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IN THE SUPREME COURT OF FLORIDA

DANIEL STAHL,

Petitioner,

Case No. SC15-725
L.T. Case No. 1D14-3077

vs.

HIALEAH HOSPITAL and SEDGWICK CLAIMS MANAGEMENT SERVICES,

Respondents.
_____/

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BRIEF OF AMICUS CURIAE, FLORIDA JUSTICE REFORM INSTITUTE AND FLORIDA CHAMBER OF COMMERCE IN SUPPORT OF RESPONDENT, HIALEAH HOSPITAL, ET AL.

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STATEMENT OF INTEREST

The Florida Chamber of Commerce (the "**Chamber**") is a not-for-profit corporation encompassing Florida's largest federation of businesses, chambers of commerce, and business associations, with its principal place of business in Tallahassee. The Chamber consists of more than 139,000 member businesses that employ more than three million workers. The Chamber works to promote private-sector job creation and currently focuses on getting Floridians back to work and securing Florida's future. The Chamber's mission is to make the State of Florida a better place to work and live for all Floridians. The 139,000 member businesses maintain workers' compensation insurance. The outcome of this case could impact the immunity of these employers from lengthy and costly tort litigation, which is given in exchange for those employers providing much needed work-place insurance coverage to their employees.

The Florida Justice Reform Institute (the "**Institute**") is Florida's leading organization of concerned citizens, small business owners, business leaders, doctors, and lawyers who are working towards the common goal of restoring predictability and personal responsibility to civil justice in Florida. The Institute strives to eliminate wasteful civil litigation and to promote fair and equitable legal practices. The Institute was founded as a not-for-profit organization in 2005. It is

the first independent organization focused entirely on civil justice in Florida. Since its founding, the Institute has worked to restore faith in Florida's judicial system and to protect Floridians from the social and economic toll of widespread and unnecessary litigation.

Together, Amici support the interests of Respondent in preventing this challenge to employer immunity, which amounts to a wholesale attack on the entire Workers' Compensation Act. If this Court entertains Petitioner's overreaching claims—which he lacks standing to bring and which are otherwise unpreserved—or applies the standard of review requested, the result could adversely impact every employer and employee in the state of Florida. Amici will address the public harm of allowing such cases to proceed when, as here, the Petitioner (**1**) lacks standing, (**2**) failed to establish any record to support his claims, and (**3**) urges this Court to apply an inappropriate standard of review.

SUMMARY OF THE ARGUMENT

This Court should dismiss this case. While Amici certainly agree with the district court's conclusion that the two discrete statutes at issue are constitutional, it appears the district court lacked the authority to reach that conclusion, and this Court should therefore not entertain review.

Petitioner asked the district court to hold the workers' compensation system unconstitutional, even though he failed to litigate his constitutional claims, failed to establish record evidence to support his claims, and failed to establish he has standing to raise them. The district court not only lacked authority to consider the constitutionality of the entire act—as Petitioner now asks this Court to do—it also lacked authority to uphold as constitutional the two discrete subsections of chapter 440 governing permanent partial disability benefits and the $10 co-pay.

The district court had no record before it showing Petitioner would have been entitled to permanent partial disability benefits had the statute not been amended. What little record evidence does exist firmly establishes Petitioner would not have been eligible for permanent partial disability benefits under the former statute because his permanent impairment rating fails to meet the threshold 20 percent. The Third District previously held Petitioner lacks standing on that basis.

Petitioner's challenge to the $10 co-pay provision also was not presented

below, and it does not appear to have been argued on appeal to the First District. Indeed, it is unclear why the district court chose to address that particular issue given that it was not even challenged by Petitioner.

An opinion from this Court on the merits of Petitioner's claims will only serve to complicate this procedural morass. Without any record support, Petitioner now asks this Court to rule, not just on the validity of two discrete subsections of chapter 440, but also on the validity of the exclusivity and employer immunity provisions—which strikes at the heart of the entire workers' compensation act. Deciding such critical issues under the circumstances of this case threatens the predictability and integrity of the entire judicial process. It will encourage any plaintiff to launch constitutional attacks for the first time on appeal, regardless of whether a reviewable record has been established and regardless of whether they are even affected by the challenged law.

Moreover, a ruling favorable to Petitioner on his adequacy and opt out claims would implode the worker's compensation act, which currently serves a critical function in balancing the rights of injured workers and employers. For decades, workers' compensation has been providing much needed benefits to injured Florida workers in a timely, efficient, and economically sound manner. Florida's employers depend on the program because, in exchange for providing

workers' compensation benefits to their employees, they receive immunity from costly and prolonged tort litigation. If the immunity provision is held optional or invalid, the entire system will collapse.

Petitioner's claims on the merits are equally misplaced. In the unlikely event this Court retains jurisdiction, this Court should restrict its review to the permanent partial disability and co-pay amendments, apply the rational basis test and affirm. Both provisions help ensure reasonable medical costs and adequate benefits to Florida workers, thus surviving rational basis review.

Petitioner's claim that the Court should apply strict scrutiny because the case involves disabled workers is without foundation in the law. Workers' compensation protects all workers regardless of whether an injury is a disabling one. The system does not simply protect disabled workers. Moreover, a disability covered by workers compensation is wholly different from a disability falling under the ADA—which solely protects persons with disabilities. Even if this case was about disabled individuals, they are not a suspect class, and strict scrutiny still would not apply.

ARGUMENT

I. Petitioner's Procedurally Defective Claims Are An Inappropriate Basis On Which To Argue The Workers' Compensation System—Which Serves A Critical Function In Balancing The Rights Of Injured Workers And Employers—Is Unconstitutional.

The workers' compensation system serves a critical function in balancing the rights of injured workers and employers. Petitioner's claims, in which he seeks to eviscerate that system, are procedurally defective because he failed to establish any record whatsoever to support his claims or establish he has standing to raise those claims. This Court should therefore exercise its discretion to not review this case.

A. The Workers' Compensation System Serves A Critical Function In Balancing The Rights Of Injured Workers And Employers.

The workers' compensation system provides necessary benefits to Florida's employees. It assures the quick and efficient delivery of disability and medical benefits to injured workers and facilitates a quick return to employment at a reasonable cost to employers. § 440.015, Fla. Stat. The workers' compensation exclusive remedy provision is essential to survival of the system. *See Seaboard Coast Line R.R. Co. v. Smith*, 359 So. 2d 427, 429 (Fla. 1978) ("[I]mmunity is the heart and soul of this legislation which has, over the years been of highly significant social and economic benefit to the working man, the employer, and the State."); *see also Baker v. Airguide Mfg., LLC*, 151 So. 3d 38, 41 (Fla. 3d DCA 2014) ("Florida's workers' compensation act sets forth a comprehensive scheme

that provides benefits to workers injured during employment").

The workers' compensation system "is based on mutual renunciation of common law rights and defenses by employers and employees, ensures that injured employees who fall within its scope receive swift compensation and medical benefits from the employer irrespective of fault or cause of injury. In exchange, employers who comply with the workers' compensation act receive immunity from suit." *Baker*, 151 So. 3d at 41 (quoting *Cabrera v. T.J. Pavement Corp.*, 2 So. 3d 996, 998 (Fla. 3d DCA 2008)).

Injured workers are compensated under the system regardless of whether they are at fault in causing their injuries. *See* §§ 440.09, 440.10(2), Fla. Stat. The purpose is "(1) to see that workers in fact [are] rewarded for their industry by not being deprived of reasonably adequate and certain payment for workplace accidents; and (2) to replace an unwieldy tort system that made it virtually impossible for businesses to predict or insure the cost of industrial accidents." *De Ayala v. Fla. Farm Bureau Cas. Ins. Co.*, 543 So. 2d 204, 206 (Fla. 1989).

Every year, tens of thousands of employees are compensated for their work-related injuries solely through workers' compensation. If those claims were litigated instead of being compensated per workers' compensation, employers and employees alike would become embroiled in unnecessary tort litigation. Lawsuits

would cost employers hundreds of millions of dollars to defend and possibly devastate their businesses through damage awards and increased liability insurance premiums. At the same time, employees would suffer by not getting the immediate care and prompt compensation currently provided by the system.

B. Petitioner's Claims Are Procedurally Defective And Should Be Dismissed.

In this case, Petitioner effectively seeks to undo the entire workers' compensation system based on a 20-page record, which contains nothing to support his arguments as to why that system is purportedly unconstitutional. Petitioner did not attempt to litigate the constitutional issues he now asserts either by establishing a record before the Judge of Compensation Claims ("**JCC**") for purposes of appellate review or having the issues determined in a circuit court by bringing a declaratory judgment action.

Instead, at a case status conference before a JCC, Petitioner asked the JCC to forego a hearing on his petition for benefits altogether and enter a final merits order. [R. 13] At Petitioner's request, the JCC took no evidence and held no hearing wherein Petitioner could have argued his denial of benefits was unfair and any necessary fact finding could occur. [*Id*.] Petitioner presented no evidence to establish the workers' compensation laws discriminated against him, denied him of due process, or deprived him of some other fundamental right. Thus, only the

determination of benefits ordered by the JCC and stipulated to by the parties appears in the record. Outside that stipulated determination of benefits, there are no findings whatsoever in the final merits order or elsewhere in the record to support Petitioner's constitutional claims.

Because the First District had no record evidence on which to base its decision upholding as constitutional these two provisions of the workers' compensation act, the First District should have never reached these issues. While Amici agree with the district court's conclusion, Amici take issue with its rendering the opinion in the absence of a record containing evidence to support the constitutional claims and in which the State's interests were unrepresented.

While it is true a JCC cannot rule on constitutional issues, it is equally true a district court cannot make a facial constitutional finding in the absence of appropriate record evidence.

> "[T]he Workers' Compensation Act, Chapter 440, does not offer [a district] court the same fact-finding resources available in cases of administrative appeals. … Therefore, an insufficiently developed record might negate the possibility of appellate review. For example, the record should clearly indicate the appellant's standing to raise the issue of the facial unconstitutionality of a specific section of the law."

Sasso v. Ram Prop. Mgmt., 431 So. 2d 204, 208 (Fla. 1st DCA 1983) (emphasis added). "As a general rule, no one can urge the unconstitutionality of a work[ers'] compensation act [when he has] no right of recovery except under the assailed

compensation act." *Id*. To raise the constitutionality of a workers' compensation statute, a petitioner must prove that, but for the statute, he would be eligible for benefits. *See Acosta v. Kraco, Inc*., 426 So. 2d 1120, 1121 (Fla. 1st DCA 1983). Otherwise, a petitioner lacks standing. *Id*.

In this case, Petitioner did not even attempt to argue, let alone prove, he would have been eligible for permanent partial disability benefits before that benefit was reclassified in 2003—more than a decade ago. And in fact, he would not have been eligible. The 2002 statute provides that benefits for permanent partial disability are available after an injured worker reaches maximum medical improvement, but only if the employee "has an impairment rating from the compensable injury of 20 percent or more." § 440.15(3)(b)1.a., Fla. Stat. (2002).

Here, when Petitioner reached maximum medical improvement in 2005, he was left with only a 6 percent impairment rating [*see* R. 4], meaning he would have received no benefit under the pre-2003 statute before the wage-loss provision was reclassified. So in addition to a lack of record on which to base his constitutional claims, he likewise has not, and cannot, prove he would be entitled to the benefits he seeks but for the provisions of section 440.15(3), as amended in 2003. He thus has failed to establish in the record he has any standing to challenge the statute's constitutionality. Indeed, the First District more recently refused to hear a

constitutional claim against this very statute because the claimant failed to establish standing on that basis. *See Beck v. MMI Dining Systems/Montverde Academy/Travelers Ins. Co.*, Case No. 1D15-2767, *Slip Op.*, --- So. 3d --- (Fla. 1st DCA Dec. 31, 2015).

Incredibly, Petitioner was on notice he must engage in fact-finding and establish standing in the record before the JCC—yet failed to do so. The Third District previously held Petitioner lacks standing on that very basis:

> [T]his Court was not presented with an [JCC] finding that but for the 2003 statute he would be entitled to wage-loss benefits. Similarly, a review of the evidence presented in this case reveals that under all versions of section 440.15(3) between 1993 and 2003, the plaintiff still would not have met the twenty percent disability threshold required for obtaining supplemental benefits.

Stahl v. Tenet Health Sys., Inc., 54 So. 3d 538, 540 (Fla. 3d DCA 2011). *See also Robbins v. Rophie Shoes, Inc.*, 413 So. 2d 839, 840 (Fla. 1st DCA 1982) ("We decline to rule on [the constitutional] issue because claimant lacks standing to challenge the constitutionality of [section 440.15(3)]. The record in this case is devoid of evidence showing that claimant is entitled to wage loss benefits."); *Acosta*, 426 So. 2d at 1121 ("The claimant has no standing to raise the constitutionality of the statute since he failed to prove that but for the statute he would be eligible for wage loss benefits.").

The $10 co-pay provision also was not fleshed out below. The only

reference to the $10 co-pay is an aside in the JCC's order noting Petitioner's claim for authorization to return to his treating physician was moot. [R. 5] Respondents had previously argued the statute of limitations had run on his post-maximum medical improvement treatment. But by the time of the status hearing in this case, Respondents had determined the statute of limitations had not run, and Petitioner was entitled to return to his previously authorized treating physician. [*Id*.] The record does not reflect Petitioner raised the issue of having to make a co-payment, let alone argued whether it violated his rights in any way. And the JCC made no findings regarding the $10 co-pay; it simply noted the statute required it be paid.

In addition to failing to establish any standing or providing any record evidence before the JCC, Petitioner likewise failed to avail himself of the alternative remedy of a declaratory judgment action seeking to determine whether the $10 co-pay and the reclassification of permanent partial disability benefits rendered the workers' compensation law an inadequate alternative. A declaratory judgment action in circuit court was an appropriate forum for Petitioner's facial constitutional challenge. *See, e.g.*, *Key Haven Assoc. Enters., Inc. v. Bd. of Trs. of Internal Imp. Tr. Fund*, 427 So. 2d 153 (Fla. 1982); *see also West Palm Beach Ass'n of Firefighters, Local Union 727 v. Bd. of City Comm'rs of City of West Palm Beach*, 448 So. 2d 1212 (Fla. 4th DCA 1984) (stating when an administrative

entity cannot rule on a constitutional issue, seeking a declaratory relief is the preferred procedure).

Because Petitioner failed to create a record by which an appellate court could address the constitutional issues, either through the JCC proceedings or through a declaratory judgment action in a circuit court, Petitioner's constitutional claims were barred in the First District. *See Stahl*, 54 So. 3d at 540; *Izquierdo v. Volkswagen Interamericana*, 450 So. 2d 602, 603 (Fla. 1st DCA 1984); *Great House of Wine, Inc. v. Dep't of Bus. and Prof. Reg.*, 752 So. 2d 728 (Fla. 3d DCA 2000) (when there is no evidentiary hearing and the record consists of only stipulated facts and an order based on those facts, district court cannot consider constitutional issues).

In summary, Petitioner's failure to establish a proper record before the JCC or attempt to litigate the constitutional claims in a circuit court by bringing a declaratory judgment action was fatal to bringing his claims in the district court. *See* § 440.25(4)(d), Fla. Stat. Because there was no record on which the district court could base its constitutional conclusions, its review should have been restricted to whether the JCC's determination of benefits was legally correct.

C. This Court Should Decline To Exercise Its Discretionary Jurisdiction Here To Prevent Public Harm.

This Court should decline to exercise its discretionary jurisdiction over

Petitioner's claims and dismiss this case because, with no record on which these issues have been or could be properly adjudicated, his wholesale attack on the workers' compensation act is outside the scope of review of *any* appellate court.

This Court has previously declined to hear cases when the record before it is insufficient. *See, e.g.*, *McNeil v. Council for Secular Humanism, Inc*., 41 So. 3d 215, 216 (Fla. 2010) (noting the wisdom of declining to consider "constitutional questions of considerable magnitude" for the first time on appeal "without the benefit of any record") (Polston J., concurring) (*citing Glendale Fed. Sav. & Loan Ass'n v. State*, 485 So. 2d 1321, 1325 (Fla. 1st DCA 1996)). This Court should likewise decline to hear Petitioner's facial attack on workers' compensation immunity here.

If this Court entertains Petitioner's claims, predictability and the integrity of the judicial system in the workers' compensation arena could suffer irreparable harm. Such precedent would allow any injured worker whose petition for benefits is denied to ignore requirements for establishing a record and standing, fail to adequately preserve claims, and then launch a facial challenge to the entire act for the first time before an appellate court.

Worse, if this Court hears the facial claims and rules favorably for Petitioner, much needed workers' compensation coverage could disappear leaving

workers without full and immediate coverage for their workplace injuries and leaving employers exposed to costly and unnecessary litigation.

At bottom, the procedure followed in this case creates great uncertainty for the business community and Florida's workers, and it disregards the basic concepts governing judicial proceedings. It allows any plaintiff at any time to bring a constitutional challenge to any statute, regardless of whether the plaintiff is adversely affected by the statute. Allowing this process to continue will divert scarce judicial resources away from legitimate claims. Amici urge this Court to decline to exercise its discretion to review this case and dismiss jurisdiction.

II. If This Court Reaches The Merits Of Petitioner's Claim, It Should Apply Rational Basis Review And Affirm.

If this Court nevertheless decides to exercise its jurisdiction to entertain Petitioner's constitutional claims, it should apply a rational basis test, not strict scrutiny as Petitioner urges. Applying the rational basis test, it should affirm.

The rational basis test is the proper test to apply to social and economic legislation, and it has traditionally been applied to review constitutional challenges to the workers' compensation act. *See, e.g.*, *Berman v. Dillard's*, 91 So. 3d 875, 877 (Fla. 1st DCA 2012) ("[t]he rational basis test is the proper standard of review. There is no basis to conclude that an elevated standard of review is appropriate"); *Bradley v. Hurricane Rest.*, 670 So. 2d 162, 165 (Fla. 1st DCA 1996) (applying

rational basis test to uphold amendments to the permanent impairment scheme under section 440.15(3)).

"Under rational basis review, a statute bears a strong presumption of validity and 'must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.'" *City of Ft. Lauderdale v. Gonzalez,* 134 So. 3d 1119, 1121 (Fla. 2014) (quoting *F.C.C. v. Beach Commc'ns., Inc.,* 508 U.S. 307, 313 (1993)). "In other words, a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data." *Id.* (quoting *Beach Commc'ns,* 508 U.S. at 315).

Assuming for the sake of argument it had jurisdiction to reach the constitutionality of Petitioner's claims, the First District correctly found a rational basis for the Legislature's amending sections 440.13 and 440.15(3) because "the copay provision furthers the legitimate stated purpose of ensuring reasonable medical costs after the injured worker has reached a maximum state of medical improvement and PPD benefits were supplanted by impairment income benefits." *Stahl,* 160 So. 3d at 520. As it noted in a prior case, "[t]he legislature set forth numerous findings of fact in support of the amendments to the permanent impairment scheme." *Bradley,* 670 So. 2d at 165.

Petitioner appears to claim this Court should apply strict scrutiny on the basis the individuals affected by this case are persons with disabilities who enjoy greater protections than persons without disabilities and who are not otherwise members of another protected class. That argument fails on two levels.

First, the workers' compensation laws provide benefits to all injured workers, not just disabled ones. While some employees may be disabled following their on-the-job injuries, the overwhelming majority suffer non-disabling injuries. The Legislature intended that the worker's compensation laws would "assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful reemployment at a reasonable cost to the employer." § 440.15, Fla. Stat. All employees are covered by workers' compensation, regardless of injury. § 440.03, Fla. Stat. Thus, employees receiving workers' compensation benefits are not a class of disabled persons entitled to a strict scrutiny standard.

Second, "disability" for purposes of state workers' compensation law is distinct from "disabled" under the federal ADA. Entitlement to workers' compensation disability benefits does not equate to a disability condition for purposes of federal law. *See Winn Dixie v. Resnikoff*, 659 So. 2d 1297, 1299 (Fla. 1st DCA 1995) ("the ADA has not produced a general application of heightened

scrutiny in the federal cases involving disabilities"). So even if workers are "disabled" for purposes of receiving certain disability benefits, that does not make them "disabled" for purposes of establishing a class of persons entitled to a strict scrutiny standard. In fact, precedent from this Court confirms disabled workers are not a suspect class subject to strict scrutiny. *See Acton v. Ft. Lauderdale Hospital*, 440 So. 2d 1282, 1284 (Fla. 1983) (finding wage-loss system governing permanent partial disability did not violate of equal protection and statute need only bear a reasonable relationship to a legitimate state interest).

Petitioner appears to conclude that because persons with physical disabilities were added in 1998 to the classes protected by Florida's equal protection clause, they are now a suspect class entitled to review under the strict scrutiny standard. But equal protection is not enjoyed only by those persons having a status resulting in a higher standard of review—equal protection is guaranteed to everyone and directs that all persons similarly situated should be treated alike. Thus, "disabled individuals enjoy equal protection guarantees despite that disability [is] not a quasi-suspect class." *Garrett v. Univ. of Ala. at Birmingham Bd. of Trs.*, 193 F. 3d 1214, 1230 n. 14 (11th. Cir. 1999), rev'd on other grounds (citing *City of Cleburne, Tex. v. Cleburne Living Cntr.*, 476 U.S. 432, 446-47 (1985)); *see also Winn Dixie*, 659 So. 2d at 1299; *reaffirmed by Herrera v. Atl. Interior Const.*, 772 So. 2d 587,

588 (Fla. 1st DCA 2000) ("The claimant's equal protection argument is based principally upon the assertion that a heightened scrutiny test, rather than the rational basis test, must be applied because the ADA has afforded disabled people the status of a protected class. We rejected this argument in *Winn Dixie v. Resnikoff*, … and we see no reason to revisit that decision.") (internal quotation marks omitted).

The United States Supreme Court also has held disabled individuals are not a suspect or even a quasi-suspect class requiring a heightened standard of review. *See Cleburne*, 473 U.S. 442-47. It explained disabled individuals are "different … and the States' interest in dealing with and providing for them is plainly a legitimate one." *Id*. at 442. Statutes that classify by "race, alienage, or national origin … are subjected to strict scrutiny and [must] serve a compelling state interest." *Cleburne*, 473 U.S. at 442. But the only requirement for statutes that delineate persons with disabilities is they have "a rational means to serve a legitimate end." *Id*.

In sum, especially as here, when economic legislation is at issue, the equal protection clause allows states wide latitude, and economic legislation must be sustained if it is rationally related to a legitimate state interest. *Id*. at 440. As the First District held here, the 1994 amendment adding a $10 copay for medical visits

after a claimant attains maximum medical improvement, and the 2003 reclassification of permanent partial disability benefits survive the rational basis test. *Stahl*, 160 So. 3d at 520. Accordingly, if this Court reaches those constitutional issues here, it should affirm.

CONCLUSION

This Court should dismiss this case because the constitutional issues were not properly before the First District Court of Appeal and are thus not properly before this Court. If this Court reaches the merits of Petitioner's constitutional claims, it should apply the rational basis test and affirm.

Respectfully submitted,

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I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by E-Mail to the counsel for the parties listed below on January 8, 2016.

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I CERTIFY the type size and style used in this Brief is 14-Point Times New Roman and complies with Florida Rule of Appellate Procedure 9.210.

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