IN THE SUPREME COURT OF FLORIDA

RAWLIS LESLIE, DEBORAH CROSBY, DONELL PITTMAN, LINDA TSCHUDI, LASHARAW, INC., and THADUS RUSS, on behalf of themselves and all other similarly situated,

Petitioners,

v.

THE ST. JOE COMPANY,

Respondent.

Case No. _____
L.T. No. 1D04-5462

PETITION FOR ALL WRITS RELIEF OR, ALTERNATIVELY, FOR LEAVE TO FILE WRIT OF CORAM NOBIS IN THE DISTRICT COURT

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BASIS FOR INVOKING JURISDICTION

The Petitioners invoke this Court's jurisdiction to "issue ... all writs necessary to the complete exercise of its jurisdiction" pursuant to Article V, section 3(b)(7), Constitution of the State of Florida, and Florida Rule of Appellate Procedure 9.030(a)(3). The Court's jurisdiction is addressed in further detail in the argument section of this petition.

STATEMENT OF THE FACTS[1]

The Petitioners are owners of real property in the neighborhood of Millview in Port St. Joe, Florida. The property was originally owned by a subsidiary of The St. Joe Company ("St. Joe") and is across the highway from the site of a former St. Joe paper mill. In 2003, the Petitioners sued St. Joe alleging it had dumped hazardous mill waste on the property prior to the Petitioners' purchase of the property. Their complaint sought damages for the cost of remediation and the diminution of the value of the property caused by the hazardous waste. They sought to represent a class of all property owners in the affected area of Millview.

The circuit court held a day-and-a-half hearing on the motion for class certification. The Petitioners presented evidence from government files showing a mill-related groundwater plume of contamination which made the use of wells in

[1] The facts contained herein are largely a matter of public record or have been addressed in published news reports, which are cited herein.

Millview inadvisable. A detailed report by Petitioners' expert who had taken numerous core samples throughout the neighborhood concluded, based on a number of factors, evidence, and data, that pollution from the mill, including heavy metals such as lead, arsenic, vanadium, and mercury, could be found in the soil throughout the neighborhood and in the groundwater. The Petitioners also presented evidence that the diminution in value of properties in the neighborhood caused by the pollution could be determined on a global basis even if the precise amount of pollution on or under any given property could not. The trial court ultimately certified a class of property owners in the Millview neighborhood. *See* Class Certification Order (Nov. 9, 2000), *attached as* Appendix 1.

St. Joe appealed to the First District Court of Appeal, and after briefing, the case was set for oral argument and assigned to a panel of three judges, including Judge Paul Hawkes.[2] The main issue on appeal, crystallized at oral argument and in post-oral argument filings, was whether the order had to be reversed because

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[2] The other members of the original panel were Judges Edward Barfield and Robert Benton. Shortly before oral argument, for reasons not disclosed to the Petitioners, Judge Benton was replaced on the panel by then-Judge, now-Justice Ricky Polston.

While the Petitioners respectfully suggest that no judge from the district court of appeal should have heard this appeal, they do not intend to imply that Judge Benton, Judge Barfield or Justice Polston were actually aware of the court's conflict of interest.

there was insufficient proof that mill waste contamination had actually been physically found on each and every parcel of property in the class area. Judge Hawkes ultimately wrote an opinion for the court reversing on three grounds, all of which rested on the same premise – that the class members failed to prove that their properties had in fact been contaminated by St. Joe. *See* Opinion (July 29, 2005), *attached as* Appendix 2.

The Petitioners filed motions for rehearing, certification, and rehearing en banc, all of which were summarily denied. They sought to invoke this Court's conflict jurisdiction, but the Court denied their petition for review concluding that "it should decline to accept jurisdiction." *Leslie v. The St. Joe Co.*, Case No. SC05-1729 (Dec. 7, 2005).

Within the last several weeks, the Petitioners have discovered from news reports that during the time the district court panel was considering St. Joe's appeal, the court "was negotiating to build [its new] courthouse on public land that was formerly owned by the St. Joe Co. and could have been retaken by the company." Editorial, *Courthouse Deal Riddled with Ethical Lapses*, St. Petersburg Times, Oct. 11, 2010 (*available at* http://www.tampabay.com/opinion/editorials/article1127492.ece). Another investigative article revealed a detailed timeline. Lucy Morgan, *In "Taj Mahal" Tale, Questions Raised in Judicial Ruling*, St.

Petersburg Times, Oct. 8, 2010 (*available at* http://www.tampabay.com/news/politics/article1126982.ece).

In March 2005, a few months after St. Joe filed its appeal to the district court but before oral argument, Chief Judge James Wolf wrote a letter to this Court proposing a new courthouse to be built on state-owned property located in Southwood, a St. Joe development. *See* Letter from James Wolf, Chief Judge to Barbara J. Pariente, Chief Justice, Florida Supreme Court (Mar. 4, 2005), *attached as* Appendix 3. This property had been deeded to the state several years prior in four separate parcels. As Chief Judge Wolf emphasized in letters to the legislature sent before oral argument in this case, the deed included a reverter clause that provided that if the state did not begin construction of an office building on Parcel 2 by January 1, 2008, then St. Joe would automatically regain title to Parcel 3. *See* Letter from James Wolf, Chief Judge to Mark Mahon, State Representative (Mar. 31, 2005), *attached as* Appendix 4; Letter from James Wolf, Chief Judge to David Coburn, Staff Director, Senate Ways and Means Committee (Mar. 31, 2005), *attached as* Appendix 5. Parcel 3 is the parcel on which the First District's now nearly complete courthouse was built.

Judge Hawkes in particular was very involved in the court's efforts to have a new courthouse built in Southwood. Less than three weeks before sitting on the oral argument in this case, Judge Hawkes purchased a new home in the Southwood

development. *See* Lucy Morgan, *In "Taj Mahal" Tale, Questions Raised in Judicial Ruling*. It does not appear that St. Joe had any involvement in that purchase or that it was anything other than an arms-length transaction. Thus, the purchase itself does not appear to have directly implicated a need for Judge Hawkes to disclose the purchase or recuse himself from this case. It is relevant, however, to show Judge Hawkes may have had a personal interest in seeing the courthouse built in the Southwood development.

Additionally, Judge Hawkes had a pre-existing connection to St. Joe because of his relationship with a St. Joe vice president, Mr. Chris Corr. Mr. Corr, who was not a lawyer or judge, was a reference on Judge Hawkes' application to the District Court of Appeal. They also served together in the legislature from 1990-1992. At the time of oral argument, Judge Hawkes must have known that this relationship was likely to come into play with the courthouse project. As subsequent events demonstrate, Judge Hawkes' relationship with Mr. Corr was such that Judge Hawkes believed that St. Joe would be more likely to accommodate the court's desires if he dealt directly with Mr. Corr instead of allowing staff at the Department of Management Services to negotiate with St. Joe.

The reverter clause referenced in Chief Judge Wolf's correspondence was a serious potential obstacle to the eventual new courthouse construction. According to the *St. Petersburg Times*, internal e-mails and minutes from a court meeting

indicate that in May 2007 the district court "judges asked St. Joe officials to extend the reverter clause and to waive a height restriction on the new courthouse building in Southwood." Lucy Morgan, *In "Taj Mahal" Tale, Questions Raised in Judicial Ruling*. According to the court's minutes at a May 23, 2007, meeting about the new building, Judge Hawkes' law clerk noted that to get the variance, Judge Hawkes would "work his St. Joe contacts." *Id.* Judge Hawkes subsequently reported to the court that he had met with Mr. Corr about these issues. *Id.*

Property records reveal that St. Joe later agreed to extend the reverter clause twice, first to extend the deadline for beginning construction from January 1, 2008, to July 1, 2008, and then to extend it again to September 29, 2008. *See* Modification of Deed Restriction and Reverter (Dec. 13, 2007), *attached as* Appendix 6; Second Modification of Deed Restriction and Reverter (June 27, 2008), *attached as* Appendix 7. Without St. Joe's agreement to these extensions, Parcel 3 would have reverted to St. Joe and the courthouse could not have been built there.

Until the recent *St. Petersburg Times* articles, the Petitioners were not aware and, through the exercise of reasonable diligence, could not have been aware of the facts they now contend warranted the recusal of Judge Hawkes and the other members of the First District. To avoid even the appearance of having a political motive and to avoid influencing the outcome of the merit retention votes on several

members of the First District, the Petitioners waited until after the general election to file this petition. Thus, they have brought this petition in a timely manner.

NATURE OF RELIEF SOUGHT

The Petitioners ask this Court to vacate the district court's opinion and mandate so that the court can reconsider the appeal *de novo* through judges from another district court of appeal. Alternatively, it should grant the Petitioners leave to file a petition for writ of coram nobis in the district court with the direction that if the facts alleged are established, the district court must grant the writ.

ARGUMENT

I. This Court Has All-Writs Jurisdiction Over This Petition.

The Petitioners invoke this Court's constitutional authority to "issue ... all writs necessary to the complete exercise of its jurisdiction" pursuant to Article V, section 3(b)(7), Constitution of the State of Florida. This provision grants the Court "a form of ancillary power that is used to protect the court's ultimate jurisdiction conferred elsewhere in the constitution." PHILIP J. PADOVANO, *Florida Appellate Practice* § 29:7 at 740 (2010 ed.) (citing *Bedford v. State*, 633 So. 2d 13 (Fla. 1994)).

As this Court recently noted, its all-writs authority does not provide an independent basis for jurisdiction, and it can only be invoked to protect the exercise of jurisdiction granted elsewhere in the constitution. *Roberts v. Brown*, 43 So. 3d 673, 677 (Fla. 2010). There are two independent grounds for this Court's

jurisdiction that are implicated in this case, and relief is necessary to protect and vindicate that jurisdiction.

First, this Court has jurisdiction to "issue writs of prohibition to courts." Art. V, § 3(b)(7), Fla. Const. This Court has held that this grant of jurisdiction authorizes it to review the refusal of district court judges to recuse themselves. *5-H Corp. v. Padovano*, 708 So. 2d 244 (Fla. 1997). Because the district court generally and Judge Hawkes in particular failed to disclose the court's relationship with St. Joe in this case, the Petitioners were prevented from invoking and this Court was prevented from exercising this prohibition jurisdiction.

Second, although it declined to exercise it, this Court had conflict jurisdiction to review the First District's decision. *See* Art. V, § 3(b)(3), Fla. Const. ("The supreme court ... [m]ay review any decision of a district court of appeal ... that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.").[3]

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[3] The Petitioners asserted two conflicts in their jurisdictional brief. Specifically, they noted that the decision conflicted with the following: (1) other district court decisions holding that the merits of the class representatives' claims need not be proven at the certification stage, *OCE Printing Syst., USA, Inc. v. Mailers Data Servs., Inc.*, 760 So. 2d 1037 (Fla. 2d DCA 2000); *Execu-Tech Bus. Sys., Inc. v. Appleton Papers, Inc.*, 743 So. 2d 19 (Fla. 4th DCA 1999); and (2) decisions by this Court that stigma damages may be recovered by owners of property adjacent to property subject to a nuisance or similar problem, *Fla. Power*

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Under the common law, when a party subsequently discovers information that would have prevented a prior judgment from being entered, it could petition the court for a writ of coram nobis.[4] *See generally Lamb v. State*, 107 So. 535 (Fla. 1926). When a lower court's decision has been unsuccessfully appealed, the

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& Light Co. v. Jennings, 518 So. 2d 895 (Fla. 1987); *Jones v. Trawick*, 75 So. 2d 785 (Fla. 1954).

The Court's order denying review did not suggest that the Court lacked conflict jurisdiction; it merely stated that the Court declined to exercise it. This Court's conflict jurisdiction, of course, is discretionary.

[4] Writs of coram nobis have been abolished at the trial court level in civil cases. *See* Fla. R. Civ. P. 1.540 ("Writs of coram nobis ... are abolished and the procedure for obtaining any relief from a judgment or decree shall be by motion as prescribed in these rules of by an independent action.). They remain available in other contexts. For example, because Rule 1.540 only applies in civil cases, Florida courts have recognized that a writ of coram nobis is still available in criminal cases. *State v. Woods*, 400 So. 2d 456, 457 (Fla. 1981) (citing *Hallman v. State*, 371 So. 2d 482, 485 (Fla. 1979)); Fla. R. Civ. P. 1.010 ("These rules apply to all actions of a civil nature ... in the circuit courts and county courts ..."); *see also Lamb*, 107 So. at 538 ("If another remedy exists, a writ of error coram nobis will not be granted.").

Under the same reasoning, a writ of coram nobis must still be available at the appellate level because Rule 1.540 does not apply to appeals and no rule of appellate procedure purports to abolish writs of coram nobis or to otherwise provide a remedy for newly discovered evidence. That there are no cases involving coram nobis at the appellate level should not be surprising because, outside the disqualification context, it is hard to envision a situation where an appellate judgment would be due to be set aside based on newly discovered evidence.

proper remedy is to seek leave from the superior court to file a petition for writ of coram nobis in the lower court. *State v. Woods*, 400 So. 2d 456, 457 (Fla. 1981); *Russ v. State*, 95 So. 2d 594, 597 (Fla. 1957); *Deauville Realty Co. v. Tobin*, 120 So. 2d 198, 200-01 (Fla. 3d DCA 1960). In short, because this Court had jurisdiction to review the district court's opinion but declined to overturn it, a petition for permission to file a petition for writ of coram nobis in the district court is necessary to the "complete exercise of its jurisdiction."

Before granting such leave to file a petition for writ of coram nobis in a lower court, the superior court must determine whether the allegations of fact would warrant relief, if proven. *Id.* And if leave is granted, then the lower tribunal only has authority to determine whether the facts alleged are, in fact, true, and if it so determines, it must grant the writ of coram nobis to set aside its prior judgment. *Id.*

Although most coram nobis cases involve the discovery of facts undermining the merits of the judgment being challenged, a writ of coram nobis is also available to set aside a judgment that was entered in the face of undisclosed, material flaws in the procedure leading to the judgment – specifically including a judgment entered by a judge who was disqualified from hearing the matter. *See Deauville Realty Co.*, 120 So. 2d at 201-02 (entertaining petition for writ of coram nobis based on bias of trial judge but denying it on the merits because improper

bias was not shown); *Pritchett v. State*, 390 So. 2d 1069, 1069 (Ala. 1979) (finding facially sufficient a petition alleging that trial judge in criminal trial had been the prosecutor who presented the case to the grand jury); *see also Russ*, 95 So. 2d at 600-01 (holding that writ of coram nobis is appropriate where juror misconduct had been concealed).

Accordingly, while the Petitioners stand ready and able to demonstrate that the decision below was legally unsupportable, they should not have to do that, and this Court should not have to reach that inquiry. To the extent the Court believes otherwise, the Petitioners request the opportunity to brief their contention that the district court's decision was erroneous.

Finally, if the Court were to conclude that it lacks jurisdiction over this petition, the Petitioners respectfully request that the petition be transferred to the district court to be treated as a petition for writ of coram nobis. *See* Fla. R. App. P. 9.040(b)(1) ("If a proceeding is commenced in an improper court, that court shall transfer the cause to an appropriate court."); Fla. R. App. P. 9.040(c) ("If a party seek an improper remedy, the cause shall be treated as if the proper remedy had been sought ....").

If the Court takes this approach, the Petitioners respectfully submit that it should appoint judges from another district court to preside so that members of the First District Court of Appeal are not sitting in judgment of their colleagues. *See*

Fla. R Jud. Admin. 2.205(a)(4)(B) ("When a judge of any district court of appeal is unable to perform the duties of office, or when necessary for the prompt dispatch of the business of the court, ... the chief justice may assign to the court any judge who is qualified to serve, for such time or such proceedings as the chief justice may direct."); *Straley v. Frank*, 585 So. 2d 334, 335 (Fla. 2d DCA 1991) (noting that Chief Justice of the Supreme Court of Florida had appointed the judges of the Fifth District Court of Appeal to sit as the Second District Court of Appeal.); *In re Frank*, 753 So. 2d 1228, 1235 & n.5 (Fla. 2000) (noting that *Straley v. Frank* litigation involved daughter of Second District Court of Appeal Judge Richard Frank.)

II. Judge Hawkes Had a Duty to Recuse from Consideration of the Underlying Appeal or, at the Very Least, to Disclose His Relationship to St. Joe and a St. Joe Executive.

Under the Code of Judicial Conduct and any reasonable notion of avoiding the appearance of impropriety, the members of the district court should have recused themselves or at least disclosed to the Petitioners the court's relationship to St. Joe. As Justice Terrell famously noted long ago,

> This Court is committed to the doctrine that every litigant is entitled to nothing less than the cold neutrality of an impartial judge. It is the duty of Courts to scrupulously guard this right and to refrain from attempting to exercise jurisdiction in any matter where his qualification to do so is seriously brought in question. The exercise of any other policy tends to discredit the judiciary and shadow the administration of justice.

State ex rel. Davis v. Parks, 194 So. 613, 615 (1939), *quoted with approval in In re McMillan*, 797 So. 2d 560, 571 (Fla. 2001) (adding that "no other principle is more essential to the fair administration of justice than the impartiality of the presiding judge"); *Sears v. State*, 889 So. 2d 956, 959 (Fla. 5th DCA 2004); *McFadden v. State*, 732 So. 2d 1180, 1184 (Fla. 4th DCA 1999).

In this spirit, the Code of Judicial Conduct provides, "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." Fla. Code Jud. Conduct § 3(E)(1). Although that canon goes on to list a number of instances in which this duty is triggered that do not neatly fit this particular situation, the commentary makes clear that "a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific rules in Section 3E(1) apply." *Id.* (commentary). The commentary provides, as an additional example,

> if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

Id.

The facts known to the district court before oral argument in this case were that the court did not have sufficient room in its current courthouse to adequately house the judges and their staff, that the court specifically desired to have a new courthouse built in Southwood, and that St. Joe held the power to hinder or prevent

that desire from occurring due to the reverter clause. Just as a judge in the process of negotiating employment should be disqualified from cases involving the employer, so too should a court in the process of negotiating for the building of a new courthouse.

Particularly in light of the obviously significant financial impact that affirming class certification would have on St. Joe, any reasonable person would have known that the impartiality of the judges of the First District in this case would be questioned. St. Joe had within its sole discretion the ability to adhere to or extend the deadline in the reverter clause to the direct detriment or benefit of the court. Accordingly, the entire court[5] should have recused itself so that judges from another district, whose future working environment would not be impacted, could sit by appointment to decide this appeal.

And the impartiality of Judge Hawkes in particular comes into even more serious question now that it has been disclosed that he was the court's point person on the courthouse negotiations, had just moved into Southwood, had a personal

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[5] In his letter to this court, Chief Judge Wolf refers to the prospect of reverter, indicating that the state's land would revert to Southwood (rather than to St. Joe). *See* Letter from James Wolf, Chief Judge to Barbara J. Pariente, Chief Justice, Florida Supreme Court, at 3, 4. Chief Judge Wolf sent copies of the letter to the other judges of the First District. *See id.* at 4. Thus, the entire court was aware of the reverter clause.

relationship with one of St. Joe's top executives, and that St. Joe would be more likely to accommodate the court's desires if he dealt directly with Mr. Corr.

As several members of the press have opined, any reasonable person should have known that recusal was called for. *See* Daniel Ruth, *Selling Out Justice for a Big-Screen TV*, *St. Petersburg Times*, Oct. 15, 2010 (*available at* http://www.tampabay.com/opinion/columns/selling-out-justice-for-a-big-screen-tv/1128156) ("You don't need to be a Louis Brandeis-esque legal scholar to figure out that in the midst of an appeal which involved a company knee-deep in doing business with the court, not to mention Hawkes' prior political association and friendship with one of St. Joe's executives, this case called for a wholesale recusal of the 1st DCA judges hearing the matter before them."); Randy Schultz, Opinion, *In Search of Courthouse, a Judge Lost His Way*, The Palm Beach Post, Oct. 15, 2010 ("Judge Hawkes broke the most basic of judicial rules: If you know of any reason why one side might consider you biased, disclose the information.") http://www.palmbeachpost.com/opinion/columnists/schultz-in-search-of-a-courthouse-a-judge-974684.html); Editorial, *Courthouse Deal Riddled with Ethical Lapses*, St. Petersburg Times, Oct. 11, 2010 (addressing this case and concluding, "These ethical lapses and conflicts of interest are so blatant that any beginning lawyer could see them.") (*available at* http://www.tampabay.com/opinion/editorials/article1127492.ece).

The Petitioners acknowledge that the legal standard, as opposed to the ethical standard, for the disqualification of appellate judges is different than that for trial judges. Unlike trial judges, appellate judges do not have an absolute duty to recuse themselves whenever a litigant demands disqualification based on mere allegations of a conflict. As this Court made clear, an appellate judge "must determine for himself both the legal sufficiency of a request seeking his disqualification and the propriety of withdrawing in any particular circumstances." *In re Estate of Carlton*, 378 So. 2d 1212, 1216-17 (Fla. 1979), *cert. denied,* 447 U.S. 922, 100 S.Ct. 3013, 65 L.Ed.2d 1114 (1980).

But that does not mean that a judge has unfettered discretion to refuse to disqualify himself when required by the Code of Judicial Conduct. As Judge Padovano has explained:

> The judge who is the subject of a motion for disqualification must first determine whether the motion is facially sufficient. A motion is said to be sufficient if it alleges facts that would place a reasonably prudent person in fear that the judge would not be fair and impartial. If the motion is facially sufficient by this standard, it should be granted and the judge should take no part in the case.

PHILIP J. PADOVANO, *Florida Appellate Practice* § 7:4 at 144 (2010 edition) (footnote omitted); *see generally Adams v. Smith*, 884 So. 2d 287 (Fla. 2004) (Northcutt, J.) (applying this standard and ultimately denying request to disqualify because motion was legally insufficient).

Indeed, in the *5-H Corp.* case, this Court made it clear that a legally sufficient motion to disqualify an appellate judge must be granted. Although it reaffirmed the rule in *Carlton*, the Court nonetheless undertook a detailed, substantive review of the legal sufficiency of the conclusion by several appellate judges not to recuse themselves from a case involving an attorney whom the court had previously referred to The Florida Bar. *5-H Corp.*, 708 So. 2d at 246-49. If the decision whether to recuse were solely in the unfettered discretion of the appellate judge, then the *5-H Corp.* decision would have left it at that without addressing the legal sufficiency (or insufficiency as it turned out) of the asserted grounds for disqualification.

Additionally, just last year, the Supreme Court of the United States held that the Due Process Clause of the Constitution of the United States may require disqualification of a judge as an objective matter, even if there may be no underlying subjective bias. Specifically, the Court indicated that disqualification may be constitutionally required where "experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." *Caperton v. A.T. Massey Coal Co., Inc.*, 129 S. Ct. 2252, 2259 (2009). In that case, a party had sought the recusal of a justice of the Supreme Court of West Virginia because an executive for the opposing party, who was appealing a multi-million dollar judgment, had donated millions of dollars that

were used to support the justice's judicial campaign at the time the appeal was pending. *Id.* at 2257. Although the Supreme Court accepted the justice's subjective finding that he was not in fact biased, it concluded that in light of "a realistic appraisal of psychological tendencies and human weakness," the circumstances of that case posed "such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented." *Id.* at 2263.

Whether the conflict in this case is as extreme as the one in *Caperton* (it is not) or even whether the failure to disqualify in this case resulted in a true violation of the Constitution (as opposed to a violation of Florida law and the Code of Judicial Conduct) is not the point. The point is that the decision whether to recuse is not committed to the unfettered discretion of the appellate judge, and if a reviewing court determines that the grounds for disqualification are legally sufficient, then the judge must step aside, regardless of any personal belief that there is no subjective bias.

Direct disqualification aside, this Court has also recognized that an appellate judge has an even broader duty to disclose a potential conflict to litigants before deciding their cases. The commentary to Canon 3E(1) of the Code of Judicial Conduct provides, "A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question

of disqualification, even if the judge believes there is no real basis for disqualification." And this Court has not only held that the standard for disclosure is lower than the standard for disqualification, it has disciplined a well-respected appellate judge for violating the duty to disclose, even in a case where the Judicial Qualifications Commission did not contend that disqualification was required. *In re Frank*, 753 So. 2d 1228, 1239-40 (Fla. 2000).

Disclosure was clearly required in this case. Had the information about the court's relationship with St. Joe (and certainly Judge Hawkes' relationship) been disclosed, the Petitioners would have promptly, though respectfully, requested the entire court to recuse so that disinterested judges from another district could decide the fate of the company that would decide whether the courthouse could be built in Southwood.

But the Petitioners were deprived of this opportunity by the failure of the court to disclose the details of its relationship with St. Joe. Regardless of whether the particular three judges on this panel would have concluded that they were legally required to recuse themselves, "a judge may still *voluntarily* recuse himself if he believes it would be in the best interests for the administration of justice." *In re Estate of Carlton*, 378 So. 2d at 1220 (Overton, J.) Indeed, this Court cited that proposition in paying "due respect to the eleven district court judges who recused themselves 'in the best interests of justice'" in *5-H Corp.*, even though the grounds

for disqualification asserted there were ultimately determined to be legally insufficient. *5-H Corp.*, 708 So. 2d at 249 (quoting *In re Estate of Carlton*).

Judge Hawkes apparently did not disclose to either Judge Polston or Judge Barfield his relationship with St. Joe executive Chris Corr, and the potential need for negotiation with St. Joe over the reverter clause and other issues. Chief Judge Wolf also must have foreseen the ongoing relationship likely to result with St. Joe and the need to ask this Court to appoint judges from another district to decide this appeal.

Petitioners do not intend in any way to cast aspersions on the character of any judge on the court. But it is clear that there has been a breakdown when it comes to that court's dealings with the new courthouse project planning and construction, and that Judge Hawkes was a key player who exercised an unusual level of control.[6] The Petitioner's right to the "cold neutrality of an impartial

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[6] Press reports indicate that Judge Hawkes also circulated a letter among all of the judges on that court urging them to express personal gratitude to several "heroes" who helped achieve the funding for the courthouse. The list of "heroes" apparently included a lawyer who frequently appears before that court in workers compensation appeals. At least one litigant who lost an appeal decided by a panel including Judge Hawkes has sought rehearing. Lucy Morgan, *Citing "Taj Mahal" Courthouse Controversy, Lawyer Questions Actions by Lakeland Congressional Candidate*, The Ledger, Oct. 21, 2010 (*available at* http://www.theledger.com/article/20101021/news/101029961).

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judge" imposed on the First District the duty "to scrupulously guard this right and to refrain from attempting to exercise jurisdiction in any matter where [a judge's] qualification to do so is seriously brought in question." *State ex rel. Davis*, 194 So. at 615. To vindicate this core value of our judicial system, to ensure due process to the Petitioners, and to foster public confidence in the Florida courts, the Court should grant this petition.

CONCLUSION

For the foregoing reasons, this Court should vacate the district court's opinion and mandate so that the district court can reconsider the appeal *de novo* through judges from another district court of appeal. Alternatively, this Court

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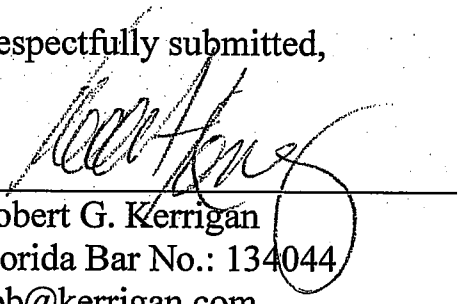
Moreover, press reports suggest that Judge Hawkes took a much more personal and direct role in the courthouse project than might normally be expected of a judge, as opposed to personnel from the Department of Management Services. *See* Lucy Morgan, *Judge Behind Florida's "Taj Mahal" Courthouse Once Preached Frugality*, Oct. 25, 2010 ("Hawkes visited the construction site so often he has a personalized hard hat. No detail was too small for his attention: color selection, picking the right chair or doorknob, even the pegs in the robing room"); Lucy Morgan, *Audit Says Judges Illegally Took Control Over "Taj Mahal" Courthouse Construction*, The Ledger, Oct. 12, 2010 (reporting that government audit "found that almost immediately, the judges insisted the court play a major role in every decision" and detailing the unusual amount of control of the project by the judges as opposed to the Department of Management Services). This additional close involvement with St. Joe and other parties involved in the courthouse clearly put the district court in an awkward position in sitting on appeals involving those parties.

should grant leave file to a petition for writ of coram nobis in the district court with the direction that if the facts alleged are established, the district court must grant the writ.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following by U.S. Mail, this 19th day of November, 2010:

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Florida Bar No.: 134044

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief is in Times New Roman 14-point font and complies with the font requirements of Rule 9.100(*l*), Florida Rules of Appellate Procedure.

Robert G. Kerrigan
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