy, justiciable in the sense that it flows out of some *definite and concrete assertion of right.*” *Hialeah Race Course, Inc. v. Gulfstream Park Racing Ass’n*, 210 So. 2d 750, 752 (Fla. Dist Ct. App. 1968). Count III should be dismissed because it fails to make a definite and concrete assertion of a violation of a constitutional right, yet seeks a declaration from this Court that the City is acting in an unconstitutional manner. *See Register v. Pierce*, 520 So. 2d 990 (Fla. Dist Ct. App. 1988) (dismissing amended complaint because court was unable to discern “any allegation of fact or law tending the show that

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[plaintiff] has an enforceable right that would be affected were he to succeed in obtaining the requested declaration”).⁴

B. Count III Fails To State A Cause Of Action For Violation Of Doral Code Of Ordinances § 2-72(c).

Count III should also be dismissed because Plaintiffs fail to offer anything more than legal conclusions in support of their allegation that the City violates § 2-72(c) or any other source of law when it declines to include a section for “public comment” on the agendas for its special meetings. Section 2-72(c) requires that the “general order of any regular *or alternate* meeting” of the City Council must include a section for “Public comments” (emphasis added). Based on nothing more than citation to this section of the code, Plaintiffs offer the conclusory allegation that the “general order of City Council meetings is applicable to both regular and special meetings of The Council,” and, therefore, failure “to hold a public comments section at each regular or special meeting of the Council is a violation of Code Section 2-72(c).” In short, Plaintiffs are alleging that an “alternate meeting” is a “special meeting.”

When interpreting a provision of law, “the statute’s plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent.” *Daniels v. Fla. Dep’t of Health*, 898 So. 2d 61, 64 (Fla. 2005). In this case, a plain reading of the statutory text negates Plaintiffs’ interpretation of the City Code. The term “alternate meeting” is not defined in the City Code. When used as an adjective, “alternate” means “constituting an alternative <took the alternative route home>.” *See Alternate* Definition, Merriam-Webster’s.com, <http://www.merriam-webster.com/dictionary/alternate> (last visited

⁴ Although it not adequately plead, this Court might assume that Plaintiffs are referring to the alleged Constitutional violation plead in Count I. If this is the case, this claim should further be dismissed because, as discussed in more detail above, the City is under no constitutional obligation to open its special meetings to public comments. *See supra*, 7-8.

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Nov. 15, 2015). When placed in context, an “alternate meeting” is one that is an *alternative* to a regular meeting – e.g., a meeting held to make up for a regular meeting that was called off due to something like a lack of a quorum or an emergency such as a hurricane. A “special meeting” is not an alternative to a regular meeting. Instead, it is a meeting designed to address some special issues and is *in addition to* the eleven regularly scheduled meetings of the Council. *See* § 2-77, Doral Code of Ordinances.

This plain interpretation of the phrase “alternate meeting” is further supported by reference to Doral’s entire statutory scheme. This Court should not consider the phrase in isolation, but rather “must look to the . . . language and design of the statute as a whole.” *Household Credit Services, Inc. v. Pfenning*, 541 U.S. 232, 239 (2004). A review of the entire Doral City Code indicates that the term “special meeting” is referenced in several places in the Code, but that term is not used in section 2-72(c). *See* Doral Code of Ordinances, §§ 2-77, 2-119, 4.01, 52-39. The use of the term “alternate meeting” instead of “special meeting” evidences a legislative intent to keep these terms separate. *See Keen Corp. v. U.S.*, 508 U.S. 200, 208, 113 S.Ct. 2035, 2040 (1993) (“Where Congress includes particular language in one section of a statute but omits it in another, it is generally presumed that Congress acts intentionally in the disparate inclusion or exclusion.”).

Finally, the City Council interprets the term “alternate meeting” to mean a meeting held in place of a regular meeting. Under the doctrine of administrative deference, “the contemporaneous administrative construction of the enactment by those charged with its enforcement and interpretation is entitled to great weight, and courts generally will not depart from such construction unless it is clearly erroneous or unauthorized.” *McKenzie Check Advance*

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of Fla., LLC v. Betts, 928 So. 2d 1204, 1215 (Fla. 2006) (citing *Gay v. Canada Dry Bottling Co. of Fla.*, 59 So. 2d 788, 790 (Fla. 1952)).

Accordingly, pursuant to both basic rules of statutory construction and the doctrine of administrative deference, an “alternate meeting” is not a “special meeting,” and Plaintiffs allege no facts that may cause this Court to depart from this conclusion. Because the Amended Complaint fails to adequately allege that the City has ever refused to hold a public comments section during any regular or alternate meeting of the City Council, this Court should dismiss Count III for failure to state a cause of action.

C. Count IV Should Be Dismissed Because It Is Duplicative Of Count II, Which Fails To State A Cause Of Action.

Count IV is a state law claim that seeks a declaratory judgment as to Code § 2-73(b)(5). [ECF No. 37, ¶ 45]. This ordinance provides that “All remarks shall be addressed to the city council as a body through the mayor, and not to any member thereof.” §2-73(b)(5), Doral Code or Ordinances. Count IV contains no allegation that this section of the Doral Code is unconstitutional or otherwise unlawful. Instead, it alleges that it is the City’s position that “Code §2-73(b)(5) prohibits speakers at council meetings from making negative references about council members and requires that all such negative remarks be addressed to The Council as a whole without naming the individual council member who is the subject of the remark.” [ECF No. 37, ¶ 47]. Count IV further alleges that unless this Court grants a judgment declaring the rights of the parties with regard to §2-73(b)(5), “Doral will continue to prevent speakers before The Council from fully addressing matters of public concern which will have a chilling effect on comments made before the Council.” *Id.*, ¶ 48.

Although Count IV is styled as a state court action, in substance it is really a restatement of Count II of the Amended Complaint. Like Count II, Count IV alleges that the City is

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employing an unwritten unconstitutional policy to censor negative remarks before the Council and requests that this Court grant injunctive relief to permit speakers before the Council the make negative comments about individual councilmembers while addressing the body as a whole. This court is “not bound by the label attached by a party to characterize a claim and will look beyond the label to analyze the substance of a claim.” *Jarbough v. Att’y Gen.*, 483 F.3d 184, 189 (3d Cir. 2007); *see also Louisius v. Fla Dep’t of Corr.*, 2015 WL 667973, at *9 (M.D. Fla. Feb. 17, 2015) (“[T]he Court is not bound by the mere labels a plaintiff gives to a claim for relief.”). Count IV is nothing more than a *Monell* claim masquerading as a state declaratory judgment claim. As a result, Count IV and should be dismissed. *See supra*, 12-17.

D. This Court Should Decline To Exercise Supplemental Jurisdiction Over The State Law Claim.

As discussed above, the Amended Complaint fails to allege any cause of action giving rise to section 1983 liability. When a district court dismisses the federal claims over which it had original jurisdiction, Plaintiff is no longer entitled to remain in federal court. *See* 28 U.S.C. § 1367(c)(3); *Busse v. Lee Cnty., Fla.*, 317 F. App’x 968, 973–74 (11th Cir. 2009) (“Since the district court ‘had dismissed all claims over which it has original jurisdiction,’ it therefore had the discretion not to exercise supplemental jurisdiction over [Appellant’s] state law claims.” (citation omitted)). As in *Seegmiller*, this Court should decline to exercise supplemental jurisdiction over the remaining state law claims. 2015 WL 3604608, at *6 (concluding that a “Florida court is the more appropriate forum”). Accordingly, Counts III and IV may also be dismissed on jurisdictional grounds.

CONCLUSION

For the foregoing reasons, Plaintiffs’ Amended Complaint should be dismissed with prejudice.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 18, 2015, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, and that a true and correct copy of the foregoing was served via CM/ECF electronic transmission upon those parties who are registered with the Court to receive electronic notifications in this matter.

By: /s/ Adam A. Schwartzbaum

COST PROPOSAL - A BEST VALUE APPROACH

We have reviewed and analyzed the Village's legal services budget for the last couple of years. After careful review, we believe that we are very familiar with the legal needs and demands of the Village and the hours required to provide these services. Our best-value cost proposal is also based on our collective Firm experience serving as city attorney for more than 19 municipalities for over 27 years. We are confident that we can provide the Village with the highest level of legal services, professionalism and dedication at the most cost-effective rates available. We believe we can reduce your overall cost of services while at the same time lowering your costs due to unnecessary legal risk and exposure.

We can do this because of the Firm business model, our knowledge and experience acquired from our many years of representing other Florida municipalities, and the resulting economies of scale resulting from having a single firm that can provide all of the Village's legal services set forth in the RFQ. As a result of our experience and the Village's needs we are pleased to offer you the following cost proposal:

All attorney time would be charged at a rate of \$250 per hour. Itemized costs would be reimbursed.

This provides the Village with maximum control over legal fees since the amount of fees incurred is dependent largely on what services the Village Council and staff request.

This assumes an exclusive arrangement whereby all of the Village's legal matters would be handled by us except for those matters which we are precluded from handling due to a conflict that cannot be resolved. We believe that our Cost Proposal provides the Village with the best-value option, which would afford the Village a high level of service in a cost effective manner.

¹ Litigation is defined as adversarial proceedings before courts, arbitrators, mediators or administrative tribunals in which the Village is a complaining or responding party.