IN THE SUPREME COURT OF FLORIDA

CASE NO. SC17-1155

TOBY and ROBERT BOGORFF, TIMOTHY FARLEY, BETH and ROALD GARCIA, DEANNA and JOHN KLOCKOW, LOIS and CHARLES STROH, NANCY and JOSEPH DOLLIVER, GROSSMAN ROTH, P.A. n/k/a GROSSMAN ROTH YAFFA COHEN, P.A., ROBERT C. GILBERT, P.A., LYTAL REITER SMITH IVEY & FRONRATH, L.L.P., and WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.,

Petitioners,

v.

HONORABLE RICK SCOTT, in his official capacity as Governor of Florida; HONORABLE KENNETH W. DETZNER, in his official capacity as Secretary of the State of Florida; and HONORABLE JEFF ATWATER, in his official capacity as Chief Financial Officer of the State of Florida,

Respondents.

GOVERNOR'S RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS

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INTRODUCTION AND SUMMARY OF THE ARGUMENT

Petitioners—several class action plaintiffs and the law firms representing them—ask this Court to issue an extraordinary writ of mandamus to "overturn" the Governor's line-item vetoes of two specific appropriations within the 2017-18 General Appropriations Act. Their novel legal theory, in effect, is that legislative appropriations intended to satisfy judgments against the state in "takings" proceedings are constitutionally immune from the Governor's veto power. Petitioners cite no constitutional provision, statute, or case law supporting this broad and expansive proposition. Lacking both factual and legal support, the Petition should be dismissed or denied.

As a threshold matter, the Petition should be dismissed because it fails to establish any basis for this Court to exercise its discretionary mandamus jurisdiction on an *emergency* basis. Although Petitioners claim immediate review by this Court is necessary "to protect governmental functions," no actual governmental functions are identified that would be impacted should this Court decline jurisdiction. Petitioners further argue that the relief they seek in this proceeding will be unavailable after the 2017-18 General Appropriations Act takes effect on July 1, 2017, but fail to develop or support that assertion with any factual basis or reference to any legal precedent. The Petition's other jurisdictional

allegations simply reflect Petitioners' belief that their case is so "important" and free of factual disputes that they should be entitled to circumvent the well-established procedures for litigating cases before this state's trial courts and district courts of appeal before seeking review by this Court. Indeed, the Petition itself acknowledges that Petitioners are *currently engaged* in circuit-court litigation that, if successful, may lead to the payment of the full compensation sought in this proceeding. This Court has never accepted emergency mandamus jurisdiction under similar circumstances and should not do so here.

In addition to the lack of any demonstrable emergency justifying the exercise of this Court's discretionary jurisdiction, the Petition fails to adequately plead a case for mandamus relief against the Governor. To be entitled to a writ of mandamus, Petitioners must allege and prove that: 1) they have a "clear legal right" to the requested relief; 2) the Governor has an "indisputable legal duty" to perform the requested action; and 3) no other adequate remedy is available. This Petition, however, fails to adequately allege any of these three elements against the Governor. The Petition concerns discretionary actions *already taken* by the Governor more than three weeks ago—not an attempt to have this Court order the performance of a ministerial and non-discretionary act. Petitioners do not even allege that they have a "clear legal right" to the relief they have requested or that

the Governor has failed to exercise some "indispensable legal duty." Moreover, the Petition itself discloses that Petitioners are actively pursuing alternative remedies in proceedings before the lower courts. These pleading deficiencies are more than sufficient cause for this Court to dismiss the Petition with prejudice.

Even if Petitioners could overcome these jurisdictional and pleading deficiencies, the Petition should still be denied on the merits. Petitioners disagree with the Governor's stated reasons for vetoing two specific appropriations. But this Court has explicitly held that the Governor "may exercise his veto power for *any reason whatsoever*." *Brown v. Firestone*, 382 So. 2d 654, 668 (Fla. 1980) (emphasis added). The only constitutional restrictions on the Governor's line-item veto power relate to the the *manner* in which it is exercised—for example, that any veto of budget proviso must extend to the appropriation to which that proviso relates. Those restrictions are not at issue in this case. Petitioners' argument that certain appropriations are categorically immune from the veto power finds no support in the text or history of Florida's Constitution. And Petitioners' claim that they are entitled to the payment notwithstanding the Governor's line-item veto is irreconcilable with the constitutional command that "no money shall be drawn from the treasury except in pursuance of appropriation made by law." Art. VII, § 1(c), Fla. Const.

Both because there is no basis for the exercise of this Court's jurisdiction and because there is no legal merit to the claims asserted, this Court should dismiss or deny the Petition for Writ of Mandamus.

ARGUMENT

I. The Petition fails to establish any basis for this Court to grant emergency relief through mandamus.

This Court has discretionary jurisdiction to issue writs of mandamus to state officers. Art. V, § 3(b)(8), Fla. Const. As a general rule, however, extraordinary writ proceedings should be commenced in the circuit court unless "the functions of government would be adversely affected absent an immediate determination by this Court." *Chiles v. Phelps*, 714 So. 2d 453, 457 (Fla. 1998). The Petition here fails to identify *any* function of government that would be adversely affected absent this Court's review. Nor does the Petition provide any other justification for this Court's immediate review other than Petitioners' belief that their case is too "important" to be litigated elsewhere. Pet. at 3-6. These allegations are plainly insufficient to justify the invocation of this Court's jurisdiction on an emergency basis.

The Petition also fails to properly allege the fundamental elements of a mandamus claim against the Governor: that "the petitioner must have a clear legal right to the requested relief, the respondent must have an indisputable legal duty to

perform the requested action, and the petitioner must have no other adequate remedy available." *Pleus v. Crist*, 14 So. 3d 941, 945 (Fla. 2009) (*quoting Huffman v. State*, 813 So. 2d 10, 11 (Fla. 2000)). For these reasons, the Petition should be dismissed.

A. The Petition fails to establish any basis for emergency relief or the need for an immediate determination by this Court.

As a threshold matter, the Petition does not present any circumstances justifying the exercise of this Court's original jurisdiction on an emergency basis. Although this Court has discretionary jurisdiction to entertain extraordinary writ proceedings, including in appropriations cases, this Court has emphasized that its jurisdiction is properly invoked "only 'where the functions of government will be adversely affected without an immediate determination.'" *Fla. Senate v. Harris*, 750 So. 2d 626, 631 (Fla. 1999) (*citing Div. of Bond Fin. v. Smathers*, 337 So. 2d 805, 807 (Fla. 1976)); *see also Moreau v. Lewis*, 648 So. 2d 124, 126 (Fla. 1995). Similarly, this Court's jurisdictional practices reserve its resources for those limited circumstances that require immediate judicial resolution. *See*, *e.g.*, *Fla. House of Reps. v. Crist*, 999 So. 2d 601, 607 (Fla. 2008) (accepting jurisdiction where, absent immediate judicial resolution, gaming compact signed by Governor would be given effect); *Brown*, 382 So. 2d at 662 (accepting jurisdiction where

uncertainty regarding veto hampered the state's ability to finance ongoing projects).

In *Florida Senate*, the Senate and its President petitioned this Court for a writ of mandamus ordering the Secretary of State to expunge from the State's official records a gubernatorial veto directed at portions of proviso language in the General Appropriations Act. *Fla. Senate*, 750 So. 2d at 628. Governor Bush counterpetitioned for a writ of mandamus arguing that the proviso language was unconstitutional. *Id.* at 630. In evaluating Governor Bush's request, this Court noted that it had entertained mandamus petitions involving constitutional challenges of provisos in cases demonstrating immediate and ongoing adverse effects to the function of government. *Id.* at 631. This Court recalled that absent those immediate and adverse effects, it "would hesitate long before accepting jurisdiction in different circumstances." *Id.* In evaluating Governor Bush's request, this Court found lacking a direct and immediate adverse effect on the functions of government. *Id.* As a result, Governor Bush's petition for mandamus was denied. *Id.*

Like Governor Bush's request in *Florida Senate*, Petitioners' request does not demonstrate that any uncertainty, urgency, or emergency exists to warrant this Court's immediate determination. The Petition requests that this Court "overturn

Governor Scott's veto" in order to direct specific appropriations included within the Legislature's General Appropriations Act to Petitioners. Pet. at 18. Not only do Petitioners fail to identify *any* governmental function that would be adversely affected absent judicial intervention, the claimed urgency to resolve this matter simply does not exist. Similarly, the Petition's apparent argument that the relief they seek in this proceeding will be unavailable after the 2017-18 General Appropriations Act takes effect on July 1, 2017, is not developed or supported by any facts or legal precedent.

Petitioners allege that upon commencement of the new fiscal year, if the Governor's veto stands, the Florida Department of Agriculture and Consumer Services ("DACS") "will argue [in the course of defending separate procedings by Petitioners pending in the circuit courts] that no appropriated funds exist with which to pay and satisfy the constitutional takings judgments held by Petitioners, and Petitioners will be left holding constitutional takings judgments that cannot be satisfied." Pet. at 5-6. However, even if DACS were to make such an argument, it would be "a defense to an alternative writ of mandamus *issued to enforce a judgment for monetary damages*." S*ee* § 11.066(4), Fla. Stat. (2016) (emphasis added). No such writs have yet been obtained by Petitioners. *See* Pet. at 14. And even *if* Petitioners *had* already obtained alternative writs of mandamus against

DACS in their ongoing trial court proceedings, the Petition provides no examples of this Court granting emergency relief simply to relieve a litigant of its burden of overcoming a legal defense in a case pending before a separate court.

Moreover, Petitioners' goal of expedited remuneration does not constitute an irremediable harm. The judgments obtained by Petitioners are in no way affected by the July 1 start of the new fiscal year. Petitioners recognize that when the General Appropriations Act takes effect on July 1, 2017, "the process will continue to recur." Pet. at 6. Indeed, nothing about the Governor's veto or the start of the new fiscal year stands in the way of the respective circuit courts issuing the writs requested by Petitioners, if those courts determine that this relief is commanded by the facts and law.

In sum, this Court should not tolerate Petitioners' failure to strictly abide by the enforcement procedures set forth in section 11.066 or their apparent unwillingness to fully pursue their available statutory remedies through the circuit courts before seeking emergency relief from this Court. Petitioners have not alleged the extraordinary circumstances necessary to justify this Court's jurisdiction. The Petition should be dismissed.

B. The Petition fails to plead a case for mandamus against the Governor.

In addition to the lack of any emergency justifying the exercise of this

Court's discretionary jurisdiction, Petitioners fail to plead the necessary elements for a writ of mandamus to issue against the Governor. "To be entitled to mandamus relief, 'the petitioner must have a clear legal right to the requested relief, the respondent must have an indisputable legal duty to perform the requested action, and the petitioner must have no other adequate remedy available.'" *Pleus*, 14 So. 3d at 945 (*quoting Huffman v. State*, 813 So. 2d 10, 11 (Fla. 2000)). Each of those three elements are absent in the Petition.

1. Petitioners lack a clear legal right to the requested relief.

First, Petitioners cannot demonstrate a "clear and certain legal right" to the relief they seek against the Governor—specifically, "overturn[ing] Governor Scott's veto of the Citrus Canker Final Judgment Appropriations." Pet. at 18. This Court has repeatedly held that mandamus may not be used to establish the existence of a right, but "only to enforce a right already clearly and certainly established in the law." *Fla. League of Cities v. Smith*, 607 So. 2d 397, 401 (Fla. 1992); *accord Pincket v. Detzner*, No. SC16-768, 2016 WL 3127704 at *1 (Fla. June 3, 2016). Petitioners here cite neither constitutional, statutory, nor jurisprudential authority supporting any "clearly and certainly established" right to the relief sought in this proceeding—the invalidation of the Governor's discretionary exercise of his line-item veto authority.

Instead, Petitioners conflate the relief requested in *this proceeding* (a mandamus petition seeking to overturn the Governor's veto of two specific appropriations) with relief they have separately obtained in *other proceedings* (judgments providing compensation for the destruction of residential citrus trees under the Citrus Canker Eradication Program). The Petition includes extensive discussion of precedent regarding compensation owed for constitutional takings. Pet. at 4-9. But the Petition cites to no authority for the actual relief sought in this case: overturning a gubernatorial veto of specific appropriations providing for payment of compensation in eminent domain proceedings. Petitioners' claim for relief, far from being a right "clearly and certainly established in the law," appears to be entirely novel. The Petition for Writ of Mandamus should be dismissed because Petitioners have not, and cannot, allege that they have a clear legal right to the requested relief.

2. Petitioners fail to demonstrate that the Governor has an "indisputable legal duty" to provide the requested relief.

Petitioners are equally unable to demonstrate the Governor has "an indisputable legal duty" to perform the relief requested in the Petition. Mandamus compels the performance of ministerial duties, but does not extend to directing discretionary decisions or functions. *See*, *e.g.*, *Pleus*, 14 So. 3d at 945 (recognizing that mandamus can direct an official to perform a ministerial function, such as

adhering to an established deadline for action, but not a discretionary act, such as selecting a particular candidate for appointment); *City of Miami Beach v. Mr. Samuel's, Inc.*, 351 So. 2d 719, 722 (Fla. 1977) (recognizing mandamus does not apply where the requested action requires the exercise of some discretion); s*ee also State ex rel. Lawler v. Knott*, 176 So. 113, 118 (Fla. 1937) (refusing that, although the Legislature's taxing power could be exercised to provide for payment of outstanding debts to creditors, "[t]he legislative discretion cannot be coerced. Mandamus will never be granted against legislative officers as to legislative or discretionary functions").

The Petition's allegations do not identify any "indisputable legal duty" owed to them by the Governor. Because they seek to overturn or avoid the effect of the Governor's veto, Petitioners ostensibly allege the Governor had a ministerial duty *not to veto* the specific appropriations at issue in this case. But this Court has recognized that the decision to veto is *discretionary*, not ministerial, and "the governor may exercise his veto power *for any reason whatsoever*." *Brown*, 382 So. 2d at 668 (emphasis added). Provided that the Governor's veto power is exercised in accordance with Article III, section 8(a), of the Florida Constitution, the decision to veto (or not to veto) particular bills and specific appropriations belongs to the Governor alone. *See* Art. III, § 8(a), Fla. Const.

(providing for executive approval and veto of bills passed by the legislature). The Petition provides no legal support for the proposition that the Governor has an "indisputable legal duty" to exercise his discretionary veto power in any particular manner.

To the extent Petitioners allege the Governor has an "indisputable legal duty" to *reconsider* his actions on the 2017-18 General Appropriations Act, their request should be denied as futile. The Governor has already filed his signed objections to SB 2500 (2017) with the Secretary of State under Article III, section 8(b), of the Florida Constitution and has no authority to take further action on the legislation. *See*, *e.g.*, Op. Att'y Gen. Fla. 67-55 (1967) ("When the executive passes the bill beyond his control, his constitutional power is exhausted and he may no longer deliberate or retract…. [W]hen he has exercised his power over it, either by approval or veto, then the action is final and irrevocable"). Petitioners have therefore "failed to show that in the circumstances presented here, the issuance of a writ of mandamus would produce any beneficial result." *Joyner v. Fla. House of Reps*., 163 So. 3d 503 (Fla. 2015) (*citing State ex rel. Ostroff v. Pearson*, 61 So. 2d 325, 326 (Fla. 1952)).

Finally, separation of powers concerns also counsel strongly against any claim by Petitioners that the judicial branch may direct a governor regarding

whether and how to exercise his discretionary line-item veto authority with respect to specific appropriations. *See* Art. II, § 3, Fla. Const. (providing for a division of the powers of state government between the legislative, executive, and judicial branches and commanding that "[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein"); *see also McPherson v. Flynn*, 397 So. 2d 665, 667-68 (Fla. 1981) (noting the admonition of the United States Supreme Court that "the doctrine of separation of powers requires that the judiciary refrain from deciding a matter that is committed to a coordinate branch of government by the demonstrable text of the constitution").

The Petition for Writ of Mandamus should be dismissed because it fails to allege or demonstrate that the Governor has "an indisputable duty" to perform any action requested by Petitioners.

3. Petitioners fail to allege or demonstrate the absence of alternative adequate remedies.

Even if the Petition demonstrated the first two elements for a writ of mandamus, the issuance of an extraordinary writ would still be inappropriate because Petitioners have not alleged or demonstrated the absence of alternative adequate remedies. As described at more length in section I(C) below, Petitioners not only have adequate alternative remedies to the writs of mandamus they seek

against the Governor, Secretary of State, and Chief Financial Officer in this proceeding, they are actively pursuing those alternative remedies concurrently with their attempt to invoke this Court's jurisdiction. The Petition for Writ of Mandamus should therefore be dismissed.

Section 11.066 of the Florida Statutes provides procedures for a judgment creditor to enforce a judgment for monetary damages against the state or a state agency. The Petition itself discloses that Petitioners have initiated proceedings under that statute in two circuit courts, but have not yet pursued those avenues to completion. *See* Pet. at 11, 14 (noting the Broward homeowners filed a motion in *In re Citrus Canker Litigation*, Case No. 00-18394(08)-CACE (Fla. 17th Cir. Ct), in January 2017, which remains pending and undecided); Pet. at 13-14 (acknowledging the Lee homeowners filed a motion in *Dellaselva et al. v. Fla. Dep't of Agric. & Consumer Serv. et al.*, Case No. 03-1947-CA (Fla. 20th Cir. Ct), in June 2017, which remains pending and undecided); *see also Bogorff v. Fla. Dep't of Agric. & Consumer Serv.*, 191 So. 3d 512, 515 (Fla. 4th DCA 2016) (noting Petitioners have "not yet travelled" the statutory avenues of redress, and therefore dismissing their challenge to the constitutionality of section 11.066 as unripe).

The Petition does not allege that these statutory proceedings will be unsuccessful before the trial courts. Nor does the Petition allege that the statutory enforcement proceedings fail to provide an adequate alternative to the separate and extraordinary relief they seek in *this* proceeding—a writ of mandamus to "overturn" a gubernatorial veto. Because Petitioners have failed to allege or demonstrate the absence of other adequate remedies, the Petition for Writ of Mandamus should be dismissed.

C. The Petition demonstrates that Petitioners have other available remedies and that they are actively pursuing those remedies in circuit court.

As discussed above, any petitioner seeking a writ of mandamus must demonstrate the absence of other adequate remedies. *See Pleus*, 14 So. 3d at 945. Petitioners here cannot demonstrate that they have no adequate remedy other than a writ of mandamus to "overturn" the gubernatorial vetoes at issue. Indeed, the Petition itself demonstrates that at least two adequate alternative remedies are available: 1) Petitioners may continue to pursue alternative writs of mandamus against the Department of Agriculture & Consumer Services in the trial courts; and 2) Petitioners may seek another appropriation from the Florida Legislature. The Petition should be dismissed because Petitioners have failed to demonstrate the absence of adequate alternative remedies.

Section 11.066 of the Florida Statutes provides procedures for enforcing judgments for monetary damages against state agencies. As noted above, Petitioners are actively seeking relief under section 11.066 in separate trial court proceedings. In a case involving the same Petitioners that are before this Court, the Fourth District recently held that section 11.066 provides two alternative remedies to a judgment creditor against a state agency: 1) a petition to the Legislature in accordance with its rules to seek an appropriation to pay the judgment; and 2) a petition seeking an alternative writ of mandamus directed to the state agency against which the judgment was obtained. *Bogorff*, 191 So. 3d at 515.

In that case, the Fourth District concluded that the Petitioners' failure to secure a legislative appropriation under section 11.066(3) did not foreclose them from seeking the remedy provided under section 11.066(4): an alternative writ of mandamus issued to enforce the money judgment against DACS. *Bogorff*, 191 So. 3d at 515. Because Petitioners had not yet pursued this alternate remedy, the Fourth District affirmed the denial of their constitutional challenge as unripe. *Id.*

Following the Fourth District's decision, Petitioners have actively pursued alternative writs of mandamus against DACS in the circuit courts to enforce their judgments for monetary damages. *See* Pet. at 11-14. Petitioners are proceeding with these circuit court actions in an attempt to secure payment of their judgments

at the same time they seek discretionary jurisdiction in this Court. Petitioners have not alleged and cannot demonstrate that the remedies authorized under section 11.066 and outlined by the Fourth District are inadequate to satisfy their judgments. And Petitioners have plainly failed to exhaust this remedy, as their cases are ongoing. A Petition for Writ of Mandamus to "overturn" the Governor's veto is therefore unjustified as Petitioners have, and are pursuing, other adequate legal remedies.

Finally, the Governor's veto of the specific appropriations in this year's budget has no effect on the Petitioners' ability to seek an appropriation in subsequent years. Petitioners unsucessfully sought a legislative appropriation in at least one legislative session prior to 2017. *See Bogorff*, 191 So. 3d at 514. Nonetheless, Petitioners returned during the 2017 legislative session and their requested appropriation was included in the general appropriations bill transmitted to the Governor. Thus, Petitioners must recognize that this avenue of redress remains open despite their initial lack of success. Should their attempts to obtain relief through alternative writs of mandamus against DACS prove unsuccessful, nothing prevents Petitioners from returning to the Legislature again for a budget amendment request this fiscal year or at the next regular legislative session in less than six months. The Petition for Writ of Mandamus should be dismissed because

Petitioners have other adequate alternative remedies and are actively pursuing those remedies in circuit court.

II. The Governor's vetoes were consistent with his constitutional authority.

If the Petition is not dismissed based on the jurisdictional and pleading defects identified above, it should be denied on the merits. The Governor's decision to veto the specific appropriations at issue in this case was well within his constitutional authority. The Florida Constitution grants to the governor a broad veto authority with specific restrictions upon the manner in which it is exercised. Art. III, § 8(a), Fla. Const. Provided these explicit restrictions are not contravened, the Governor's decision whether to exercise the power to veto specific appropriations is committed exclusively to his discretion. The Petition here fails to demonstrate an unconstitutional exercise of the Governor's veto power.

Although broad, a governor's veto authority is not unbounded. A governor's veto may nullify, but cannot alter or amend legislative intent. *Brown*, 382 So. 2d at 664 (noting "the veto power is intended to be a negative power, the power to nullify, or at least suspend, legislative intent" but it "is not designed to alter or amend legislative intent"). To enforce this constitutional limitation, a governor's veto of budget proviso containing qualifications or restrictions on the spending power must extend to the specific appropriation related to that qualification. *Id*. at

668 ("He may, consistent with article III, section 8(a), either veto an entire bill, or in the case of a general appropriations bill, he may veto any specific appropriation. If he seeks to veto any qualification or restriction in a general appropriations bill, however, he must also veto the appropriation to which it relates"). A governor may also veto an identified, exact sum of money specified in proviso, but may not estimate the value to be vetoed. *See Fla. Senate*, 750 So. 2d at 630 (holding governor may not look beyond the face of the proviso itself in calculating veto amount, "no matter how accurate" governor's monetary estimate might be); *Fla. House of Reps. v. Martinez*, 555 So. 2d 839, 844 (Fla. 1990) ("[B]efore the Governor may veto specific proviso language, that language on its face must create an identifiable integrated fund – an exact sum of money – that is allocated for a specific purpose").

Petitioners allege, without elaboration, that the Governor's veto "was unconstitutional." *See* Pet. at 14 (citing *Brown*). But Petitioners do not—and cannot—allege that Governor Scott *exercised* the veto power unconstitutionally, as alleged in *Brown* and *Martinez*. The specific appropriations at issue here were properly vetoed in their entirety, along with associated proviso language, as directed by Article III, section 8(a), of the Florida Constitution and the cases cited above.

Instead, the Petition appears to allege that the Governor's vetoes were unconstitutional because of their *effect*, which is to remove from the 2017-18 General Appropriations Act certain funds designated to satisfy takings judgments that Petitioners have obtained and are seeking to enforce in the lower courts under section 11.066, Florida Statutes. To grant Petitioners the relief they seek would create an unwritten exception to Article III, section 8(a)—a new implicit limitation on the gubernatorial veto power that has never been recognized and simply does not exist. As discussed above, mandamus cannot be used to establish the existence of a right, but only to enforce a right that is "clearly and certainly established in the law." *Fla. League of Cities*, 607 So. 2d at 401. The Petitioners' purported right not to have an appropriation vetoed has never before been recognized in the law.

Although the Petition also contains a bare allegation that the Govenor's veto denies Petitioners "substantive due process" under the Florida and Federal Constitutions, no legal arguments or authorities are advanced in support of this proposition. Pet. at 14-15. As it is the duty of Petitioners' counsel to advance legal arguments in support of their positions, these claims should be deemed waived. *See Polyglycoat Corp. v. Hirsch Distribs., Inc.*, 442 So. 2d 958, 960 (Fla. 4th DCA 1983) (on rehearing) ("When points, positions, facts and supporting authorities are omitted from the brief, a court is entitled to believe that such are waived,

abandoned, or deemed by counsel to be unworthy").

Neither the Governor's *reasons* for exercising his line-item veto power nor the *effect* of the veto presents an occasion for judicial review, particularly under this Court's well-established precedents related to mandamus. If not dismissed on jurisdictional grounds, the Petition for Writ of Mandamus should be denied because the Governor's decision to veto the specific appropriations at issue in this proceeding was within the bounds of discretion committed to the executive branch under the Florida Constitution.

CONCLUSION

The Petition for Writ of Mandamus should be dismissed or denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that this computer-generated Response is prepared in Times New Roman 14-point font and complies with the font requirement of Florida Rule of Appellate Procedure 9.100(*l*), and that a true and correct copy of the foregoing has been furnished by electronic service through the Florida Courts E-Filing Portal this 26th day of June, 2017, to the following:

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