APPLICATION FOR NOMINATION TO THE FIRST APPELLATE DISTRICT COURT

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

DATE: November 17, 2015 Florida Bar No.: 0745359

GENERAL: Social Security No.: xxx-xx-xxxx

1. Name Harvey Lamar Jay III E-mail: HJay@coj.net

   Date Admitted to Practice in Florida: April of 1988

   Date Admitted to Practice in other States: Not Applicable

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

   Circuit Court Judge, Fourth Judicial Circuit

3. Business address: 501 West Adams Street

   City Jacksonville County Duval State Fl. ZIP 32202

   Telephone (904) 255-1234 FAX (904) 357-5970

4. Residential address:

   City s. 119.071(4)(d) F.S. County s. 119.071(4)(d) F.S. State s. 119.071(4)(d) ZIP s. 119.071(4)(d) F.S.

   Since December of 1997 Telephone s. 119.071(4)(d) F.S.

5. Place of birth: Jacksonville, Florida

   Date of birth: s. 119.071(4)(d) F.S. Age: 53

6a. Length of residence in State of Florida: 53 years

6b. Are you a registered voter? ☒ Yes ☐ No

   If so, in what county are you registered? Duval

7. Marital status: Married

   If married: Spouse's name s. 119.071(4)(d) F.S.

   Date of marriage

   Spouse's occupation

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

   Not applicable

8. Children

Name(s) *Age(s)* *Occupation(s)* *Residential address(es)*

s. 119.071(4)(d) F.S.

9. Military Service (including Reserves)

Service *Branch* *Highest Rank* *Dates*

Not applicable

Rank at time of discharge _____ Type of discharge _____

Awards or citations _____

HEALTH:

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

No.

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

Yes ☐ No ☒

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

Please describe such treatment or diagnosis.

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

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

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

Yes ☐ No ☒

If yes, please explain.

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

Yes ☐ No ☒

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

Yes ☐ No ☐

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

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

No.

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

No.

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

No.

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

No.

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

No.

EDUCATION:

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

Schools	*Class Standing*	*Dates of Attendance*	*Degree*
The Bolles School	Exact Standing Unknown	1977-1980	High School
Stetson University	"	1980-1984	B.B.A.
The University of Florida Levin College of Law	"	1985-1987	J.D.

18b. List and describe academic scholarships earned, honor societies or other awards.
The Bolles School: The National Honor Society; Vice President Senior Class; President, Fellowship of Christian Athletes.
The University of Florida Levin College of Law: The University of Florida Student Honor Court; The University of Florida Trial Competition Team.

NON-LEGAL EMPLOYMENT:

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

Date	*Position*	*Employer*	*Address*

1984	Dispatcher	Bowman Transportation	Jacksonville, Florida

PROFESSIONAL ADMISSIONS:

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

Court or Administrative Body	*Date of Admission*
The Florida Bar	1988
The Middle District of Florida	1988
The Northern District of Florida	2003
United States Court of Appeals, 11th Circuit	

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

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

Position	*Name of Firm*	*Address*	*Dates*
Law Clerk	Howell, Liles and Milton	233 E. Bay Street Jacksonville, Fl. 32202	Summer 1986, Summer 1987 and December 1987
Associate Attorney	Howell, Liles and Milton	233 E. Bay Street Jacksonville, Florida 32202	1988-1989
Associate Attorney	Law Offices of Joseph Milton	1660 Prudential Drive Jacksonville, Florida 32207	1989-1991
Equity Partner	Saalfield Shad (and predecessor firms)	245 Riverside Avenue Jacksonville, Florida 32202	1991-2012

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

As detailed above, I am currently serving as a circuit court judge. Previously, I had a trial and appellate practice which primarily involved the defense of hospitals, physicians and nurses in medical malpractice cases and the associated appellate work related to that litigation. I also represented individual health care providers in administrative actions advanced by the Florida Department of Health and hospitals in NICA cases involving catastrophically brain injured children.

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

Court			Area of Practice		
Federal Appellate		%	Civil	100	%
Federal Trial	5	%	Criminal		%
Federal Other		%	Family		%
State Appellate	10	%	Probate		%
State Trial	75	%	Other		%
State Administrative	10	%			
State Other		%			
		%			
TOTAL	100	%	TOTAL	100	%

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

Jury? 17 Non-jury? 3

Arbitration? 6 Administrative Bodies? 2

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

No.

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

No.

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

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

(1) Lexington Insurance Company v. Shands Teaching Hospital and Clinics, Inc.

JAMS Arbitration, Case No.:1440002864

Philip Glatzer (305) 460-6543

Travase Erickson (904) 355-4401

(2) University Medical Center, Inc. v. Healthcare Staffing Solutions, Inc.

Fourth Circuit Case No.:16-1998-CA-6425 [First District Citation 86 So.3d 519]

Second StarMed Trial

Ronald Harrop (407) 843-2100

Brian Currie (904) 353-5000

Carol Bishop (904) 356-0700

Rhonda Boggess (904) 356-0700

Susan Kelsey (850) 487-1000

(3) Violet Baden, as Personal Representative of the Estate of Danny W. Baden v. Shands Jacksonville Medical Center, Inc.

Fourth Circuit Case No.:16-2003-CA-106

Stephan LeClainche (877) 515-7955

Joseph Johnson (561) 684-2500

S. William Fuller (850) 222-0770

J. Brent Jones (941) 748-1727

Richard Ramsey (904) 598-3201

(4) University Medical Center, Inc. v. Healthcare Staffing Solutions, Inc.

Fourth Circuit Case No.:16-1998-CA-6425 [First District Citation 5 So.3d 726]

First StarMed Trial

Ronald Harrop (407) 843-2100

Brian Currie (904) 353-5000

Reed Grimm (904) 356-0700

Rhonda Boggess (904) 356-0700

Susan Kelsey (850) 487-1000

(5) Rebecca Parker, as Personal Representative of the Estate of Savannah Parker v. The University of Florida Board of Trustees, Brian Gilligan, M.D., and Emergency Physicians, Inc.

Fourth Circuit Case No.:16-2004-CA-2061

David Wolf (904) 355-8888

Mary Bland Love (904) 398-0900

Trudy Innes Richardson (850) 224-7091

(6) Douglas Bailey and Lenore Bailey v. Hazen G. Lancaster, Jr. and Osborne Bryan Harris, Jr.

United States District Court Case No.:3:00-CV-1087-J-25HTS

James F. Moseley, Jr. (904) 356-1306

William Cooper (904) 353-6473

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

(1) Shands Teaching Hospital and Clinics, Inc. v. Medstaff Healthcare Solutions, Inc.

Eighth Circuit Case No.:2009-CA-5318

W. Douglas Childs (904) 396-3007

Linda Hester (904) 396-3007

(2) Doretha Brown, on Behalf of the Estate of Thomas Brown v. Jacksonville Orthopaedic Institute and Sunday Ero, M.D.

C. Scott Schuler (904) 396-1911

(3) Victoria Golden and Edward S. Golden v. Shands Teaching Hospital and Clinics, Inc.

Eighth Circuit Case No.:2005-CA-1704

Alan McMichael (352) 375-4449

(4) Amanda McHale, Ellis McHale and Kathleen McHale v. The University of Florida Board of Trustees and Shands Jacksonville Medical Center, Inc.

Fourth Circuit Case No.:16-2008-CA-9607

James Terrell (904) 722-2228

Patricia Dodson (904) 255-2500

Stephen Gallagher (904) 398-0900

(5) Arnette Dunbar, as Personal Representative of the Estate of David Dunbar v. John Crump, M.D., North Florida Surgeons, P.A. and Southern Baptist Hospital of Florida, Inc.

Joshua Whitman (904) 346-3800

James Murphy (904) 342-6009

Jill Bechtold (904) 398-0900

(6) Shirley Dunkley and Yvonne Dunkley v. Adventist Healthcare Systems, Celebration Obstetrics and Gynecology Associates, P.A. and Mark Crider, M.D.

Ninth Circuit Case No.:2009-CA-28344

Maria Tejedor (407) 705-2880

Thomas Dukes, III (407) 423-8571

J. Brent Jones (941) 748-1727

27c. During the last five years, how frequently have you appeared at administrative hearings?
Infrequently average times per month

27d. During the last five years, how frequently have you appeared in Court?
Four average times per month

27e. During the last five years, if your practice was substantially personal injury, what percentage of your work was in representation of plaintiffs? 10% Defendants? 90%

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

Not applicable.

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

Chief counsel. Case citations are reflected in the answer to 27(a) above.

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

(1) Ronald E. Ashe, as Personal Representative of the Estate of Dara Leigh Ashe v. Southern Baptist Hospital of Florida, Inc.

Fourth Circuit Case No.:16-2003-CA-6283

In this case, the plaintiff alleged that Baptist Medical Center had improperly released the decedent "against medical advice" after the patient insisted, multiple times, that she had the right to be discharged from the hospital. Unfortunately, the nurse who released the patient did not appreciate that the decedent had been committed to Baptist under the Baker Act, likely because the patient was intially admitted to a regular telemetry floor. Tragically, after the decedent was released from the facility, she jumped -- to her death -- in front of a moving train. I served as both trial and appellate counsel in a case that focused on the breadth of the presuit provisions of Florida's Medical Malpractice Act and whether the nurse's actions, as alleged, required presuit notice to Baptist.

Circuit Judge: Brad Stetson

Attorney: Kenneth Wright

(2) Douglas Bailey and Lenore Bailey v. Hazen G. Lancaster, Jr. and Osborne Bryan Harris, Jr.

United States District Court Case No.:3:00-CV-1087-J-25HTS

After initially representing the captain of the offending vessel -- a record appearance that ended when the captain was dismissed from the case on the first morning of trial -- I subsequently entered an appearance for the ship's owner in a federal jury trial involving the sinking of a sailboat in the Intracoastal Waterway. After several days of a hotly contested trial, the jury ultimately found in favor of the owner on all of the plaintiffs' claims.

District Court Judge: Henry Adams

Attorneys: James F. Moseley, Jr.; William Cooper

(3) John Doe v. Big Brothers Big Sisters of North Florida, Inc., and Big Brothers Big Sisters of America, Inc.

Fourth Circuit Case No.:16-2000-CA-8490

I represented Big Brothers Big Sisters in a case that attracted national media attention

and involved the alleged sexual abuse of teenagers by a Jacksonville attorney who was also a high ranking officer in the Florida National Guard.

Circuit Judge: L. Page Haddock

Attorneys: James F. Moseley, Jr.; Scott Costantino

(4) University Medical Center, Inc. v. Healthcare Staffing Solutions, Inc.

Fourth Circuit Case No.:16-1998-CA-6425

I represented University Medical Center in a case that involved a hospital patient's catastrophic brain injuries that were caused by the medical intervention related to the patient's cardiac tamponade. After the hospital entered into a multi-million dollar settlement with the patient's attorneys -- a settlement that did not include any monetary contribution by the staffing agency -- the hospital advanced claims against the agency based on multiple deficiencies in the agency nurse's care, deficiencies that were paid for by the hospital in the underlying lawsuit. Ultimately, after two lengthy trials which resulted in favorable judgments for the hospital, in separate opinions after each trial, the First District reversed both judgments finding that the trial court -- twice -- had failed to correctly reconcile the interplay between Section 768.81, Fla. Stat., and Florida's Uniform Contribution Among Tortfeasor's Act. As part of my duties in the case, I had the privilege of serving as lead trial counsel for both trials and co-appellate counsel for the two appeals.

Circuit Judges: A. C. Soud; Bernard Nachman; Jack Schemer

Attorneys: Ronald Harrop; Eric Gibbs; Christopher Speed; Brian Currie; Susan Kelsey; Reed Grimm; Carol Bishop; Rhonda Boggess.

(5) Jeffrey Welker v. Southern Baptist Hospital of Florida, Inc.

Fourth Circuit Case No.:16-2001-CA-5587

In this case, I represented Baptist Medical Center in a lawsuit emanating from the disclosure of therapy information by a hospital mental health counselor which the plaintiff claimed resulted in the loss of time-sharing rights with his minor children. At the trial court level, the plaintiff's claims were dismissed based on findings that the plaintiff had failed to comply with the medical malpractice presuit provisions and that the plaintiff's lawsuit was barred by Florida's impact rule. On appeal to the First District, the First District reversed the dismissal finding that the plaintiff's allegations did not fall within the malpractice parameters of Chapter 766 and that the impact rule did not bar the plaintiff's claims. Subsequently, after the parties submitted briefing on the jurisdictional issues, the Florida Supreme Court accepted jurisdiction, quashed the First District's decision and remanded the case back to the circuit court for an evaluation of whether the plaintiff could assert a valid cause of action against the hospital.

Circuit Judge: Aaron Bowden

Attorney: Lawrence C. Datz

(6) Shanara L. Mobley and Kamiyah Teresiah Tasha Mobley v. University Medical

Center

Fourth Circuit Case No.:16-1998-CA-5438

In a case that attracted national media attention, I represented University Medical Center in a lawsuit arising out of an infant abduction from the hospital's post-partum unit shortly after the child's birth. Because the child was never recovered after the kidnapping, the case involved important -- and arguably, novel -- aspects of Florida's impact rule and ultimately, precipitated nationwide changes to security protocols in hospital mother/baby units.

Circuit Judge: Karen Cole

Attorneys: Wayne Alford; Russell Healey

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

Attached are two recent orders generated in the Brown v. Philip Morris USA case. As to the first order -- the Order Denying the Defendant's Motion for Mistrial -- this order was predominantly written by me. As to the second order, the Order on the Plaintiff's Entitlement to Attorney's Fees, I had significant involvement in drafting the order. Further, as more fully set forth below, I have twenty-six other orders/judgments that have been published on Westlaw. If the committee members would like copies of any of these other opinions, I am pleased to electronically forward those to the committee's attention.

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE:

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

Yes. I am currently a circuit court judge. I have served in that capacity since July 1, 2012.

32b. List any prior quasi-judicial service:

Dates	*Name of Agency*	*Position Held*

Types of issues heard:

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

No.

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

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

(1) Thomas Donahoo, Jr.

245 Riverside Avenue Suite 450

Jacksonville, Florida 32202

(904) 354-8080

(2) Michael Orr

50 North Laura Street Suite 1675

Jacksonville, Florida 32202

(904) 358-8300

(3) Edward McCarthy

1301 Riverplace Boulevard Suite 1500

Jacksonville, Florida 32207

(904) 398-3911

(4) Cheryl Worman

1301 Riverplace Boulevard Suite 1500

Jacksonville, Florida 32207

(904) 346-5554

(5) Jeffrey Regan

9905 Old St. Augustine Road Suite 400

Jacksonville, Florida 32257

(904) 356-1300

(6) Eric Leach

3127 Atlantic Boulevard

Jacksonville, Florida 32207

(904) 346-3800

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

As a civil division judge, I have tried multiple jury trials of varying complexities including an airplane crash case, several automobile negligence cases and an Engle class action lawsuit which included an underlying three week trial on liability and damages and a subsequent two week trial on compensatory damages and entitlement to punitive damages. Also, in 2014, I presided over a six week construction defect case -- a bench trial -- that involved multiple parties, almost two dozen Daubert motions and several thousand trial exhibits. This bench trial culminated in an eighty-seven page final judgment. Previously, when serving as a family law judge, I tried hundreds of cases on a variety of family law issues including time sharing, child support, alimony, equitable distribution, relocation and parental responsibility. Several of these trials involved supplemental petitions from underlying final judgments and requests for varying levels of modification from the previous dispensations. Further, as a component of my domestic violence responsibilities, I have tried several hundred cases involving a myriad of statutory claims including requests for permanent domestic violence injunctions, repeat violence injunctions, sexual violence injunctions, dating violence injunctions, stalking injunctions and cyberstalking injunctions. These cases often include related -- emergency -- time sharing, custodial care, child exchange and child support claims and frequently require real-time determinations of requests for exclusive control of a shared residence. In this same domestic violence capacity, I have presided over writs of attachment for failures to comply with various aspects of final judgments and oftentimes, these duties necessitate an evaluation of the potential consequences of these violations -- including discerning whether continued incarceration is required -- depending on the severity of the alleged contumacious behaivior. Additionally, when domestic violence proceedings were conducted on the first floor of the Duval County Jail, I presided over and disposed of several felony cases involving defendants who expressed a desire to resolve their criminal charges prior to trial. Finally, sitting in my appellate capacity as a circuit court judge, I have handled writs of certiorari from administrative determinations and appeals from county court judgments. The county court appeals have included both civil and criminal appeals. Also, on two occasions, I have served on three judge appellate panels which were convened by the Chief Judge after a certification of need for the assignment of a three judge panel. While one of those appeals ended with a lengthy opinion, the other appeal remains pending.

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

Based upon a recent Westlaw search, I have twenty-eight trial orders/judgments which have been published in the Westlaw database. As a separate document, I have attached a Westlaw listing of these twenty-eight cases.

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

(1) Riverside Avenue Partners v. The Auchter Company

Fourth Circuit Case No.:16-2010-CA-6433

Attorneys: Jeffrey Regan; Christopher Mueller; Leo Meirose; Tammy Giroux; Anthony Abate

(2) Mary Brown, as Personal Representative of the Estate of Rayfield Brown v. Phillip Morris USA, Inc.

Fourth Circuit Case No.:16-2007-CA-11175

Attorneys: Robert Shields; John Kalil; Leslie Bryan; John Mills; Ken Reilly; Hassia Diolombi; Amir Tayrani; Dana Bradford

(3) Gardner v. Gardner

Fourth Circuit Case No.:16-2013-DR-7190-FM

Attorneys: Brian Roberts; Dee Reiter; Heather Quick; Katherine Johnson

(4) Rebecca Cummings, as Personal Representative of the Estate of John Cummings v. Misky Harris, as Personal Representative of the Estate of Michael Harris

Fourth Circuit Case No.:16-2011-CA-3849

Attorneys: Edward McCarthy; Susan Novak; Edward Booth; Lawrence Burkhalter; Thomas Strueber

(5) Long v. State of Florida

Consolidated Case Nos.:16-2007-AP-37; 16-2008-AP-74; 16-2008-AP-69; 16-2008-AP-22

Attorneys: Elizabeth Webb; Alan Chipperfield; Rich Mantai

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

To my knowledge, no complaints have been made against me to the Judicial Qualifications Commission. Consistent with this, I have never received notice from the Judicial Qualifications Commission about any complaints brought against me.

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

No.

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

Not applicable.

BUSINESS INVOLVEMENT:

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

Not applicable.

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

None other than my current work as a Circuit Court Judge.

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

None other than the income with my wife referenced in my Financial History and my Form 6.

POSSIBLE BIAS OR PREJUDICE:

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

At the present time, other than the mandatory requirements of the Rules of Judicial Administration, I am only actively recusing myself from cases involving attorneys from my former firm, Saalfield Shad. Previously, though not at the current time, I have recused myself from cases involving my former clients including the Baptist Health System, Shands Teaching Hospital and Clinics, Memorial Medical Center and other hospital systems that I previously represented. I have also recused myself in a few cases where a close friend was named as a party to the lawsuit. For obvious reasons, I would not anticipate this latter category to be a recurring issue.

MISCELLANEOUS:

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

Yes _____ No __X__ If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

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

degree misdemeanor?

Yes _____ No __X__ If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

35c. Have you ever had the adjudication of guilt withheld for a crime which is a felony or a first degree misdemeanor?

Yes _____ No __X__ If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

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

No.

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

No.

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

No. However, my former law firm -- at the time, Saalfield, Shad, Jay, Stokes and Inclan -- was named as a party to a lawsuit that involved claims for the alleged negligence of a previous member of the firm, Trudy Innes Richardson. The case was settled out of court.

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

Yes ☒ No ☐ If no, please explain. _____

43b. Have you ever paid a tax penalty?

Yes ☒ No ☐ If yes, please explain what and why. Based on higher than anticipated farm income, we paid a $52 tax penalty.

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

No.

HONORS AND PUBLICATIONS:

44. If you have published any books or articles, list them, giving citations and dates.

None other than the twenty-eight orders/judgments referenced in section 32(d)(iii) of this application.

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

2015 Jurist of the Year Award Presented by the Jacksonville Chapter of the American Board of Trial Advocates; AV Preeminent Peer Review Rated Attorney Martindale-

Hubbell; Florida Super Lawyer 2008, 2009, 2010 and 2011; Fellow, Litigation Counsel of America, Trial Lawyer Honorary Society; Master, The Chester Bedell Inn of Court; Past Master, The First District Appellate Inn of Court.

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

Before serving as a circuit judge, I gave multiple presentations to nurses, physicians, risk managers and attorneys concerning medical negligence issues, pre-suit requirements, statutory interpretation and administrative law issues unique to hospitals and physicians. Also, in March of 2012, I lectured at the Florida Bar Topics in Evidence Seminar on the legal effects of Amendment 7 on hospital privileges and the importance of understanding the term "adverse medical incidents" as that term relates to malpractice discovery requests. Additionally, after becoming a judge, I have served on several judicial discussion panels which have addressed a variety of litigation issues including courtroom civility, effective courtroom presentation, improper discovery conduct, Daubert admissibility standards and the necessity of keeping clients informed about the status of litigation events. In October of 2012, I presented to the Florida Trial Court Staff Attorneys Association on the important differences between "motions" and "pleadings" under the Florida Rules of Civil Procedure and the significant problems that can occur from confusing the standards for motions to dismiss and motions for summary judgment.

47. Do you have a Martindale-Hubbell rating? Yes ☒ If so, what is it?___No ☐

When I was working as an attorney, it was AV Preeminent, 5 out of 5.

PROFESSIONAL AND OTHER ACTIVITIES:

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

Currently, The Florida Bar; Master, The Chester Bedell Inn of Court; Honorary Member, The Florida Family Law Inn of Court.

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

Past Fellow, Litigation Counsel of America; Past Master, The First District Appellate Inn of Court; Past Member, The Jacksonville Bar; Past Member, The Florida Supreme Court Historical Society; Past Member, The Jacksonville Association of Defense Counsel; Board Member, Jacksonville K-Life; Member, The Christian Legal Society; Member, FBC Professional Men's Sunday School Class; Member, Deerwood Improvement Association; Past Elder, Grace Community Church of Mandarin; Past Elder, Providence Community Church; Past Member, Deermeadows Baptist Church; Past Member, Strategic Planning Advisory Council, Providence School of Jacksonville; Past Member, Republican National Committee; Past Member, Deerwood Country Club; Past Member, San Jose Country Cub; Past Member, Jacksonville Jaycees; Past Member, National Rifle Association.

48c. List your hobbies or other vocational interests.

Physical fitness and reading.

48d. Do you now or have you ever belonged to any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices and whether you intend to continue as a member if you are selected to serve on the bench.

No.

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

In the five years before I took the bench, I accepted work on several pro bono projects including a medical negligence case where I represented a physician's assistant against claims of neurosurgical malpractice, an administrative proceeding where I defended a physician on licensing issues advanced by the Board of Medicine and a small claim proceeding where a business owner was being sued for an alleged breach of a customer services contract.

SUPPLEMENTAL INFORMATION:

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

In 2013, I attended and successfully completed both phases of the Florida Judicial College. The first phase of the Judicial College offered multiple workshops on a variety of topics including trial skills, fairness and diversity, potential judicial liability, alternatives to contempt, domestic violence, judicial ethics and judicial style. The second phase of the college was, by design, more closely tailored to my duty assignment at the time -- family law -- and included, among other topics, workshops on judicial emergencies, time-sharing, relocation, parental responsibility, child support, contempt, alimony, equitable distribution, attorney's fees, modifications, domestic violence and ethics. Also, over the last three years, I have participated in additional judicial training that focused on specialized domestic violence issues including repeat violence, dating violence, sexual violence, stalking, cyberstalking, temporary injunctions and injunction modifications.

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

As more fully set forth above, in March of 2012, I lectured at the Florida Bar Topics in Evidence Seminar on the legal effects of Amendment 7 on hospital privileges and the importance of understanding the term "adverse medical incidents" as that term relates to malpractice discovery requests. Additionally, after becoming a judge, I have served on several judicial discussion panels which have addressed a variety of litigation issues including courtroom civility, effective courtroom presentation, improper discovery conduct, Daubert admissibility standards and the need for keeping clients informed about the status of ongoing litigation. In October of 2012, I also presented to the Florida Trial Court Staff Attorneys Association on the important differences between "motions" and "pleadings" under the Florida Rules of Civil Procedure and the significant problems that can occur from confusing the standards for motions to dismiss and motions for summary judgment.

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

In my previous work as a civil defense attorney, I had the privilege of trying a broad range of civil cases, with a variety of attorneys, including medical malpractice claims, maritime actions, FELA claims, Jones Act lawsuits, false arrest cases, equitable contribution claims and automobile negligence lawsuits. As the lead attorney in the great majority of these cases, I was responsible for taking key depositions, meeting with experts, briefing significant legal issues and arguing dispositive motions. Concurrent with these responsibilities, in my medical negligence cases, I represented dozens of healthcare providers who were also involved -- by statutory mandate -- in parallel proceedings in the administrative system. In those administrative cases, my work included conferencing with healthcare providers, complying with required disclosures, drafting reponses to administrative complaints and if necessary, litigating unresolved administrative issues. This broad variety of litigation experience has been extremely helpful -- as a judge -- in providing insight into recurring litigation issues and enhancing my appreciation of the common difficulties in trying cases.

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

Consistent with my commitment to my work as a circuit judge, I would aspire to bring the highest level of intellectual integrity, honesty and professional decorum to my duties as an appellate judge. In line with that, I would also dedicate myself to being judicially restrained in my decisions and in doing so, to restrict my textual analyses to the words of the legal texts, always evaluating the words in their proper context.

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

First District JNC: Fall 2004; Fall 2006; and Fall 2008.

Fourth Circuit JNC: Fall 2009 -- Two Vacancies; Spring 2011; and Summer/Fall 2011 -- Two Vacancies.

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

I am firmly and deeply committed to a belief that judges should not legislate from the bench nor make decisions that transgress the actual words of the governing text. Stated another way, in searching for statutory meaning, it has been rightly said that judges should never travel "beyond the borders of the statute". I have held this view since starting work as an attorney in 1988 and have been resolutely dedicated to this principle as a circuit court judge.

REFERENCES:

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

(See next page)

(1) Judge Susan Kelsey
First District Court of Appeal
2000 Drayton Drive
Tallahassee, Florida 32399
(851) 487-1000 main

(2) Judge Mark Mahon
Duval County Courthouse
501 West Adams Street
Jacksonville, Florida 32202
(904) 255-1228 office
(904) xxx-xxxx cell

(3) Charles Shad
245 Riverside Avenue Suite 400
Jacksonville, Florida 32201
(904) 355-4401 office
(904) 238-7013 cell

(4) Randall Jenkins
Administrator, Self-Insurance Program
P.O. Box 112735
Gainesville, Florida 32611
(352) 273-7006 office
(352) 514-6868 cell

(5) Patrick Kilbane
5000 Sawgrass Village Circle Suite 25
Ponte Vedra Beach, Florida 32082
(904) 280-3706 office
(904) 652-3000 cell

(6) Judge Adrian Soud
Historic Nassau County Courthouse
416 Centre Street
Fenandina Beach, Florida 32034
(904) 491-7275 office
(904) xxx-xxxx cell

(7) William Fuller
2565 Barrington Circle
Tallahassee, Florida 32308
(850) 222-0770 office
(850) 544-2221 cell

(8) Judge Marianne Aho
Duval County Courthouse
501 West Adams Street
Jacksonville, Florida 32202
(904) 255-1240 office
(904) xxx-xxxx cell

(9) Jack Saalfield
245 Riverside Avenue Suite 400
Jacksonville, Florida 32202
(904) 355-4401 office
(904) 716-1062 cell

(10) Judge Don H. Lester
Clay County Courthouse
P.O. Drawer 1845
Green Cove Springs, Florida 32043
(904) 269-6338

CERTIFICATE

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

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

Dated this 17th day of November, 2015.

Harvey L. Tag
Printed Name

Signature

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

FINANCIAL HISTORY

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

Current year to date	No earnings		
List Last 3 years	$65,600(2012)	No earnings (2013)	No earnings(2014)

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

Current year to date	No earnings		
List Last 3 years	$65,600(2012)	No earnings (2013)	No earnings(2014)

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

Current year to date	$130,000(est.)		
List Last 3 years	$166,752(2012)	$173,993(2013)	$197,347(2014)

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

Current year to date	$97,500(est.)		
List Last 3 years	$115,365(2012)	$122,211(2013)	$147,465(2014)

FORM 6
FULL AND PUBLIC DISCLOSURE OF FINANCIAL INTEREST

PART A – NET WORTH

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

My net worth as of December 31, 2014 was $2,139,815.

PART B - ASSETS

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

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

The aggregate value of my household goods and personal effects (described above) is $ 135,000

ASSETS INDIVIDUALLY VALUED AT OVER $1,000:

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
Primary Residence	$425,000
Dreyfus Funds	$6,228
Wells Fargo Advantage Funds	$1,484
Meridian Fund	$32,583
Touchstone Investments	$2,476
Stifel Nicolaus (Money Market Account)	$604,331
Johnson and Johnson (Equity)	$1,891
Johnson Controls, Inc. (Equity)	$2,322
McDonald's Corp. (Equity)	$1,352
Northwest Natural Gas Company (Equity)	$56,203
Safeway, Inc. (Equity)	$16,244
United Technologies Corp. (Equity)	$2,631
SPDR Gold Trust (ETF)	$163,555
Sentinel Common Fund (Equity)	$83,584
AbbVie (Equity)	$1,170
Vystar (Checking Account)	$52,659
Entrust Group (IRA)	$64,498
National Life (Variable Life)	$70,042
Transamerica Extra (IRA)	$456,501
Wells Fargo (Equity)	$1,656

Precious Metals (est.)	$61,145
Blackhawk Network Holdings (Equity)	$2,789
ISHARES Silver Trust (ETF)	$70,782

PART C - LIABILITIES

LIABILITIES IN EXCESS OF $1,000 (See instructions on page 4): NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
JPMorgan Chase Bank P.O. Box 182613 Columbus, Ohio 43218	$162,679
Hyundai Motor Finance P.O. Box 660891 Dallas, Texas 75266	$18,632

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

PART D - INCOME

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

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

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

NAME OF SOURCE OF INCOME EXCEEDING $1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
State of Florida	200 E. Gaines St. Tallahassee, Fl. 32399	$139,538
Pamcar Farms, LLC	P.O. Box 1493 Waitsfield, Vermont 05673	$40,384
Stifel Nicholaus	501 N. Broadway St. Louis, Mo. 63102	$13,412
Meridian Fund	P.O. Box 9792 Providence, R.I. 02940	$3,425

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

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

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

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

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

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

OATH

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

7-7-17

SIGNATURE

STATE OF FLORIDA

COUNTY OF DUVAL

Sworn to (or affirmed) and subscribed before me this 17th day of Nov, 2015 by Harvey L. Jay, III.

Linda S. Blackman

(Signature of Notary Public—State of Florida)

LINDA S. BLACKMAN
Commission # FF 052570
Expires October 23, 2017
Bonded Thru Troy Fain Insurance 800-385-7019

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

Personally Known ✓ *OR* Produced Identification ____

Type of Identification Produced ____

INSTRUCTIONS FOR COMPLETING FORM 6:

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

PART A – NET WORTH

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

To total the value of your assets, add:

(1) The aggregate value of household goods and personal effects, as reported in Part B of this form;

(2) The value of all assets worth over $1,000, as reported in Part B; and

(3) The total value of any assets worth less than $1,000 that were not reported or included in the category of "household goods and personal effects."

To total the amount of your liabilities, add:

(1) The total amount of each liability you reported in Part C of this form, except for any amounts listed in the "joint and several liabilities not reported above" portion; and,

(2) The total amount of unreported liabilities (including those under $1,000, credit card and retail installment accounts, and taxes owed).

PART B – ASSETS WORTH MORE THAN $1,000

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

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

ASSETS INDIVIDUALLY VALUED AT MORE THAN $1,000:

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

How to Identify or Describe the Asset:

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

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

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

How to Value Assets:

— Value each asset by its fair market value on the date used in Part A for your net worth.

— Jointly held assets: If you hold real or personal property jointly with another person, your interest equals your legal percentage of ownership in the property. However, assets that are held as tenants by the entirety or jointly with right of survivorship must be reported at 100% of their value.

— Partnerships: You are deemed to own an interest in a partnership which corresponds to your interest in the equity of that partnership.

— Trusts: You are deemed to own an interest in a trust which corresponds to your percentage interest in the trust corpus.

— Real property may be valued at its market value for tax purposes, unless a more accurate appraisal of its fair market value is available.

— Marketable securities which are widely traded and whose prices are generally available should be valued based upon the closing price on the valuation date.

— Accounts, notes, and loans receivable: Value at fair market value, which generally is the amount you reasonably expect to collect.

— Closely-held businesses: Use any method of valuation which in your judgment most closely approximates fair market value, such as book value, reproduction value, liquidation value, capitalized earnings value, capitalized cash flow value, or value established by "buy-out" agreements. It is suggested that the method of valuation chosen be indicated in a footnote on the form.

— Life insurance: Use cash surrender value less loans against the policy, plus accumulated dividends.

PART C—LIABILITIES

LIABILITIES IN EXCESS OF $1,000:

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

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

How to Determine the Amount of a Liability:

— Generally, the amount of the liability is the face amount of the debt.

— If you are the only person obligated to satisfy a liability, 100% of the liability should be listed.

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

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

Examples:

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

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

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

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

PART D – INCOME

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

PRIMARY SOURCES OF INCOME:

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

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

Examples:

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

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

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

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

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

SECONDARY SOURCE OF INCOME:

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

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

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

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

Examples:

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

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

PART E – INTERESTS IN SPECIFIED BUSINESS

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

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

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

JUDICIAL APPLICATION DATA RECORD

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

(Please Type or Print)

Date: November 17, 2015

JNC Submitting To: First Appellate District

Name (please print): Harvey L. Jay III

Current Occupation: Circuit Court Judge

Telephone Number: (904) 255-1234 Attorney No.: 745359

Gender (check one): ☒ Male ☐ Female

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

County of Residence: Duval

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

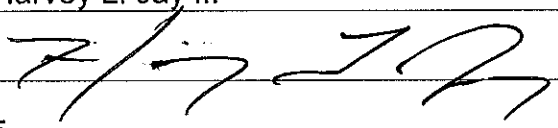
DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

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

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

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

Printed Name of
Applicant: Harvey L. Jay III

Signature of Applicant: 

Date: November 17, 2015

Application for Nomination to the First District Court of Appeal

Allen Winsor
s. 119.071(4)(d), F.S.
s. 119.071(4)(d), F.S.
allenwinsor@yahoo.com
s. 119 071(4)(d), F.S.

APPLICATION FOR NOMINATION TO THE FIRST DCA COURT

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

DATE: November 17, 2015 Florida Bar No.: 016295

GENERAL: Social Security No.: s. 119.071(5)(a), F.S.

1. Name Allen Winsor E-mail: allenwinsor@yahoo.com

   Date Admitted to Practice in Florida: Oct. 6, 2005

   Date Admitted to Practice in other States: Georgia, Dec. 10, 2002

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

   Solicitor General, Office of the Florida Attorney General

3. Business address: PL-01 The Capitol

   City Tallahassee County Leon State Fla. ZIP 32399

   Telephone (850) 414-3688 FAX (850) 414-2672

4. Residential address: s. 119.071(4)(d), F.S.

   City s. 119.071(4)(d), F.S. County s. 119.071(4)(d State s. 119.071(4)(d), F ZIP s. 119.071(4)(d), F.

   Since August, 2005 Telephone s. 119.071(4)(d), F.S.

5. Place of birth: Orlando, Florida

   Date of birth: s. 119.071(4)(d), F.S. Age: 39

6a. Length of residence in State of Florida: 32 years

6b. Are you a registered voter? ☒ Yes ☐ No

   If so, in what county are you registered? Leon

7. Marital status: Married

   If married: Spouse's name Alicia Wright Winsor

   Date of marriage July 11, 1998

   Spouse's occupation s. 119.071(4)(d), F.S.

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

   n/a

8. Children

Name(s)	*Age(s)*	*Occupation(s)*	*Residential address(es)*
William Winsor	9	s. 119.071(4)(d), F.S.	s. 119.071(4)(d), F.S.
John (Jack) Winsor	7	s. 119.071(4)(d), F.S.	s. 119.071(4)(d), F.S.
Allie Winsor	5	s. 119.071(4)(d), F.S.	s. 119.071(4)(d), F.S.

9. Military Service (including Reserves)

Service *Branch* *Highest Rank* *Dates*

n/a

Rank at time of discharge n/a Type of discharge n/a

Awards or citations n/a

HEALTH:

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

No

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

Yes ☐ No ☒

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

Please describe such treatment or diagnosis.

n/a

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

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

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

Yes ☐ No ☒

If yes, please explain.

n/a

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

Yes ☐ No ☒

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

Yes ☐ No ☐

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

n/a

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

No

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

No

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

No

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

No

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

No

EDUCATION:

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

Schools	*Class Standing*	*Dates of Attendance*	*Degree*
Univ. of Fla., Levin College of Law	4 of ~220	8/99-5/02	JD (high honors)
Auburn University	unknown	6/94-8/97	BSBA (finance)
Valencia CC	unknown	8/93-6/94	(HS dual enrollment)
Boone HS	unknown	8/90-6/94	HS Diploma

18b. List and describe academic scholarships earned, honor societies or other awards.
Florida Law Review (Editor in Chief, Spring 2002)
Order of the Coif
Irving Cypen Scholastic Achievement Award (for highest first-year grades)
Book Awards (highest grade): Corporations, Sales, Evidence, Property

NON-LEGAL EMPLOYMENT:

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

Date	*Position*	*Employer*	*Address*
	Marketing	NCR Government	20370 Seneca

9/97-7/99	Specialist	Systems	Meadows Pkwy, Germantown, MD

PROFESSIONAL ADMISSIONS:

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

Court or Administrative Body	*Date of Admission*
United States Supreme Court	Jan. 25, 2010
United States Court of Appeals - DC Circuit	Aug. 17, 2015
United States Court of Appeals - Fourth Circuit	Nov. 14, 2003
United States Court of Appeals - Eleventh Circuit	Nov. 30, 2005
United States District Court - N.D. Georgia	Oct. 6, 2003
United States Bankruptcy Court - N.D. Georgia	Oct. 6, 2003
United States District Court - N.D. Florida	Jan. 27, 2006
United States District Court - M.D. Florida	Jun. 22, 2006
United States District Court - S.D. Florida	Nov. 6, 2006
The Florida Bar	Oct. 6, 2005
Georgia Bar	Dec. 10, 2002

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

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

Position	*Name of Firm*	*Address*	*Dates*
See Attachment 1			

22. Describe the general nature of your current practice including any certifications which you possess; additionally, if your practice is substantially different from your prior practice or if you are not now practicing law, give details of prior practice. Describe your

typical clients or former clients and the problems for which they sought your services.

As Solicitor General, my practice focuses on state and federal appeals involving the State or its agencies. This office handles, oversees, or assigns civil appeals in which the Office of the Attorney General is involved, appeals covering a wide range of subject-matter areas. My practice also includes certain trial-court matters, usually legal challenges that require little or no factual development.

Most cases that I handle involve constitutional challenges to state statutes or other state action. A typical case would be an individual or organization suing a state agency or officer, seeking a declaration regarding the constitutionality of legislation.

Although the majority of my practice involves civil matters, I also work on some criminal matters; I have twice handled criminal cases in the United States Supreme Court. My office also prepares amicus briefs presenting the State's views on important issues pending before state and federal courts.

Before joining the Office of Attorney General, my practice at GrayRobinson similarly involved trial and appellate matters, primarily relating to state government. Clients in private practice included state agencies and associations litigating the constitutionality of state statutes. Both at GrayRobinson and earlier at King & Spalding, I also represented private clients in business disputes or other commercial matters.

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

Court		Area of Practice	
Federal Appellate	25 %	Civil	95 %
Federal Trial	15 %	Criminal	5 %
Federal Other	0 %	Family	0 %
State Appellate	45 %	Probate	0 %
State Trial	15 %	Other	0 %
State Administrative	0 %		
State Other	0 %		
	%		
TOTAL	100 %	TOTAL	100 %

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

Jury? 0 Non-jury? 2

Arbitration? 0 Administrative Bodies? 0

25. Within the last ten years, have you ever been formally reprimanded, sanctioned, demoted, disciplined, placed on probation, suspended or terminated by an employer or tribunal before which you have appeared? If so, please state the circumstances under

which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No

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

No

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

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

In my current position, I am involved in many cases for which others have primary responsibility. Typically, cases handled by my office involve one or more deputy solicitors general, and my personal involvement in individual cases varies. In selecting cases responsive to this question, I included only those cases in which I had primary responsibility or substantial personal involvement. I also included appellate cases that have been argued and are awaiting decision; I did not include other pending matters.

Dep't of Revenue v. American Business USA Corp., Case No. SC14-2404 (Fla. Sup. Ct.). For Dep't of Rev.: Jeffrey Dikman & Rachel Nordby, 850.414.3300. For Am. Business: Michael Sloan, Dean Morande, & David Esau, 561.659.7070.

Hurst v. Florida, Case No. 14-7505 (S. Ct.). For Petitioner: Seth Waxman, Catherine Carroll, David Lehn, & Francesco Valentini: 202.663.6000; Nancy Daniels & David Davis, 850.606.1000; Mark Olive, 850.224.0004; Eric Fletcher & Allison Trzop, 617.526.6000. For Florida: Carolyn Snurkowski, Rachel Nordby, Denise Harle, & Osvaldo Vazquez, 850.414.3300.

In re Advisory Opinion re Limits or Prevents Barriers to Local Solar Electricity Supply, Case No. SC15-780 (Fla. Sup. Ct.). For interested parties: Robert Nabors, Gregory Stewart, & William Garner, 850.224.4070; Stephen Turner, 850.681.6810; Floyd Self & Javier Vazquez, 850.561.3010; William Willingham & Michelle Hershel, 850.877.6166; Stephen Grimes & Bruce May, 850.224.7000; Linda Loomis Shelley, 850.681.0411; Raoul Cantero & Neal McAliley, 305.371.2700; Dan Stengle, 850.566.7619; Harry Morrison, 850.222.9684; Craig Leen, 305.460.5218; Susan Clark & Donna Blanton, 850.425.6654; John Burnett, 727.820.5184; Jeffrey Stone & Terrie Didier, 850.432.2451; Barry Richard, 850.222.6891; Major Harding & James Beasley, 850.224.9115; Kenneth Bell, 850.521.1980; Carlos Muniz, 850.222.8900; Alvin Davis, 305.577.2835.

Gretna Racing v. DBPR, Case No. 1D14-3484 (1st DCA). For Appellant: Marc Dunbar, 850.933.8500; David Romanik, 954.610.4441. For Appellee: Jon Glogau, 850.414.3817.

Cook v. Stewart, Case No. 14-12506 (11th Cir.). For Plaintiffs/Appellants: Alice O'Brien & Lisa Powell, 202.822.7043; John West, 202.842.1888; Ronald Meyer & Lynn Hearn, 850.878.5212. For School Board Defendants/Appellees: Lisa Augspurger, 407.422.5319; Audra Bryant, 850.386.7666; Jamie White & David Delaney,

352.372.4381. For State Defendants: Rachel Nordby, 850.414.3681.

Apthorp v. Detzner, Case No. 1D14-3592 (1st DCA). For Plaintiff/Appellant: Talbot D'Alemberte & Patsy Palmer, 850.325.6292. For Defendant/Appellee: Rachel Nordby, 850.414.3681.

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

Emile Baudoin v. CVS, Case No. 2009-CA-2155 (2d Cir. Fla.) For Plaintiff: Alan S. McConnaughhay, 850.422.7773.

Judy & William Bass v. Holiday CVS, LLC, Case No. 2009-CA-992 (2d Cir. Fla.) For Plaintiff: Ken Davis, 850.222.6026.

Panama City Beach Condos LP v. Adjusters International, Case No. 4:08-cv-368 (N.D. Fla.) (Hinkle, J.) For Plaintiffs: George Meros, 850.577.9090; Andy Bardos, 850.577.9090. For Defendants: Mark Enoch, 972.419.8300; William Finger, 303.674.6955; Sharon Shade, 305.531.8118. For third-party defendant Greenberg Traurig: Bridget Smitha, 850.329.4852; Glenn Burhans, 850.329.4852.

Langford v. CVS Pharmacy, Case No. 4:07-cv-341 (N.D. Fla.) (Mickle, J.) For Plaintiff: Marie Mattox, 850.383.4800; Erika Goodman, 850.383.4800. For Defendant: Michael Riley, 850.577.9090.

Waters Edge Living LLC v. RSUI Indemnity Co., et al., Case No. 4:06-cv-334 (N.D. Fla.) (Hinkle, J.) For Plaintiffs: Martin Fitzpatrick (then with Broad & Cassel, now Second Circuit Judge), 850.606.4302; Stephen Turner, 850.681.6810; Mark Walker (then with Mark Walker PA, now N.D. Fla. Dist. Judge), 850.521.3631. For RSUI: Kathleen Maus, 850.894.4111; John Pappas, 813.281.1900; Melissa Sims, 786.338.2878. For intervenor: Harry Thomas, 850.425.6654. For Prime Income: George Meros, 850.577.9090.

Smith v. Jacobs Eng'g, Case No. 4:06-cv-496 (N.D. Fla.) (Stafford, J.). For Plaintiff: Steven Andrews, 850.681.6416; David Frank, 850.894.5729; Scott Newbern, 850.591.1707. For Defendant: Andy Bardos, 850.577.9090; Mike Riley, 850.577.9090.

27c. During the last five years, how frequently have you appeared at administrative hearings?
0 average times per month

27d. During the last five years, how frequently have you appeared in Court?
1-2 average times per month

27e. During the last five years, if your practice was substantially personal injury, what percentage of your work was in representation of plaintiffs? n/a% Defendants? n/a%

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

While in private practice, I typically had more active trial-court matters than I do now, so

my practice required more court appearances. The trial court matters that I have handled as Solicitor General typically have required fewer court appearances.

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

n/a

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

I included only completed cases in this response. Two additional cases (both pending in the United States Supreme Court) deserve mention as significant, but I omitted them to avoid discussing pending matters: (1) *Hurst v. Florida* presents Sixth and Eighth Amendment challenges to Florida's capital sentencing system. The Court heard argument on October 13, 2015, and has not yet issued a decision. (2) *Florida v. Georgia* is an original action seeking an equitable apportionment of waters in the ACF Basin. In November, 2014, the Supreme Court appointed a Special Master to conduct proceedings, which remain ongoing.

1. *Hall v. Florida*, Case No. 12-10882, United States Supreme Court, 134 S. Ct. 1986 (2014), March 3, 2014. Other attorneys involved: For Florida: Carolyn Snurkowski, Rachel Nordby, Osvaldo Vazquez, Diane DeWolf, Leah Sevi, Carol Dittmar. For Hall: Seth Waxman, Eric Pinkard, Mark Olive, Danielle Spinelli, Megan Barbero, Daniel T. Deacon, Matthew Guarnieri, Thomas G. Sprankling. Personal involvement: I argued the case and had principal brief-writing responsibility.

This case presented an Eighth Amendment challenge to Florida's means for determining which inmates are exempt from capital punishment because of intellectual disability. Ten years earlier, in Atkins v. Virginia, the United States Supreme Court held that the Eighth Amendment forbid executing the intellectually disabled. It did so based on its finding of a national consensus against the practice, citing, among others, a Florida statute that both exempted the intellectually disabled from execution and determined how to evaluate intellectual-disability claims. Florida law established a threshold IQ; defendants with higher scores were not, as a matter of law, intellectually disabled. In Hall, the United States Supreme Court ultimately held, by a 5-4 vote, that Florida's law was unconstitutionally inflexible. Although we lost this case, it was a significant matter because it sought to defend Florida's longstanding legislative choice against a federal constitutional challenge.

2. *Apthorp v. Detzner*, Case No. 1D14-3592, 162 So. 3d 236 (Fla. 1st DCA 2015) (Thomas, Rowe, Osterhaus, JJ.), review denied. Other attorneys involved: For Sec'y Detzner: Rachel Nordby. For Apthorp: Talbot D'Alemberte and Patsy Palmer. Personal involvement: I argued the case on appeal and authored the briefs. I also argued the case in the trial court and had principal responsibility for the Florida Supreme Court briefing.

This was a facial challenge to a provision of Florida's Ethics Code that authorized blind trusts to avoid public officials' conflicts of interest. The provision, which passed unanimously in the Legislature, was similar to a longstanding federal provision. Shortly before qualifying began for the 2014 election, the appellant filed an original action in the Florida Supreme Court, seeking a writ prohibiting the Secretary of State from qualifying

any candidate who used a blind trust in the financial disclosure. Representing the Secretary of State, we asked the Court to dismiss the challenge or transfer it to circuit court; it did the latter. In the circuit court we argued both that the challenger lacked standing and that the statute was constitutional. The trial court disagreed on standing, but agreed with us on the merits and rejected the challenge. On appeal, the First DCA held that the challenger lacked standing, and it declined to address the merits. This was an important case because it turned on separation of powers and recognized that the judiciary's limited authority does not authorize the resolution of abstract issues.

3. *Diaz v. Cobb*, Case No. 04-22572-CIV, 541 F. Supp. 2d 1319 (S.D. Fla. 2008) (King, J.). Other attorneys involved: For Sec'y Cobb: Peter Antonacci, Andy Bardos. For Plaintiffs: Mary Jill Hanson, Judith A. Browne, Sheila Y. Thomas, Elizabeth Westfall, Judith A. Scott, John J. Sullivan, Elliot Mineberg, Jonathan P. Hiatt, Michael Halberstam, Thomas Abt, Sarah Kroll–Rosenbaum, Robert Harris, Manny Anon, Jr. Personal involvement: I first-chaired the trial, argued the summary judgment motion, and was principally responsible for the briefing.

This case presented a First Amendment challenge to Florida's voter registration deadline. The challengers contended that by cutting off voter registration 29 days before an election, the state violated the right to vote. The state contended that it sought to protect the right to vote, by ensuring that there was sufficient time to process timely applications. Over the course of a five-day trial, the court heard evidence about the administrative burdens facing local elections officials in the hectic days preceding each election. The court's extensive factual findings in its lengthy decision supported the Legislature's decision to impose the registration cutoff. This was an important case because the challenge threatened the orderly administration of Florida elections.

4. *Cook v. Stewart*, Case No. 14-12506, 792 F.3d 1294 (11th Cir. 2015) (Carnes, C.J., Jill Pryor, Higginbotham, JJ.); Case No. 1:13-cv-72-MW, 28 F. Supp. 3d 1207 (N.D. Fla. 2014) (Walker, J.). Other attorneys involved: For State Defendants: Rachel Nordby, Matt Carson, Jon Glogau. For County Defendants: Audra Bryant, Lisa Augspurger, David Delaney, Jamie White, Donna Waters. For Plaintiffs: Alice O'Brien, Lisa Powell, Warren Gary Kohlman, John Miller West, Pamela L. Cooper, Lynn C. Hearn, Ronald G. Meyer. Personal involvement: In the trial court, I led briefing efforts and overall strategic direction, and I handled preliminary hearings. On appeal, I assisted with briefing and strategy, but a colleague (Rachel Nordby) prepared the brief and successfully argued the case.

This was a due process and equal protection challenge to Florida laws requiring teacher evaluations to include a student performance component. The challengers asserted that the evaluation system was unfair and irrational. Early in the case, the challengers asserted fundamental rights claims, but on appeal, the claim was limited to an application of the rational-basis standard. On behalf of the Board of Education, we argued that the laws satisfied the deferential rational basis standard and that policy disagreements should be directed to the Legislature. The district court sided with us, and the Eleventh Circuit affirmed. This case was significant because the challengers sought to invalidate the Legislature's policy determination regarding teacher evaluations.

5. *Citizens for Police Accountability v. Browning*, Case No. 08-15115, 572 F.3d 1213 (11th Cir. 2009) (Dubina, C.J., Edmondson, Hill, JJ.); Case No. 2:08–cv–635, 581 F. Supp. 2d 1164 (M.D. Fla. 2008) (Steele, J.). Other attorneys involved: For Sec'y

Browning: Peter Antonacci, Andy Bardos. For Plaintiffs: Paul McAdoo, Gregg Thomas, James McGuire, Rebecca H. Steele, Muslima Lewis. Personal involvement: I handled the preliminary injunction briefing in the trial court, and I handled the briefing and argument on appeal.

By statute, Florida has a 100-foot no-solicitation zone around polling places, and petition gathering (and other solicitation) is prohibited within that zone. Plaintiffs alleged this was a First Amendment violation and that the State must satisfy the strict scrutiny test to justify the restriction. The trial court agreed and preliminarily enjoined the law's enforcement. The Eleventh Circuit reversed and upheld the law. This was a significant case not only because it challenged an act of the Legislature but also because an adverse outcome could have threatened the orderly administration of elections.

6. *McCarty v. Myers*, Case No. 1D13-1355, 125 So. 3d 333 (Fla. 1st DCA 2013) (Thomas, Wetherell, and Ray, JJ.). Other attorneys involved: For Comm'r McCarty: Rachel Nordby, Timothy Gray, Bruce Culpepper. For Plaintiffs: Luke Lirot, Adam Levine. For Amici Supporting Comm'r McCarty: Maria Abate, Matthew Scarfone, Katherine Giddings, Nancy Wallace, Marcy Aldrich. For Amici Supporting Plaintiffs: Theodore Karatinos, Kimberly A. Driggers, Paul W. Lambert, Mark S. Sussman, Jessie Harrell, Bryan Gowdy. Personal involvement: I prepared the briefing and argued the case, both with assistance from a colleague (Rachel Nordby).

Following allegations of fraud, the Legislature amended Florida's no-fault Personal Injury Protection (PIP) insurance law to exclude from PIP coverage certain acupuncture and chiropractic services. Providers sued the Florida Commissioner of Insurance, alleging a constitutional violation. The trial court entered a temporary injunction, ordering the Commissioner to refrain from enforcing the law. The First DCA reversed, finding the challengers lacked standing. This was a significant case because the pendency of the injunction caused great uncertainty in the insurance market and because the standing issue implicated separation of powers.

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

I have attached two writing samples. One was a response to a petition for writ of quo warranto, filed in the Florida Supreme Court in *Dean v. DOAH* (Case No. SC15-1055), which remains pending. The second is an answer brief filed in *Apthorp v. Detzner* (Case No. 1D14-3592) in the First DCA, which led to a published opinion (162 So. 3d 236). Although I received input from colleagues in my office (as I do with all briefs), I personally wrote both briefs.

In addition, below are Internet citations to two United States Supreme Court briefs I submitted. Although these include portions written or edited by others, I was ultimately responsible for the briefs' content, which fairly represents my writing.

Brief for Respondent, *Hurst v. Florida*: http://www.scotusblog.com/wp-content/uploads/2015/08/14-7505-bs.pdf

Brief for Respondent, *Hall v. Florida*: http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs-v3/12-10882_resp.authcheckdam.pdf

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE:

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

No

32b. List any prior quasi-judicial service:

Dates	*Name of Agency*	*Position Held*
n/a		

Types of issues heard:

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

I have served on the JNC for the Second Judicial Circuit since October, 2012.

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

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

n/a

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

n/a

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

n/a

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

n/a

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

n/a

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

n/a

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

n/a

BUSINESS INVOLVEMENT:

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

n/a

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

No.

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

No.

POSSIBLE BIAS OR PREJUDICE:

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

None.

MISCELLANEOUS:

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

Yes _____ No X If "Yes" what charges? n/a

Where convicted? _____ Date of Conviction: _____

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

Yes _____ No X If "Yes" what charges? n/a

Where convicted? _____ Date of Conviction: _____

35c. Have you ever had the adjudication of guilt withheld for a crime which is a felony or a first degree misdemeanor?

Yes _____ No X If "Yes" what charges? n/a

Where convicted? _____ Date of Conviction: _____

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

No

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

No

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

No

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

No

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

No

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

Yes. I was involved in an automobile accident when I was sixteen, and it resulted in litigation against me. I was never served, and our insurance carrier settled the matter. *Ross v. Winsor, et al.*, Case No. 1994-CA-007069-O (Orange County, Florida).

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

No

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

No

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

investigation.

No

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

No

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

Yes ☒ No ☐ If no, please explain. _____

43b. Have you ever paid a tax penalty?

Yes ☐ No ☒ If yes, please explain what and why. _____

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

No

HONORS AND PUBLICATIONS:

44. If you have published any books or articles, list them, giving citations and dates.

Book Review: *Inside Bush v. Gore*, 65 Fla. L. Rev. F. 1 (May, 2013)

Apportionment from Hoffman v. Jones through the 2011 Legislative Session: Perfecting the Equation of Liability with Fault, 31 No. 1 Trial Advoc. Q. 29 (Winter, 2012) (co-authored with Justice Charles Wells)

Sarasota Alliance for Fair Elections, Inc. v. Browning: The Implied End to Implied Preemption, 41 Stetson L. Rev. 499 (Winter, 2012)

Student Comment: *Appellate Procedure, Kaweblum v. Thornhill Estates Homeowners Ass'n*, 53 Fla. L. Rev. 595 (July, 2001).

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

Florida Trend, Legal Elite, 2014-2015

Florida Superlawyers, Rising Star, 2008-10 (approx.)

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

I spoke at an RNLA election law conference in St. Louis in 2008, providing an update on election-related litigation matters in Florida. Earlier this year, I participated in a panel discussion on updates regarding workers' compensation constitutional challenges at the Florida Chamber's Insurance Summit in Orlando.

47. Do you have a Martindale-Hubbell rating? Yes ☒ If so, what is it?___No ☐

AV

PROFESSIONAL AND OTHER ACTIVITIES:

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

First District Court of Appeal Inn of Court

Federalist Society

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

Wildwood Church (Tallahassee); Northside Methodist Church (Atlanta).

48c. List your hobbies or other vocational interests.

Outdoor activities with family (camping, hiking); golf; bicycling.

48d. Do you now or have you ever belonged to any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices and whether you intend to continue as a member if you are selected to serve on the bench.

I belong to Wildwood Church, which welcomes everyone to worship, but which limits membership to those willing to make a profession of faith. I have belonged to other churches with similar policies. I am also involved in Boy Scouts of America as an assistant den leader, and its Cub Scout program (with which I am involved) limits membership to boys. And in college, I belonged to a social fraternity that limited membership to male students. I am no longer involved in the fraternity, but I would continue my church membership and BSA involvement if selected.

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

In 2005, the Eleventh Circuit Court of Appeals appointed me to serve as counsel for an Alabama inmate in a civil appeal. The case involved a First Amendment issue related to the inmate's access to his mail. I prepared the appellate briefs and argued the case on the inmate's behalf. The appeal was unsuccessful.

In 2004, through a legal aid program, I represented a client in a debt-collection matter. The client's car had been repossessed and sold at auction, and the lender had sued for a deficiency judgment. We ultimately settled the matter.

SUPPLEMENTAL INFORMATION:

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

I have attended several, including in the areas of appellate practice and ethics.

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

Part of my responsibility as Solicitor General is to teach at the Florida State University College of Law. I have taught four semesters of a course entitled "Florida Courts and the Constitution," which focuses on the operation and jurisdiction of Florida appellate courts.

The course includes discussion of separation of powers, limited Florida Supreme Court jurisdiction, and the history of and amendments to Article V of the Florida Constitution. The course also addressed ethics in appellate practice and other topics.

On several occasions, I have presented at CLE programs, including twice at the "Practicing before the Florida Supreme Court" program and once at the "Practicing before the First DCA" program. I also presented an update on Florida Supreme Court cases to a training program for DCA law clerks earlier this year. More recently, I participated in a panel discussion at JNC training for new members.

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

As a law clerk, in private practice, and as Solicitor General, I consistently encountered a broad range of cases and issues. Some attorneys become highly specialized in narrow areas of the law, but my practice has constantly presented new and fresh challenges. I might work on a criminal matter one day, analyze a complicated preemption issue the next, and evaluate state or federal constitutional issues the next. This has not only exposed me substantively to a wide variety of legal issues, but also allowed me to develop the skills necessary to address new and unfamiliar issues efficiently.

My experience as a law clerk to Eleventh Circuit Judge Ed Carnes was particularly helpful. Seeing how he approached and decided complicated cases was an excellent learning experience. I similarly learned a great deal working with former Justice Charles Wells, who joined my former law firm after retiring from the Court. While in private practice, Justice Wells and I worked together on a number of appeals and other matters, all of which made me a better attorney. Both men are tremendous jurists and people, and my experience learning from them has been invaluable.

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

First, I would bring the same work ethic and diligence that I have brought to every position I have held. Both in private practice and in state government, I have worked exceptionally hard to ensure that whatever task I undertake is done well. I would bring that same approach and effort to the court.

I would also contribute by serving collegially. Both in private practice and in state government, I have worked cooperatively with attorneys, administrative staff, judges, and clients. Even when facing varied and strong personalities—and stressful or difficult situations—I have always managed to work professionally and respectfully with others. This has helped in my practice, and it would help me as a judge.

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

n/a

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

I strongly believe in the rule of law. We all depend on a judiciary that faithfully applies the law to each case. We all deserve judges committed to operating within the limits of authority given them, judges who understand their role is to apply the law regardless of personal opinion or philosophy. This is particularly true of appellate judges, whose decisions can bind lower courts. I understand the role of a good judge and the importance of good judges to the proper functioning of government and society.

REFERENCES:

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

Peter Antonacci, Executive Director, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, Florida, s. 119.071(4)(d), F.S.

Hon. Pamela Bondi, Florida Attorney General, PL-01 The Capitol, Tallahassee, Florida, 850.245.0222 (Catherine Crutcher, Executive Assistant)

Hon. Ed Carnes, Chief Judge, United States Court of Appeals for the Eleventh Circuit, One Church Street, Montgomery, Alabama, 334.954.3580 (Blanche Baker, Executive Administrator)

Tyler Cathey, Chief of Staff, Office of the Attorney General, PL-01, The Capitol, 352.397.5339

Trish Conners, Deputy Attorney General, PL-01, The Capitol, 850.245.0178

George Meros, Jr., GrayRobinson PA, 301 S. Bronough St., Tallahassee, Florida, 850.577.5487

Carlos Muniz, McGuireWoods LLP, 215 S. Monroe St., Tallahassee, Florida, 850.570.0178

Hon. Tim Osterhaus, Judge, First District Court of Appeal, Tallahassee, Florida, 850.717.8175

Chesterfield Smith, Jr., Associate Deputy Attorney General, PL-01 The Capitol, Tallahassee, Florida, 850.414.3623

Hon. Charles T. Wells, Florida Supreme Court Justice (ret.), GrayRobinson PA, 301 E. Pine Street, Orlando, Florida, 407.843.8880

CERTIFICATE

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

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

Dated this 17th day of November, 2015.

Allen Winsor
Printed Name

Signature

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

Attachment 1 – Law Practice

1. Law Clerk to Hon. Ed Carnes, Judge (now Chief Judge), Eleventh Circuit Court of Appeals, One Church Street, Montgomery, Alabama (Aug. 2002 – Aug. 2003)

2. Associate, King & Spalding LLP, 1180 Peachtree Street, NE, Atlanta, Georgia (Aug. 2003 – May 2005) (also summer associate/intern summers of 2001 and 2002)

3. Associate, GrayRobinson PA, 301 S. Bronough Street, Tallahassee, Florida (May 2005 – Aug. 2008)

4. Shareholder, GrayRobinson PA, 301 S. Bronough Street, Tallahassee, Florida (Aug. 2008 – Jan. 2013)

5. Chief Deputy Solicitor General, Office of the Florida Attorney General, PL-01 The Capitol, Tallahassee, Florida (Jan. 2013 – Jun. 2013)

6. Solicitor General, Office of the Florida Attorney General, PL-01 The Capitol, Tallahassee, Florida (Jun. 2013 – present)

Writing Sample 1

SC15-1055

In the Supreme Court of Florida

NORMAN DEWAYNE DEAN, *et al*.,
Petitioners,

v.

DIVISION OF ADMINISTRATIVE HEARINGS,
Respondent.

RESPONSE TO PETITION

PAMELA JO BONDI
Attorney General

ALLEN WINSOR (FBN 016295)
Solicitor General

RACHEL NORDBY (FBN 056606)
Deputy Solicitor General

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Counsel for the Division of Administrative Hearings

INTRODUCTION

Petitioners ask this Court for an extraordinary remedy. They seek a writ of quo warranto to prevent the Division of Administrative Hearings ("DOAH") "from presiding over any medical malpractice arbitrations under the authority of § 766.207, Fla. Stat. *et seq*." Pet. at 1. But Petitioners need no help from this Court to avoid an arbitration involving DOAH; they only need to decline the arbitration request. Nothing in the challenged provisions *compels* arbitration, so no person arbitrates without voluntarily consenting. That is enough to end this case.

What Petitioners actually hope to prevent is the application of noneconomic damages caps resulting from a prospective defendant's offer to arbitrate—statutory caps that apply (albeit in different amounts) whether Petitioners accept or decline the offer. The issue, then, is not so much about DOAH's exercise of authority, but about the Legislature's exercise of authority. More specifically, the case is about the constitutional validity of the statutory caps. But as Petitioners' own authority shows, that dispute belongs in a lawsuit between a claimant wishing to overcome the caps and a defendant wishing to rely on them. Petitioners have chosen the wrong procedural vehicle, the wrong target, and the wrong Court. This Court should dismiss.

I. THE STATUTORY SYSTEM AT ISSUE.

In 1988, the Legislature enacted comprehensive medical malpractice reforms. The intent was "to provide a plan for prompt resolution of medical negligence claims," § 766.201(2), Fla. Stat., through two principal components: presuit investigation and arbitration. Presuit investigation was to be mandatory, but the arbitration "shall be voluntary." *Id.*; *see also Franks v. Bowers*, 116 So. 3d 1240, 1244-45 (Fla. 2013) (detailing statutes); *Barlow v. N. Okaloosa Med. Ctr.*, 877 So. 2d 655, 657-58 (Fla. 2004) (same).

After the presuit investigation, "the parties may elect to have damages determined by an arbitration panel." § 766.207(2), Fla. Stat. Either party may propose arbitration and, if accepted, the parties agree that arbitration will preclude other remedies. *Id.* § 766.207(7). The voluntary arbitration involves a panel of three arbitrators, "one selected by the claimant, one selected by the defendant, and one an administrative law judge furnished by [DOAH]." *Id.* § 766.207(4). There are no punitive damages, and noneconomic damages cannot exceed $250,000 per incident. *Id.* § 766.207(7). The defendant pays the costs of arbitration, as well as the claimant's attorney's fees and costs. *Id.* And the defendant must pay any arbitral award promptly. *Id.* § 766.211. These provisions "were enacted to provide '[s]ubstantial incentives for both claimants and defendants to submit their cases to binding arbitration, thus reducing attorneys' fees, litigation costs, and delay.'"

Franks, 116 So. 3d at 1247 (quoting *Chester v. Doig*, 842 So. 2d 106, 107 (Fla. 2003) (in turn quoting § 766.201(2)(b), Fla. Stat.)).

On the other hand, if a defendant offers arbitration but a claimant declines, the case proceeds to trial. § 766.209(5), Fla. Stat. In that circumstance, the claimant's damages "shall be limited to net economic damages, plus noneconomic damages not to exceed $350,000 per incident," and future economic losses are compensated with periodic payments. *Id*. § 766.209(4).

Either way, the decision to arbitrate remains with the parties. DOAH has no authority to compel arbitration. Its obligation is to "furnish[]" an administrative law judge to serve as chief arbitrator on a three-member arbitration panel, *if* a party offers voluntary binding arbitration and *if* another party accepts.

II. THIS COURT SHOULD DISMISS THE PETITION.

This Court should dismiss the Petition for a number of reasons, all of which relate to Petitioners' efforts to turn a private dispute between a claimant and providers into a quo warranto claim against a State agency.

A. Petitioners seek relief (an order "preclud[ing] DOAH from regulating or participating in any medical malpractice arbitrations brought under § 766.207, *et seq.*," Pet. at 26) that is entirely disconnected from their constitutional arguments (that limitations on medical malpractice damages awards are invalid, Pet. at 16-25). Petitioners never argue that DOAH lacks authority to participate in voluntary

arbitrations generally; they argue that DOAH lacks authority to participate in arbitrations because *another provision* within the same statutory scheme is unconstitutional. But DOAH's involvement with one aspect of the law does not make it the appropriate party to defend an attack on a second. The damages caps function by operation of statute—not by any action DOAH takes or does not take.

Suppose the Legislature had adopted a voluntary arbitration program without any attendant noneconomic damages caps. *Cf.* § 44.104(1), Fla. Stat. ("Two or more opposing parties who are involved in a civil dispute may agree in writing to submit the controversy to voluntary binding arbitration . . . ."); *cf. also* Fla. R. Civ. P. 1.830 (providing for "voluntary binding arbitration"). Suppose the Legislature provided that parties to those voluntary arbitrations could (but were not required to) use DOAH for free arbitration services. And suppose a party who was invited to participate in voluntary arbitration with DOAH elected not to. What action would lie against DOAH? The only difference between that scenario and this one is that here, the same statutory scheme offering voluntary arbitration separately imposes noneconomic damages caps.

Even if the caps were unconstitutional (and they are not), that would not preclude DOAH's participation in any voluntary arbitration. The Legislature did two separate things: it authorized DOAH's participation in voluntary arbitrations, and it provided for noneconomic damages caps for those offered arbitration. The

enacting legislation includes a severability clause, *see* Ch. 88-1, § 82, at 185, Laws of Fla., so any decision invalidating the damages caps would not preclude DOAH's participation in voluntary arbitration. Petitioners actually acknowledge that the caps' invalidity would not preclude the parties from voluntarily arbitrating. *See* Pet. at 8 n.1. The flip side is that a writ precluding DOAH from participating in arbitrations would not preclude enforcement of the caps. They are different issues. As a result, DOAH is not the proper party.

B. Second, quo warranto is not the proper vehicle because no public right is at issue. This Court has "held that members of the general public seeking enforcement of a public right may obtain relief through quo warranto." *Chiles v. Phelps*, 714 So. 2d 453, 456 (Fla. 1998) (citing *Martinez v. Martinez*, 545 So. 2d 1338, 1339 (Fla. 1989)); *accord State v. Bryan*, 39 So. 929, 952 (1905) ("[Q]uo warranto is not the proper remedy for the trial of exclusively private rights. It is available only where the public, in theory at least, have some interest."); *see also Johnson v. Manhattan Ry. Co.*, 289 U.S. 479, 502 (1933) ("Quo warranto is addressed to preventing a continued exercise of authority unlawfully asserted, *not . . . to a vindication of private rights*." (emphasis added)). "The 'public right' at issue in *Martinez* was the right to have the Governor perform his duties and exercise his powers in a constitutional manner." *Chiles*, 714 So. 2d at 456; *see also Whiley v. Scott*, 79 So. 3d 702, 707 (Fla. 2011). Here, there is no "public right" at

issue. There is no public interest in a dispute between Petitioner Dean and the medical providers he intends to sue.[1]

C. Third, quo warranto is unavailable when there is another adequate remedy. *See State ex rel. Gibbs v. Bloodworth*, 1184 So. 1, 2 (Fla. 1938). Because parties can challenge a statute's validity through a declaratory judgment action when there is an actual need for a declaration, *Martinez v. Scanlan*, 582 So. 2d 1167, 1170 (Fla. 1991), quo warranto is improper. Here, Petitioners identify several cases in which this Court has considered the constitutionality of medical malpractice damages caps, but they identified none granting the extraordinary quo warranto writ to address that issue. Instead, as Petitioners' own authorities demonstrate, these challenges arise in private disputes between the real parties in interest.

For example, in *Estate of McCall v. United States*—the principal case Petitioners cite—the plaintiffs filed a tort action against the defendant health provider. 134 So. 3d 894, 899 (Fla. 2014).[2] The plaintiffs won, but the court

[1] There is no "right" at issue at all for the other two Petitioners. They allege no medical malpractice claims, no impact from the caps, and no harm (or threatened harm) from DOAH's actions. They have no dispute with DOAH. *See infra,* at 9-10.

[2] The providers were with the United States Air Force, so the action was against the United States under the Federal Tort Claims Act. 134 So. 3d at 899. Under that Act, "the United States is liable for tortious conduct 'in the same manner and to the same extent as a private individual under like circumstances' after applying the applicable law in the same jurisdiction." *Turner ex rel. Turner v.*

reduced their recovery based on Florida's medical malpractice damages caps. *Id*. The plaintiffs argued those caps were unconstitutional, the trial court disagreed, and the plaintiffs appealed. *Id*. The Eleventh Circuit upheld the caps against the federal constitutional challenges, but certified to this Court questions about the Florida Constitution. *Id.* As a result, this Court had the constitutional issue squarely before it, along with appropriate adverse parties. The *McCall* plaintiffs never argued that the constitutional issue had to be resolved before they filed their malpractice action, and they certainly did not start with an original action against the trial court, questioning its authority to apply Florida law.

Perhaps an even better example is *University of Miami v. Echarte*, which involved the same voluntary arbitration statute at issue here. 618 So. 2d 189 (Fla. 1993). In *Echarte*, the plaintiff alleged negligent treatment at the University of Miami. *Id.* at 190. She served a notice of intent to initiate a malpractice action, and the University requested voluntary arbitration under section 766.207, Florida Statutes. *Id*. At that point, Echarte was in precisely the same position as Petitioner Dean here. *See* Pet. at 9. But rather than challenge DOAH's authority in a Florida Supreme Court action, the *Echarte* plaintiffs filed a declaratory judgment action in the trial court. That action was not against DOAH, but against the University of Miami, the entity actually affected by the damages caps. 618 So. 2d at 190.

United States, 514 F.3d 1194, 1203 (11th Cir. 2008) (quoting 28 U.S.C. § 2674).

Finally, in *Parham v. Florida Health Sciences Center, Inc*., the plaintiff declined the voluntary arbitration, activating the section 766.209(4) damages caps. 35 So. 3d 920, 924 & n.2 (Fla. 2d DCA 2010). Rather than seeking a writ against DOAH, the plaintiff proceeded to trial and challenged the constitutionality of the cap there. *Id*. at 924. As in the cases above, the trial court action featured the real parties in interest presenting competing constitutional arguments, with appellate rights available to the losing side.

It is unclear why Petitioner Dean did not follow that same course. He does not explain why he cannot decline arbitration, sue those he believes wronged him, and litigate the constitutionality of the caps there. That court's decision on the constitutional issue would be subject to appellate review, including potentially this Court's review, just as in *Echarte* and *Estate of McCall*.[3] That is how these cases should proceed. *See Moreau v. Lewis*, 648 So. 2d 124, 126 (Fla. 1995) ("We have previously recognized that under ordinary circumstances the constitutionality of a

[3] The trial court might also avoid the issue altogether, if, for example, the jury sided with the defendants or awarded an amount below the cap. Dismissing this case would therefore serve the additional benefit of avoiding unnecessary constitutional questions. *See In re Holder*, 945 So. 2d 1130, 1133 (Fla. 2006) (noting "principle of judicial restraint" under which Court avoids unnecessary constitutional questions).

statute should be challenged by filing a suit for declaratory judgment in circuit court.").[4]

At one point, Dean does argue that he needs an immediate resolution because of his thirty-day deadline to respond to the arbitration offer, Pet. at 3-4, but his deadline has already passed, *id*. at 9. The other two Petitioners provide no other basis for immediate action. Those two do not even allege their rights were (or will be) violated by DOAH's action or the challenged statutes. Instead, they are attorneys who "advise[] individuals and family members regarding their rights in response to arbitration offers." Pet. at 9-10. They have standing only because, they assert, everyone has standing in quo warranto actions. *Id.* at 8 (citing *Whiley*). But the Court's statement in *Whiley* that "when bringing a petition for writ of quo warranto, individual members of the public have standing as citizens and taxpayers," 79 So. 3d at 706 n.4, only highlights the fact that a claim like this—with no "public right" at issue—cannot support a quo warranto action. *Whiley* did not open this Court to any challenge of any statute by any citizen, so long as the citizen named some state agency with a tangential relationship to the statute.

[4] In *Moreau*, this Court departed from that ordinary practice because "an immediate determination [was] necessary to protect governmental functions." *Id.* There are no governmental functions to protect in this private dispute, and there is no need for immediate determination of the validity of a law enacted nearly thirty years ago and already upheld by this Court.

Dean can challenge the statute in a claim against the medical providers (the real parties in interest) in trial court. The other two Petitioners can challenge the statute when they can similarly allege a medical malpractice claim, serve a notice of intent to sue, and receive an offer to arbitrate. In the meantime, because Petitioners have no claim against DOAH, this Court should dismiss.

III. ALTERNATIVELY, THIS COURT SHOULD TRANSFER TO AN APPROPRIATE CIRCUIT COURT.

The Court asked "whether the petition should be transferred to an appropriate circuit court for consideration as an action for declaratory judgment." Order Requesting Response (Jun. 17, 2015). Because DOAH would not be the appropriate defendant in any action, *see supra*, simply transferring the matter to circuit court in Leon County would not resolve the problem. And it is unclear whether Petitioners would pursue a declaratory judgment action against the providers, whether they would proceed with a tort action, or whether they would follow some other course. In these circumstances, the Court should dismiss outright, allowing Petitioners to pursue their constitutional claims in an appropriate forum against an appropriate defendant.

If the Court does not dismiss the case, however, it should transfer it. "As a general rule, unless there is a compelling reason for invoking the original jurisdiction of a higher court, a quo warranto proceeding should be commenced in

circuit court." *Whiley*, 79 So. 3d at 707. There is no "compelling reason" here. This is not a case "where the functions of government would be adversely affected absent an immediate determination by this Court." *Id.* (quoting *Chiles*, 714 So. 2d at 457). The challenged statute has been in place since 1988, and this Court's *Echarte* decision upholding it has stood since 1993.

In addition, by allowing the lower courts to address the legal arguments in the first instance, on later review (if any), this Court would "have the benefit of developed arguments on both sides and lower court opinions squarely addressing the question." *Yee v. City of Escondido, Cal.*, 503 U.S. 519, 538 (1992). Interested parties would have sufficient time and a workable process to develop further defenses, and the final decision would rest on a full and complete record and sounder legal analysis. Acting now, "without the benefit of a full record or lower court determinations [would not be] a sensible exercise of this Court's discretion." *Lytle v. Household Mfg., Inc*., 494 U.S. 545, 551 n.3 (1990); *accord Fla. Dep't. of Agric. & Cons. Servs. v. Haire*, 824 So. 2d 167, 168 (Fla. 2002) (Pariente, J., concurring) ("If we eventually are called upon to adjudicate the constitutionality of section 581.184 or any related issues, our decision will be a more informed one because of that intermediate appellate review.").

IV. THE COURT SHOULD NOT REACH THE MERITS OF THE CONSTITUTIONAL CLAIM, BUT IF IT DOES, IT SHOULD REJECT THE CLAIMS.

Finally, although the Court should not reach the merits of Petitioners' constitutional claims, the claims are not difficult. The Court in fact already resolved them when it rejected identical claims in *Echarte*. The plaintiff in *Echarte*, like Petitioners here, argued that the damages caps triggered by arbitration requests violated equal protection, access to courts, and the right to trial by jury. 618 So. 2d at 191. *Echarte* squarely controls here. Departing from it now would disrupt more than twenty years of settled law and produce widespread harm for those who have relied on this Court's decision. But even if the Court were addressing the issue on a clean slate, it should uphold the statutes, which are constitutional.

A. "The doctrine of stare decisis, or the obligation of a court to abide by its own precedent, is grounded on the need for stability in the law and has been a fundamental tenet of Anglo-American jurisprudence for centuries." *N. Florida Women's Health & Counseling Servs., Inc. v. State*, 866 So. 2d 612, 637 (Fla. 2003). The Court has never "taken lightly" the decision to depart from established precedent, *Robertson v. State*, 143 So. 3d 907, 910 (Fla. 2014), recognizing Floridians' reliance on its decisions. For example, in *Strand v. Escambia County*, the Court refused to depart from precedent on a bond validation issue, concluding

that "for the past twenty-seven years there has been widespread reliance upon the [earlier] decision in the issuance of bond financing by local government authorities, including school boards, enabling the financing of many public works that have enhanced the quality of life in our State." 992 So. 2d 150, 159-60 (Fla. 2008). Changing course "would cause serious disruption to the governmental authorities that have relied upon that precedent." *Id.* at 160. Similarly, insurers, underwriters, providers, employers, and governments have relied on the certainty and predictability the law here provided. *Cf. N. Fla. Women's*, 866 So. 2d at 637 (noting consideration of whether "the rule of law announced in the decision [can] be reversed without serious injustice to those who have relied on it and without serious disruption in the stability of the law").

Reliance aside, another factor to consider before overcoming stare decisis is whether the precedent turned on premises that are no longer justifiable. *Id.* As described more fully below, the central premise of *Echarte* was that the law provided a beneficial tradeoff: the defendant concedes liability and agrees to pay reasonable damages, and the claimant avoids uncertainty, delays, and certain costs. *Echarte*, 618 So. 2d at 194. That tradeoff persists today. Far from suggesting that the *Echarte* premise is outdated, unworkable, or no longer justified, the Court recently affirmed it. In *Franks v. Bowers*, the Court invalidated on public policy grounds a private arbitration agreement that did not provide the same benefits the

challenged statutes afford. 116 So. 3d at 1241. The Court relied on the policy enunciated in the challenged statutes, finding specifically that the law "presents the Legislature's careful balancing of the rights of patients and the needs of doctors in order to address the medical malpractice crisis." *Id.* at 1247. Because the private agreement in *Franks* did not include the commensurate tradeoffs included in the voluntary arbitration law, it contravened "the public policy of this state." *Id.*

B. In addition to the strong presumption that the Court will follow its settled precedent, there is a strong presumption that a legislative act is constitutional. *Franklin v. State*, 887 So. 2d 1063, 1073 (Fla. 2004). "To overcome the presumption, the invalidity must appear beyond reasonable doubt . . . ." *Crist v. Fla. Ass'n of Criminal Defense Lawyers, Inc*., 978 So. 2d 134, 139 (Fla. 2008) (quoting *Franklin*). Therefore, Petitioners face the doubly difficult burden of overcoming the Court's settled precedent and the presumption of constitutionality.

C. *Echarte* was correct. The challenged provisions do not violate equal protection, access to courts, or the right to trial by jury.

Access to Courts: Because the statute limited damages, the Court in *Echarte* applied the settled *Kluger* test to resolve the access to courts claim. Under that test, the Legislature cannot abolish a right that predated the Declaration of Rights without providing "a reasonable alternative to protect the rights of the people of the State" unless the Legislature can demonstrate "an overpowering public necessity

for the abolishment of such right." *Kluger v. White*, 281 So. 2d 1, 4 (Fla. 1973). The two *Kluger* prongs are alternatives, so the law is valid if either "one of the *Kluger* exceptions is met." *Smith v. Dep't of Ins.*, 507 So. 2d 1080, 1088 (Fla. 1987). In *Echarte*, the Court found the law satisfied both prongs.[5]

First, the Court found that the provisions "provide claimants with a 'commensurate benefit' for the loss of the right to fully recover non-economic damages." *Echarte*, 618 So. 2d at 194:

> The defendant's offer to have damages determined by an arbitration panel provides the claimant with the opportunity to receive prompt recovery without the risk and uncertainty of litigation or having to prove fault in a civil trial. A defendant or the defendant's insurer is required to conduct an investigation to determine the defendant's liability within ninety days of receiving the claimant's notice to initiate a malpractice claim. Before the defendant may deny the claimant's reasonable grounds for finding medical negligence, the defendant must provide a verified written medical expert opinion corroborating a lack of reasonable grounds to show a negligent injury. The claimant benefits from the requirement that a defendant quickly determine the merit of any defenses and the extent of its liability. The claimant also saves the costs of attorney and expert witness fees which would be required to prove liability. Further, a claimant who accepts a defendant's offer to have damages determined by an arbitration panel receives the additional benefits of: 1) the relaxed evidentiary standard for arbitration proceedings as set out by section 120.58, Florida Statutes; 2) joint and several liability of multiple defendants in arbitration; 3) prompt payment of damages after the

[5] Petitioners incorrectly argue that an overpowering public necessity "is a prerequisite to upholding a restriction on the constitutional right to access to courts." Pet. at 16. The *Kluger* tests' two prongs are alternative means of satisfying the constitutional requirement. *See Samples v. Fla. Birth-Related Neurological Injury Comp. Ass'n*, 114 So. 3d 912, 920 (Fla. 2013).

> determination by the arbitration panel; 4) interest penalties against the defendant for failure to promptly pay the arbitration award; and 5) limited appellate review of the arbitration award requiring a showing of "manifest injustice."

Id. (citations omitted). In short, the Legislature intended "to provide substantial incentive to claimants and defendants to voluntarily submit their cases to binding arbitration." *St. Mary's Hosp., Inc. v. Phillipe*, 769 So. 2d 961, 969 (Fla. 2000).

In *Estate of McCall v. United States*, which Petitioners contend undermined *Echarte*'s continued vitality, the two-Justice plurality distinguished *Echarte* precisely because the law in *Echarte* provided a commensurate benefit. 134 So. 3d 894, 904 (Fla. 2014) (plurality).[6] "In upholding the constitutionality of the cap in medical malpractice arbitration proceedings, this Court in *Echarte* noted that arbitration provided commensurate benefits in exchange for the cap, such as saving the expense of attorney fees and expert witnesses." *Id.* On the other hand, the plurality concluded, under the law challenged in *Estate of McCall*, "survivors receive absolutely no benefit whatsoever from the cap on noneconomic damages, but only arbitrary reductions based upon the number of survivors." *Id.*[7]

[6] In *Estate of McCall*, the Court referred to the two-Justice lead opinion as the plurality opinion and the three-Justice opinion as the concurring-in-result opinion. This Response will follow the same practice.

[7] As the plurality recognized, the Court did not address access to courts in *Estate of McCall*, deciding the case on equal protection grounds. 134 So. 3d at 904. Accordingly, the plurality found *Echarte* inapposite. *Id.* It nonetheless correctly found *Echarte* distinguishable based on the commensurate benefit.

Setting *Echarte* aside, the Court has identified other statutory schemes in which the Legislature provides reasonable alternatives to restricted claims. For example, in *Lasky v. State Farm Insurance Company*, the Court upheld provisions of Florida's no-fault insurance law that provided a reasonable alternative to a tort claim. 296 So. 2d 9, 15 (Fla. 1974). "In exchange for the loss of a former right to recover—upon proving the other party to be at fault—for pain and suffering, etc., in cases where the thresholds of the statute are not met, the injured party is assured a speedy payment of his medical bills and compensation for lost income from his own insurer, even where the injured party was himself clearly at fault." *Id.*

Later, in *Martinez v. Scanlan*, the Court rejected an access-to-courts claim against Florida's workers' compensation law because the law provided a reasonable alternative to tort. 582 So. 2d at 1172 ("It continues to provide injured workers with full medical care and wage-loss payments for total or partial disability regardless of fault and without the delay and uncertainty of tort litigation."). More recently, in *Samples v. Florida Birth-Related Neurological Injury Compensation Association*, the Court upheld a law providing no-fault benefits for certain neurological birth-related injuries because the system "provides a reasonable alternative remedy to a parent's right to access the courts for redress of their child's [harm]." 114 So. 3d 912, 921 (Fla. 2013). This Court correctly held

in *Echarte* that the law provides a reasonable alternative and therefore does not violate access to courts.

Petitioners focus their argument on *Echarte*'s alternative holding: "Even if the medical malpractice arbitration statutes at issue did not provide a commensurate benefit, we would find that the statutes satisfy the second prong of *Kluger* which requires a legislative finding that an 'overpowering public necessity' exists, and further that 'no alternative method of meeting such public necessity can be shown.'" 618 So. 2d at 195 (quoting *Kluger*). As a preliminary matter, even if the Court's alternative holding were incorrect, the law would still survive under the reasonable-alternative prong. Nonetheless, the Court's public-necessity holding was correct.

According to Petitioners, whatever necessity existed in 1993 no longer exists today. But just two years ago, this Court noted that it has "clarified the stated policy and intent of the Act—to address the 'overpowering public necessity' created by the medical malpractice insurance crisis. And the [Act] does 'redress an existing grievance.'" *Franks*, 116 So. 3d at 1247 (quoting *Echarte*). Moreover, the plurality's evaluation of public necessity in *Estate of McCall* turned on a different legislative action responding to a different set of circumstances. On top of that, the plurality's rejection of the Legislature's findings garnered the support of only two Justices. *See Estate of McCall*, 134 So. 3d at 916 (Pariente, J., concurring in result)

("[M]y primary disagreement is with the decision not to afford deference to the legislative findings in the absence of a showing that the findings were 'clearly erroneous.'" (quoting *Echarte*)); *id.* at 936 (Polston, C.J., dissenting) ("[T]he Legislature has shown an overpowering public necessity for the cap on noneconomic damages . . . .").

The *Echarte* holding—that the statutes satisfy both *Kluger* prongs—is as correct today as it was in 1993. This Court should reject the access-to-courts claim.

Trial by Jury: Petitioners' jury trial claim likewise fails. First, Petitioners fail to develop any substantive argument on this point. Although Petitioners bundle the claim into the same heading as their access-to-courts challenge, Pet. at 20, they offer only scattered references to the right and the unelaborated observation that "as noted in *Smith*, damage caps violate the right to jury trial," *id.* at 22. In failing to develop any argument on this claim, Petitioners have waived it. *See City of Miami v. Steckloff*, 111 So. 2d 446, 447 (Fla. 1959) (explaining that a court will not consider issues "unless they are properly raised and discussed in the briefs"); *White v. White*, 627 So. 2d 1237, 1239 (Fla. 1st DCA 1993). Second, even if the claim were not waived, it still fails. *Echarte*—which controls here—already upheld the damages caps against a right to jury trial challenge. 618 So. 2d at 191.

Equal Protection: The Court also rejected an equal protection claim in *Echarte*, the same claim Petitioners present here. The Court did not present a

detailed analysis, but its unmistakable holding nonetheless remains. *Id.* at 191 ("[W]e have also considered the other constitutional claims and hold that the statutes do not violate the right to trial by jury [or] equal protection guarantees . . . ."). As the Court recognized several years later, the specific equal protection claim in *Echarte* "concerned whether the cap on noneconomic damages created two classifications of medical malpractice victims—those with insignificant injuries who are compensated in full, and those with serious injuries who are deprived of full compensation." *St. Mary's Hosp., Inc.*, 769 So. at 971 n.3. That is the precise equal protection claim presented here. Pet. at 17-18. At any rate, whatever one views as the classification at issue, the laws do not violate equal protection.

Because neither a suspect class nor a fundamental right is implicated, the equal protection claim warrants only rational basis review. *See Samples*, 114 So. 3d at 917. This is an extremely deferential standard, and the challengers must establish that the law does not "bear some rational relationship to legitimate state purposes." *Id.* at 917 (quoting *Westerheide v. State*, 831 So. 2d 93, 110 (Fla. 2002)). It does not matter whether the policy is the best one, or whether the Court would have chosen the same approach. The only inquiry is whether there is some conceivable relationship between the law and a legitimate state interest. *The Fla. High Sch. Activities Ass'n, Inc. v. Thomas By & Through Thomas*, 434 So. 2d 306,

308 (Fla. 1983). "The burden is upon the party challenging the statute or regulation to show that there is *no* conceivable factual predicate which would rationally support the classification under attack. Where the challenging party fails to meet this difficult burden, the statute or regulation must be sustained." *Id.*

As the Court recognized in *Franks*, the legislation provides an incentive to encourage arbitration and reduce costs of medical care in Florida. 116 So. 3d at 1248. This is more than sufficient to establish a conceivable rational basis. This Court certainly would not have relied on this legislation in reaching its public-policy holding in *Franks* if the legislation were completely irrational. The legislative system, including the noneconomic damages caps, serves a legitimate state interest. *See Samples*, 114 So. 3d at 917 ("Limiting the parental award to $100,000 per claim—as opposed to per parent—is rationally related to maintaining the actuarial soundness of the Plan."); *Mizrahi v. N. Miami Med. Ctr., Ltd*., 761 So. 2d 1040, 1043 (Fla. 2000) ("[T]he instant statute which created a right of action for many while excluding a specific class from such action, and which exclusion is rationally related to controlling healthcare costs and accessibility, does not violate the equal protection guarantees of either the United States or Florida Constitutions.").

Petitioners note that in *Estate of McCall*, this Court found an equal protection violation. But as explained above, the plurality carefully distinguished

the statute at issue there from the statute challenged here. *See supra*. The equal protection issue in *Estate of McCall* turned on a per incident cap, meaning claimants' recovery depended on the number of claimants. The plurality noted that therefore "*Echarte* does not compel a different result here." 134 So. 3d at 904 (plurality); *accord id*. at 904-05 ("*Echarte* did not address a circumstance in which similarly situated survivors would receive different, arbitrarily reduced noneconomic damage awards solely based upon the number of survivors.").

The challenged statutes do not violate equal protection.

* * *

Just as the Court held more than twenty years ago, the medical malpractice provisions challenged here are constitutional. If the Court reaches Petitioners' constitutional claims, it should reject them in their entirety.

CONCLUSION

This Court should dismiss the Petition. Alternatively, it should transfer to a circuit court for further proceedings. The Court should not reach the merits of the constitutional claim. But if it does, it should set the case for oral argument and comprehensive briefing, allowing interested parties an opportunity to be heard.

Respectfully submitted,

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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.

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Writing Sample 2

IN THE DISTRICT COURT OF APPEAL
FOR THE FIRST DISTRICT, STATE OF FLORIDA

CASE NO.: 1D14-3592
L.T. CASE NO.: 2014-CA-1321

JAMES APTHORP,
Appellant,

v.

KENNETH W. DETZNER,
in his official capacity as
Florida Secretary of State,
Appellee.

APPELLEE'S ANSWER BRIEF

ON APPEAL FROM A FINAL JUDGMENT OF THE
SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA

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SUMMARY OF ARGUMENT

The Legislature unanimously enacted a provision authorizing the use of qualified blind trusts in Florida. This law promotes ethics in government by allowing public officials to avoid conflicts of interest, and it is fully consistent with the Florida Constitution. This Court should reject Apthorp's efforts to invalidate it.

First, this Court need not reach the constitutional question because Apthorp lacks standing. As Apthorp acknowledges, no person is presently using the blind trust statute to avoid financial disclosures. Therefore, Apthorp's claim turns on speculation about how or when candidates might rely on the statute in the future. In addition, any "harm" Apthorp faces would be undifferentiated from all other citizens' "harm," meaning Apthorp has no specialized injury. Moreover, the proper defendant when challenging a statute's constitutionality is the official charged with enforcing the statute, and the Secretary does not enforce this statute.

Apthorp's challenge also fails on the merits. The Constitution gives the Legislature authority to establish appropriate parameters for financial disclosure. Exercising that authority, the Legislature adopted reasonable and appropriate measures consistent with the Sunshine Amendment's purpose. This Court should affirm the final judgment in the Secretary's favor.

STANDARD OF REVIEW

This Court reviews de novo decisions interpreting constitutional provisions or determining a statute's constitutionality. *Fla. Dep't of Revenue v. City of Gainesville*, 918 So. 2d 250, 256 (Fla. 2005). The Court must presume the constitutionality of legislative acts. *Id*. This Court also reviews standing determinations de novo. *McCarty v. Myers*, 125 So. 3d 333, 336 (Fla. 1st DCA 2013).

ARGUMENT

James Apthorp fundamentally disagrees with a provision of Florida's ethics law. He claims the law "has numerous shortcomings," perhaps allows blind trusts that are not "truly blind," and compares unfavorably to its federal-law counterpart. IB at 32-35. Policy debates aside, however, the issue here is whether Apthorp has a legal right to a judgment declaring the law invalid. He does not. Not only does Apthorp lack standing to bring his challenge, but his claims also fail on the merits. This Court can affirm the final judgment on either basis.

I. APTHORP HAS NO STANDING TO CHALLENGE THE LAW.

"Standing is a legal concept that requires a would-be litigant to demonstrate that he or she reasonably expects to be affected by the outcome of the proceedings, either directly or indirectly." *Hayes v. Guardianship of Thompson*, 952 So. 2d 498,

505 (Fla. 2006); *accord Brown v. Firestone*, 382 So. 2d 654, 662 (Fla. 1980) ("[T]his Court has long been committed to the rule that a party does not possess standing to sue unless he or she can demonstrate a direct and articulable stake in the outcome of a controversy."). If standing still operates as any limitation on a plaintiff's ability to sue over laws he merely opposes, it must preclude this challenge.

Although the trial court held that Apthorp had standing, (R2:332), it entered final judgment for the Secretary after deciding the merits. This Court can affirm the final judgment without reaching the merits, based on Apthorp's lack of standing. *See Fla. Nat'l Org. for Women, Inc. v. State*, 832 So. 2d 911, 915 (Fla. 1st DCA 2002) (court can affirm judgment on any alternate basis supported by record). In fact, that would be a prudent course, in light of this Court's obligation to avoid reaching constitutional issues unnecessarily. *See, e.g.*, *Pub. Defender, Eleventh Judicial Circuit of Fla. v. State*, 115 So. 3d 261, 280 (Fla. 2013) ("It is a settled principle of constitutional law that courts should not pass upon the constitutionality of statutes if the case in which the question arises may be effectively disposed of on other grounds." (quoting *Singletary v. State*, 322 So. 2d 551, 552 (Fla. 1975)) (internal quotations omitted)).

A. As Apthorp Acknowledges, Nobody Is Using This Law To Avoid Disclosures.

Apthorp is not challenging the entirety of the law: "The Appellant is challenging only the subsection of the statute which allows using qualified blind trusts in financial disclosure statements." IB at 36. But Apthorp admits that he "knows of no constitutional officer or candidate who incorporated a blind trust in the most recent financial disclosure statements." *Id*. Even when this case began—when Apthorp filed an emergency petition in the Florida Supreme Court—he knew "of only one current Florida office holder or candidate using a blind trust." (R1:27); *see also* IB at 12 ("[A]t the time, [Governor] Scott appeared to be the only such individual holding a blind trust"). Now Apthorp cannot identify a single person doing what he contends is unconstitutional. He therefore cannot demonstrate that "there is a bona fide, actual, present practical need for the declaration," meaning he is not entitled to declaratory relief. *Martinez v. Scanlan*, 582 So. 2d 1167, 1170 (Fla. 1991) (quoting *May v. Holley*, 59 So. 2d 636, 639 (Fla. 1952)).[1]

[1] In a frequently cited passage, the Florida Supreme Court held that not just anyone may seek declaratory relief. In addition to showing a bona fide, actual need for the declaration, a successful plaintiff must show:

> that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; that some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; that there

"[O]ne who challenges the constitutionality of an act of the legislature must point out to the court exactly how and in what manner his constitutional rights will surely be, or have been invaded or infringed." *Smith v. Ervin*, 64 So. 2d 166, 171 (Fla. 1953). Although he does not address standing on appeal, Apthorp argued below that his constitutional rights would be infringed if candidates or officers used the blind-trust law to avoid disclosures. (R2:294-95) But if no candidate or officer is using the law to avoid disclosures, Apthorp cannot show "exactly how and in what manner his constitutional rights will surely be" infringed.

It is no answer to say, as Apthorp did in his pass-through suggestion, that "hundreds of newly elected and reelected officials *may* consider the lower court ruling as authority for establishing blind trusts which could then be used in 2015

> is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law; that the antagonistic and adverse interest are all before the court by proper process or class representation and that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity. These elements are necessary in order to maintain the status of the proceeding as being judicial in nature and therefore within the constitutional powers of the courts.

Martinez, 582 So. 2d at 1170 (quoting *May*, 59 So. 2d at 639) (emphasis omitted). The absence of any practical need for the declaration deprived the trial court of jurisdiction. The Secretary disputed Apthorp's standing below, but "[e]ven if both parties have no objection to the court entertaining such an action, mere mutual agreement between parties cannot confer subject-matter jurisdiction upon a court." *Id.* at 1171 n.2.

financial disclosure statements." Appellant's 2d Am. Sugg. for Certif. at 5 (Aug. 21, 2014) (emphasis added). By Apthorp's own admission, *no* person relied on a blind trust for his or her 2014 financial disclosure—at a time when everyone could rely on the presumptively valid statute. Regardless of what Apthorp fears *may* happen, speculation cannot save his standing. *See Martinez*, 582 So. 2d at 1174 ("[I]t is well-settled that courts will not render, in the form of a declaratory judgment, what amounts to an advisory opinion at the instance of parties who show merely the possibility of legal injury on the basis of a hypothetical state of facts which have not arisen and are only contingent, uncertain, and rest in the future."); *Williams v. Howard*, 329 So. 2d 277, 282 (Fla. 1976) ("This Court has repeatedly held that the mere possibility of injury at some indeterminate time in the future does not supply standing under our Declaratory Judgment Act.").

B. Apthorp Is In No Different Position Than Any Other Citizen.

Even if the statute harmed Apthorp, his "harm" would be shared by everyone. That is not enough. "The interest of the parties . . . must be more than merely general." *State v. Fla. Consumer Action Network*, 830 So. 2d 148, 152 (Fla. 1st DCA 2001) (quoting *Ready v. Safeway Rock Co.*, 24 So. 2d 808, 811 (Fla. 1946)) (internal quotation marks omitted). A plaintiff must show that his right to a declaration is "different in kind than those of all citizens." *See McNevin v. Baker*,

170 So. 2d 66, 68 (Fla. 2d DCA 1964). Here, Apthorp does not base his claim on a personal privilege or right. *Cf. McCarty*, 125 So. 3d at 336 ("It is well-established 'that a party seeking adjudication of the courts on the constitutionality of statutes is required to show that *his* constitutional rights have been abrogated or threatened by the provisions of the challenged act.'" (quoting *Hillsborough Inv. Co. v. Wilcox*, 13 So. 2d 448, 453 (Fla. 1943)). He is therefore in no different position than any other person who may want this law—or any other law—declared invalid.

C. The Secretary Is Not a Proper Defendant.

"The proper defendant in a lawsuit challenging a statute's constitutionality is the state official designated to enforce the statute." *Atwater v. City of Weston*, 64 So. 3d 701, 703 (Fla. 1st DCA 2011); *accord Marcus v. State Senate*, 115 So. 3d 448, 448-49 (Fla. 1st DCA 2013); *Haridopolis v. Alachua Cnty*., 65 So. 3d 577, 578 (Fla. 1st DCA 2011). Rather than contend that the Secretary is the state official designated to enforce the blind trust statute (and he is not), Apthorp argued below that the Secretary is a proper defendant because his duties include "keeping custody of the state's official records, including the original state statutes," (R2:214), meaning he is the party who could "expunge an unconstitutional statute from official state records," (R2:245).

If the Secretary's role as custodian of official records warranted party-defendant status, the Secretary would be an appropriate defendant in any challenge to any statute. This would not only undermine the requirement for a controversy between adverse parties, *see Martinez*, 582 So. 2d at 1170, but also squarely conflict with this Court's precedent, *see Atwater*, 64 So. 3d at 703 ("[T]he Secretary of State, also is not a proper party to the lawsuit for that official does not enforce Florida's growth management laws."); *id*. (reversing order directing "the Secretary of State to expunge the law from the official records of the State").

Apthorp also argued below that the Secretary is a proper defendant because he is the chief elections official. (R2:214, 245.) But Apthorp's claim for facial invalidation is not an elections challenge. The qualified blind trust statute applies to anyone filing a financial disclosure, and the financial disclosure requirement is not limited to officials facing election. Those already elected still must file annual disclosures, *see* § 112.3144, Fla. Stat., and those disclosures (filed with the Florida Commission on Ethics) are unconnected to the Secretary's duties. Even when the Secretary accepts disclosures from candidates seeking to qualify for election, the Secretary does not enforce the qualified blind trust statute. Instead, he simply collects the disclosure forms (and other required documents), and by law, "may not determine whether the contents of the qualifying papers are accurate."

§ 99.061(7)(c), Fla. Stat. All he determines is "whether [all required items] have been properly filed and whether each item is complete *on its face*." *Id.* (emphasis added).

* * *

If the law affected Apthorp, *if* he were in a different position than all other Floridians, and *if* he had sued a proper defendant, he probably would have standing. But as things are, he does not. This Court should therefore affirm the final judgment against Apthorp without reaching the merits of his claims. If this Court reaches the merits, though, it should nonetheless affirm, because—as the trial court correctly found—the statute is constitutional.

II. THE QUALIFIED BLIND TRUST LAW IS CONSTITUTIONAL.

Although his brief wanders through a history of Florida politics, accusations of corruption, general criticisms of blind trusts, and broad endorsements of Florida's Sunshine Amendments, Apthorp's lone constitutional challenge is quite narrow. Apthorp challenges a single provision of Florida's Ethics Code—the one that says public officers are "not required to report as a secondary source of income any source of income to the blind trust." IB at 10 (quoting § 112.31425(5)); *see also* IB at 1-2. He explicitly acknowledges that he "is challenging only the subsection of the statute which allows using qualified blind

trusts in financial disclosure statements." IB at 36; *see also id.* at 32 n.15 ("The Appellant would have no quarrel with candidates and elected officials who—like Governor Scott in 2014—keep assets in qualified blind trusts 364 days a year but reveal them fully and publicly in annual financial disclosure statements."). So the entire issue is whether the Constitution allows the Legislature to regulate the reporting of secondary sources of income in this manner. It does.

A. The Constitution Gives the Legislature Authority to Specify Disclosure Requirements.

The thrust of Apthorp's argument is this: The Constitution requires "full and public disclosure," and the statute allows something less than "full and public disclosure." Therefore, he argues, the statute must fall.

Essential to this flawed argument is Apthorp's own interpretation of what "full and public disclosure" must mean. He looks to dictionaries to evaluate "full" and "public," and—although he never explains how "full" is full enough in this context (are weekly disclosures required? daily? spouse or family disclosures?)—he concludes the Legislature's determination is unconstitutional.

But this Court need not concern itself with Apthorp's proposed definition of "full and public disclosure," because the Constitution defines it: "Full and public disclosure of financial interests shall mean filing with the custodian of state records by July 1 of each year a sworn statement showing net worth and identifying each

asset and liability in excess of $1,000 and its value" along with a statement of income or a tax return. Art. II, § 8(i)(1), Fla. Const. Notwithstanding Apthorp's preferred alternative, this Court cannot disregard the Constitution's definition. *See Ervin v. Capital Weekly Post, Inc*., 97 So. 2d 464, 469 (Fla. 1957) ("statutory definition of a word is controlling and will be followed by the Courts" (quoting and adopting circuit court order)); *Vocelle v. Knight Bros. Paper Co.*, 118 So. 2d 664, 667 (Fla. 1st DCA 1960); Sutherland Statutory Construction § 20.8 (7th Ed. 2009) (constitutional definition is binding even if "the definition does not coincide with the ordinary meaning of the words"); *cf. Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 244 (Fla. 2001) ("[I]t is the constitution itself, rather than 'common usage,' which is the touchstone against which the Legislature's enactments are to be judicially measured . . . ." (note omitted)).

Ordinarily, a constitutional definition likewise binds the Legislature. But in this case, the Constitution expressly allows the Legislature to alter the definition. The constitutional definition of "full and public disclosure of financial interests" says what the term "shall mean" on the Amendment's effective date "*and until changed by law*." Art. II, § 8(i), Fla. Const. (emphasis added). "By law" means by act of the Legislature, *see AFL-CIO v. Hood*, 885 So. 2d 373, 375 (Fla. 2004), so the Amendment allows the Legislature to determine the definition. Indeed, as

Apthorp correctly notes, the Legislature has already "made some changes in the original schedule." IB at 7.

This is therefore quite unlike *State ex rel. Griffin v. Sullvan* and *Beck v. Game and Fresh Water Fish Commission*, which Apthorp cites. IB at 22-23. Under the constitutional provision at issue there, the Game and Fresh Water Fish Commission—and not the Legislature—had power to regulate the taking of fresh water fish. *Beck*, 33 So. 2d 594, 595 (Fla. 1948). The question was "whether the Legislature can oust the constitutional Commission from control over fresh water fish in Lake Okeechobee and the St. Johns River by making a legislative finding that said waters are salt." *Id.* The answer was no. *Id.* But there was nothing in the Constitution expressly authorizing the Legislature to define "fresh water"; here there is a provision authorizing the Legislature to define "full and public disclosure."

The constitutional grant of authority to the Legislature is clear. And there is nothing unusual about constitutional provisions allowing for legislative definitions. *See, e.g.*, Art. III, § 19(b), Fla. Const. ("for purposes of this subsection, 'specific appropriation,' 'itemization,' and 'major program area' shall be defined by law"); Art. VII, § 3(c), Fla. Const. (counties and cities may "grant community and economic development ad valorem tax exemptions to new businesses and

expansions of existing businesses, as defined by general law"). Nor is it unusual for constitutional amendments to provide temporary provisions making the amendments effective immediately without awaiting legislative action, but allowing later legislative action. *See Plante v. Smathers*, 372 So. 2d 933, 938 (Fla. 1979) (disclosure provisions self-executing). For example, when the Constitution introduced judicial nominating commissions, it provided a "schedule" temporarily determining how the commissions would be comprised. Art. V, § 20(c)(5), Fla. Const. But that composition lasted only "until changed by general law," *id.* § 20(c), and the Legislature subsequently changed it, *see* § 43.291, Fla. Stat. There, as here, the plain language allowed the Legislature to supersede the Constitution's temporary provisions.[2]

[2] In a footnote, Apthorp complains that the Legislature's authority to modify judicial nominating processes led to the return of "a gubernatorial patronage committee process" which the Constitution sought to avoid. IB at 24 n.10. This misplaced argument only further proves the point: If the framers of the constitutional amendment did not want the Legislature adjusting the judicial nominating process, the amendment would not have expressly allowed the committee composition to be "changed by general law." Art. V, § 20(c)(5), Fla. Const. Likewise, if the framers of the Sunshine Amendment did not want the Legislature establishing the parameters of "full and public disclosure," they would not have drafted the amendment to explicitly give the Legislature authority to define "full and public disclosure" "by general law." Art. II, § 8(i), Fla. Const.

B. The Constitutional Grant of Authority to the Legislature Is Logical and Consistent With the Sunshine Amendment's Overall Purpose.

It does not matter whether Apthorp thinks it wise to give the Legislature authority to alter the parameters of "full and public disclosure." That is what the Constitution did, and that should end the inquiry. But it is nonetheless worth pointing out that the constitutional provision granting the Legislature authority to establish appropriate parameters is both logical and consistent with the Sunshine Amendment's overall purpose.

Apthorp credits Governor Askew with spearheading the Sunshine Amendment, IB at 3-5, and the Florida Supreme Court has too, *Williams v. Smith*, 360 So. 2d 417, 418-19 (Fla. 1978). Governor Askew knew that candidates could not unilaterally determine what "full and public disclosure" meant—and that the Legislature could provide the needed specificity. "Because a constitution must be a statement of broad principle capable of enduring and evolving with passage of time the Sunshine Amendment was not intended to address every ethics issue. The amendment establishes a foundation and a framework on which we can add the specificity that statutes permit." *Id.* at 419 (quoting Gov. Askew). Governor Askew was "confident the Legislature will respect the expressed desires of the vast majority of Florida voters and move, in good faith, to further extend the

Amendment." *Id.* (quoting Gov. Askew). That is why "[t]he Amendment leaves to the Legislature sufficient flexibility to carry out the will and intent of the voters." *Id.* (quoting Gov. Askew); *accord* Bud Newman, *Askew Brings His Petition Campaign to County*, The Palm Beach Post (Nov. 21, 1975) (quoting Gov. Askew: "We have drafted this in such a way that we're not trying to put in concrete into the constitution specifics that should more appropriately be part of a statute.").[3]

The commonsense idea is the Amendment would establish broad principles, and the Legislature—consistent with the will of the people—would provide specifics to establish "workable standards for financial disclosure." *Williams*, 300 So. 2d at 419 (quoting Gov. Askew). None of the books, newspaper articles, or movies that Apthorp cites contradict this. Instead those materials support only what is undisputed: that people were concerned about ethics in government and wanted financial disclosures. None of this suggests that the people would have resisted the Legislature's action here.

Given the history and Governor Askew's clear statements, "[t]here could hardly be a more specific record of the patent intent of the framers that the Legislature would act to implement the constitutional amendment and supply the needed specifics where required." *Id.* at 419-20. The Florida Legislature supplied

[3] http://news.google.com/newspapers?id=HPgiAAAAIBAJ&sjid=9M0FAAAAIBAJ&pg=1379%2C1696383.

those needed specifics, and a lengthy section of the Florida Statutes details requirements for "full and public disclosure of financial interests." § 112.3144, Fla. Stat. The blind trust provision only adds to that detail, establishing precise requirements where none existed.[4]

C. The Blind Trust Law Is Reasonable, Appropriate, and Consistent With the Sunshine Amendment's Purpose.

Unable to argue that the Legislature has no authority to alter the schedule the Constitution provided "until changed by law," Art. II, § 8(i), Fla. Const., Apthorp argues that the Legislature's authority is limited to *expanding* the disclosure obligations. He contends that the Legislature may not enact any law that would "limit disclosure." IB at 7, 23. But he misreads section 8(h) of article II, which has nothing to do with limiting legislative authority. That section provides that the Ethics in Government provision of the Florida Constitution (article II, section 8) "shall not be construed to limit disclosures and prohibitions which may be established by law to preserve the public trust and avoid conflicts between public duties and private interests." That means if the Legislature "established by law" *additional* disclosures or prohibitions *not* required by the Constitution, no one

[4] Even if the Constitution did not define "full and public disclosure" or allow the Legislature to do so, it cannot be that the Constitution requires as much disclosure "as is possible," as Apthorp suggests with his dictionary definition. IB at 15. Disclosures by state officials (including judges) have never involved as much disclosure "as is possible," an impractical and unrealistic standard.

could challenge the Legislature's authority to do so based on section 8—under an *expressio unius est exclusio alterius* theory or otherwise. *Cf. State v. Hearns*, 961 So. 2d 211, 219 (Fla. 2007) (describing *expressio unius* canon).

Only by ignoring the structure (or words) of section 8(h) can Apthorp contend that it limits the Legislature's authority. The section says it does not limit disclosures that the *Legislature* may establish. It says nothing about the Legislature's ability to determine the parameters of full and public disclosure. Indeed, rather than *limit* the Legislature's authority, this provision expressly *protects* it. The purpose is to ensure that the Legislature has authority to enact "by law" disclosures it deems appropriate. The drafters could have, of course, provided that the Legislature could not deviate from the temporary schedule. But they decided instead that the Legislature could be trusted to adjust the schedule, and the Constitution expressly grants the Legislature that authority without limitation.

Regardless, even if there were an unexpressed constitutional limitation on the Legislature's authority to establish parameters, the Legislature's decision was reasonable and fully consistent with the Sunshine Amendment's purposes. The Sunshine Amendment's primary purpose is "to impose stricter standards on public officials so as to avoid conflicts of interest." *Plante*, 372 So. 2d at 936-37; *accord Myers v. Hawkins*, 362 So. 2d 926, 930 (Fla. 1978) (purpose "was evolved to

establish an arsenal of protections against the actual and apparent conflicts of interest"). As the trial court found, "[t]he purpose of disclosing this information is not mere curiosity as to the public official's financial holdings. Rather it allows the public to have the same information as the public official, thus permitting an informed opinion on whether conflicts of interest have or may in the future occur." (R2:340); *cf. also Plante*, 372 So. 2d at 937 (describing voters' "desire to be informed as to [candidates'] personal finances . . . because of their legitimate concern to avoid conflicts of interests").

Blind trusts are consistent with this purpose. With a blind trust, the "official will have no control over, will receive no communications about, and will (eventually as existing assets are sold and new ones obtained by the trustee) have no knowledge of the identity of the specific assets held in the trust." Jack Maskell, Cong. Research Serv., RS21656, *The Use of Blind Trusts by Federal Officials* 4 (Sept. 23, 2005) (the "CRS Report"). This is particularly true of "qualified blind trusts," provided by the statute Apthorp challenges. The statute requires that the officer give prompt notice of forming a blind trust and to disclose all financial interests placed into that trust. § 112.31425(6)(d), Fla. Stat. The trust agreement must not restrict the qualified trustee's ability to transfer or sell an asset, must give the trustee "complete discretion to manage the trust," and must preclude disclosure

to the officer or beneficiary of "any information concerning replacement assets to the trust." *Id*. § 112.31425(6)(c). The statute also precludes the officer from "attempt[ing] to influence or exercise any control over decisions regarding the management of assets" in the trust. *Id.* § 112.31425(3). The officer "may not have any direct or indirect communication with the trustee with respect to the trust," except in limited situations and only in writing. *Id.* § 112.31425(4). Each of these requirements is fully consistent with the Sunshine Amendment.

It is not a matter of choosing between a blind trust and "full disclosure," as Apthorp suggests. The law continues to require full disclosure. In addition to reporting all assets put into the trust, the officer must report the "beneficial interest in the qualified blind trust and its value as an asset on his or her financial disclosure form, if the value is required to be disclosed." *Id.* § 112.31425(5). If the trust earns income, that too must be disclosed. *See id*. If an officer liquidates a qualified blind trust while the officer is in office, or if the officer learns of replacement assets added to the trust, the officer must amend the financial disclosure statement to include the previously unreported assets. The officer also "shall disclose the previously unreported pro rata share of the trust's interests in the investments or income deriving from any such investments." *Id.* § 112.31425(7). In short, there is full disclosure of financial interests.

Claiming otherwise, Apthorp suggests that every asset of the trust must be disclosed as a "financial interest." But the financial interest is in the trust, and that interest is disclosed. An official with a blind trust "will not need to (and will not be able to) identify the particular assets in the 'blind trust' in future financial disclosure reports, and such assets will not be considered 'financial interests' of the official for disqualification purposes." CRS Report at 4-5 (internal references omitted). The interest the officer knows—the beneficial interest in the blind trust and its value—is disclosed. That is full disclosure. (R2:341) (circuit court's final order) ("The intent of the Sunshine Amendment has been fulfilled by disclosing what assets are placed in the trust and the value of the trust at the applicable reporting time. The public official and the public possess the same information and there is nothing more to disclose. This process does not violate the express language or intent of the Sunshine Amendment.").

Notably, even in an ordinary (non-blind) trust, Florida law requires only that the beneficial interest in the trust be disclosed—not each asset within the trust. The instructions to Form 6, which the Commission on Ethics adopts by rule, *see* R. 34-8.002(1), Fla. Admin. Code, require a description of assets, including "beneficial interests in a trust."[5] "For example, list 'Stock (Williams Construction Co.),'

[5] Form 6 (and the instructions for its completion and filing) is available at http://www.ethics.state.fl.us/FORMS/Form%206_2013i.pdf; *see also* Art. II,

'Bonds (Southern Water and Gas),' 'Bank accounts (First National Bank),' [or] '*Smith family trust*.'" Form 6, at 4 (emphasis added). Officers have qualified for election doing just that—listing the beneficial interest in an ordinary trust without identifying each trust asset. (R2:287) (noting that several judicial candidates have qualified for election this cycle listing trust interests without identifying specific trust assets). If disclosing the beneficial interest of an ordinary trust is enough, then disclosing the beneficial interest of a blind trust—with its additional protections against conflicts of interest—likewise constitutes "full and public disclosure."

Apthorp details Florida's well-known ethics problems from the 1970s, arguing that this history proves the voters adopting the Sunshine Amendment would have rejected the concept of blind trusts. *Cf. Plante v. Gonzalez*, 575 F.2d 1119, 1122 n.3 (5th Cir. 1978) (describing history of problems). But that era suffered problems on the national stage, too. With Watergate a fresh memory, Congress passed the Ethics in Government Act of 1978 ("EIGA"), Pub. L. No. 95-521, 92 Stat. 1824 (1978). Like the Sunshine Amendment's command that public officers and candidates "file full and public disclosure of their financial interests," the EIGA required each member of Congress and certain executive officers to make an annual "full and complete statement" regarding assets, income, and other

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§ 8(i)(1)(b), Fla. Const. ("The forms for such source disclosure and the rules under which they are to be filed shall be prescribed by the [Commission on Ethics].").

information. *Id.* §§ 101(a), 102(a), 201, 202(a)-(b). The same law provided that the member or officer could utilize a "qualified blind trust." *Id.* §§ 102(e)(2)(A), 202(f)(2). (Incidentally, the Act defined a "qualified blind trust" in terms nearly identical to those used in section 112.31425.) So during the same era Apthorp argues that Florida voters *prohibited* blind trusts to address ethics issues, Congress *authorized* blind trusts to address ethics issues. Apthorp's speculation aside, there is nothing in the history of the Sunshine Amendment to suggest that blind trusts are inconsistent with the voters' intent.

Beyond this history, there is additional support for the reasonableness of the Legislature's action. First, a number of other states allow blind trusts for the same reasons Florida does. *See* Fla. Comm'n on Ethics, *Annual Report to the Florida Legislature for Calendar Year 2012* (the "Ethics Comm'n Report"), at 26 ("The ethics laws of many states, as well as the U.S. government, allow a public official to place private financial interests that may pose a conflict of interest with public duties into a 'blind trust.'").[6]

More importantly, Florida's Nineteenth Statewide Grand Jury recommended blind trusts in its 2010 report on public corruption and recommended solutions. *See* Nineteenth Statewide Grand Jury, Case No. SC 09-1910, First Interim Report, *A Study of Public Corruption in Florida and Recommended Solutions* (Dec. 29,

[6] http://www.ethics.state.fl.us/publications/2012%20Annual%20Report.pdf.

2010) (the "Grand Jury Report").[7] The report found that "[r]eform is essential to remedy the perception that those in leadership roles fail to set a noble example of service and are instead assumed to be egotistical and corrupt." *Id.* at 12. To that end, the grand jury made certain recommendations to "be considered in the upcoming legislative session, and continuing sessions, until they are passed." *Id*. at 4, 14. One recommended measure was to "[c]reate a 'blind trust' provision under the Code of Ethics." *Id*. at 14, 67.

The Legislature followed that recommendation. *See* Fla. S. Comm. on Rules, CS for SB 2 (2013) Staff Analysis at 2 (Feb. 20, 2013) ("The bill incorporates a recommendation of the Nineteenth Statewide Grand Jury by allowing all public officers to place their assets in a blind trust."). The law, modeled after its federal counterpart, followed the Legislature's unremarkable determination that "if a public officer creates a trust and has no control over the assets therein, his official actions will not be considered in conflict or to be influenced by private considerations." § 112.31425(1), Fla. Stat. A beneficial interest in that trust "will not give rise to conflict of interest." *Id.* § 112.31425(2).

The Legislature also relied on the 2012 Annual Report of the Commission on Ethics, which included proposals regarding blind trusts:

[7] http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8CLT9A/$file/19thSWGJInterimReport.pdf.

> The proposal would require disclosure of the assets being placed in the trust, and if the trust is revoked, of the assets remaining. It would prohibit the official from exercising any control over the trust, except for general directions regarding investment goals, requests for distributions, and directions for dealing with assets which might pose a conflict of interest, and would prohibit the official from learning about the trust's investments, except to the limited extent necessary for personal tax returns. The recommendations describe how interests in a blind trust would be reported on the official's financial disclosure statements, limit who can serve as a trustee, prohibit the trustee from investing trust assets in businesses which the trustee knows are regulated by or doing significant business with the official's public agency, and provide for full disclosure if the blind trust is terminated. Finally, they would require that the blind trust must be approved by the Ethics Commission.

Ethics Comm'n Report, at 26. The Commission on Ethics' purpose is to promote ethics in government, and it exists to enforce the ethics laws. *See* § 112.320, Fla. Stat.

There is also past practice. "Prior to the 2013 passage of the subject statute, Florida officials and candidates from both political parties had used blind trusts." (R2:331) (trial court's final order). In 2010, then-CFO Alex Sink qualified to run for Governor. Her financial disclosure form identified the "Adelaide A. Sink Blind Trust" but did not disclose the trust's holdings.[8] Apthorp did not challenge CFO Sink's filing as less than "full." (Neither did any of the amici supporting Apthorp here.) And CFO Sink herself explained that "[n]ewspapers, elected officials, ethics

[8] http://election.dos.state.fl.us/PublicRecordsBER/wfPublicImagesBER.aspx?account=50275.

experts and even the Florida Commission on Ethics all have endorsed blind trusts for elected officials. A blind trust represents a critical step toward assuring ethical conduct and ought to be required of every person who holds public office." Sydney P. Freedberg & Adam C. Smith, *CFO Alex Sink's blind trust limits public financial disclosure*, St. Petersburg Times (July 31, 2009) (cited in Pet. at 8 (R1:25)).

The Legislature's response to past practice and to the recommendations of the Commission on Ethics, the statewide grand jury, and scores of others, did not violate the Constitution; it only enhanced the protections the Constitution supplies.

D. Any Doubt About the Statute's Validity Must Be Resolved In Favor of Its Constitutionality.

Finally, even if there is any question about the statute's validity—even if the Court found some part of Apthorp's argument persuasive—the Court cannot invalidate the law "unless it clearly appears beyond all reasonable doubt that, under any rational view that may be taken of the statute, it is in positive conflict" with the Constitution. *In re Apportionment Law, Senate Joint Resolution No. 1305, 1972 Regular Session*, 263 So. 2d 797, 805-06 (Fla. 1972) (quoting *City of Jacksonville v. Bowden*, 64 So. 769 (Fla. 1914)). "[E]very reasonable doubt must be indulged in favor of the act. If it can be rationally interpreted to harmonize with the Constitution, it is the duty of the Court to adopt that construction and sustain the act." *Holley v. Adams*, 238 So. 2d 401, 404 (Fla. 1970). Thus, even if this Court

suspects an inconsistency between the drafters' intent and the Legislature's action (and it should not), it should sustain the law unless the inconsistency is indisputable. Similarly, even if the Court—like Apthorp—disagrees with the Legislature's policy decision, it must not invalidate the law unless the law is unconstitutional beyond all doubt. *See id*. at 405 ("The judiciary will not nullify legislative acts merely on grounds of the policy and wisdom of such act, no matter how unwise or unpolitic they might be, so long as there is no plain violation of the Constitution.").[9]

CONCLUSION

Because Apthorp is unaffected by the law he challenges, or alternatively because his claims fail on the merits, this Court should affirm the final judgment in the Secretary's favor.

[9] Because there are no facts at issue and no person is relying on the statute, Apthorp's challenge is necessarily a facial one, which he acknowledges, IB at 37. "A facial challenge to a statute is more difficult than an 'as applied' challenge, because the challenger must establish that no set of circumstances exists under which the statute would be valid." *Cashatt v. State*, 873 So. 2d 430, 434 (Fla. 1st DCA 2004). Here, all the statute does is provide that officials are "not required to report as a secondary source of income any source of income to the blind trust." § 112.31425(5), Fla. Stat. At the very least, that would be constitutional as applied to sources of income that do not exceed $1,000. *See* Art. II, § 8, Fla. Const. (originally limiting disclosure to "each separate source and amount of income which exceeds $1,000). This constitutional application defeats a facial claim. Regardless, any application would be constitutional, as explained above.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of this brief was served by electronic mail on the individuals listed below, this third day of November, 2014.

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CERTIFICATE OF COMPLIANCE

I certify that this brief was prepared in Times New Roman 14-point font in compliance with Florida Rule of Appellate Procedure 9.210.

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JUDICIAL APPLICATION DATA RECORD

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

(Please Type or Print)

Date: November 17, 2015

JNC Submitting To: First DCA

Name (please print): Allen Winsor

Current Occupation: Solicitor General

Telephone Number: 850-980-0857 Attorney No.: 016295

Gender (check one): ☒ Male ☐ Female

☐

Male

☐ Female

Ethnic Origin (check one):

☒ White, non Hispanic

☐ Hispanic

☐ Black

☐ American Indian/Alaskan Native

☐ Asian/Pacific Islander

County of Residence: Leon

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

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

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

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

Printed Name of Applicant: Allen Winsor

Signature of Applicant: 

Date: November 17, 2015