IN THE DISTRICT COURT OF APPEAL
FIFTH DISTRICT OF FLORIDA

CASE NO. 5D11-______

FULLY INFORMED JURY ASSOCIATION,
on behalf of itself and on behalf of its volunteers,
and JAMES COX, individually,

Petitioners,

vs.

HON. CHIEF JUDGE OF THE
NINTH JUDICIAL CIRCUIT,

Respondent.
______________________________/

PETITION FOR WRIT OF COMMON LAW CERTIORARI

I. INTRODUCTION

> Whether a jury has the right to acquit in spite of the law and the evidence may be debated. That the jury has the power to acquit in those circumstances, and that we for two hundred years have preserved the accused's right to trial by a jury having that power, cannot be doubted.[1]

This Petition challenges the constitutionality of Administrative Order 2011-03 ("the Administrative Order") entered on January 31, 2011, by Chief Judge Belvin Perry, Jr., entitled "Administrative Order Governing Expressive Conduct

[1] *Beckwith v. State*, 386 So. 2d 836, 842 (Fla. 1st DCA 1980) (internal citations omitted).

Toward Summoned Jurors, Orange and Osceola Counties." The Administrative Order, Appendix (hereinafter "A") 1-4, exceeds the Chief Judge's jurisdiction under *Fla. R. Jud. Admin*. 2.215, as it bans, in overbroad and vague terms, expressive conduct and speech, reaching far beyond the purview of §918.12, *Fla. Stat.* (2010); Florida's jury tampering statute. Petitioners desire to educate individuals at or near courthouses in the Ninth Judicial Circuit, including potential jurors, as to their rights and responsibilities under Florida law. The conduct and speech that the Administrative Order prohibits are well within the ambit of protected expression under the United States and Florida Constitutions. Petitioners have suffered and will continue to suffer irreparable injury, in the form of lost constitutional rights to free expression. Further, Petitioners have no adequate remedy at law, as any individual found in violation of the Administrative Order faces contempt of court, confinement, fines or a combination of those sanctions. This Petition is timely filed.

II. BASIS FOR INVOKING JURISDICTION

Pursuant to *Fla. R. App. P.* 9.100(c)(2), Petitioners seek certiorari review of the Administrative Order entered by the Hon. Belvin Perry, Jr., Chief Judge of the Ninth Judicial Circuit of Florida ("Chief Judge Perry"), on January 31, 2011. Article V section 4(b) of the Florida Constitution provides that the district courts of

appeal have jurisdiction to issue writs of certiorari. *See also Fla. R. App. P.* 9.030 (b)(2)(A).

Moreover, this Court has jurisdiction to review the Administrative Order entered by Chief Judge Perry because the Administrative Order violates the state and federal constitutions, conflicts with §918.12, *Fla. Stat.* (2010), and therefore exceeds Judge Perry's authority as Chief Judge pursuant to *Fla. R. Jud. Admin*. 2.215. *See 1-888-Traffic Schools v. Chief Judge, Fourth Judicial Circuit,* 734 So. 2d 413, 415 (Fla. 1999) (challenges to administrative orders entered pursuant to Rules of Judicial Administration "routinely have been made by petition for writ of common law certiorari in the district courts of appeal"); *Holt v. Chief Judge of the Thirteenth Judicial Circuit,* 920 So. 2d 814, 815 (Fla. 2d DCA 2006) ("This court has jurisdiction to review by certiorari a claim that a chief judge has exceeded his or her authority by issuing an administrative order"); *Hewlett v. State,* 661 So. 2d 112 (Fla. 4th DCA 1995) (granting certiorari petition challenging administrative order as conflicting with statute and being beyond chief judge's authority); *Morse v. Moxley,* 691 So. 2d 504, 506 (Fla. 5th DCA 1997) (certiorari is proper vehicle by which to seek review of administrative order of chief judge); *Valdez v. Chief Judge of the Eleventh Judicial Circuit,* 640 So. 2d 1164 (Fla. 3d DCA 1994) (granting certiorari petition challenging administrative order as exceeding chief judge's authority); *Department of Health & Rehab. Servs. v. Johnson,* 504 So. 2d

423 (Fla. 5th DCA 1987) (denying certiorari petition challenging administrative order as an attempt to legislate). This petition is timely under *Fla. R. App. P.* 9.100(c)(1).

III. STATEMENT OF THE FACTS

A. Identity and Interests of Petitioners

Petitioner Fully Informed Jury Association ("FIJA") is a non-profit, charitable association that is devoted to educating potential jurors as to their rights. *See* Jones Affidavit, A 5-7. As set forth on the Association's website:

> The mission of the Florida Fully Informed Jury Association is to educate the citizens of Florida regarding their full powers as jurors, including their ability to rely on personal conscience, to judge the merit of the law and its application, and to nullify bad law, when necessary for justice, by finding for the defendant.[2]

FIJA desires to hand out pamphlets, on or near courthouse grounds within the Ninth Judicial Circuit, to passers-by who may include summoned jurors, in order to further its educational mission. An example of the pamphlet FIJA has its volunteers seek to disseminate is attached hereto as A 8-9. The information sought to be conveyed to individuals near the courthouse is protected by the First Amendment to the United States Constitution and the parallel provisions of the

[2] *See*, http://florida.fija.org/about/ (last viewed February 28, 2011); *see also*, Affidavit of Iloilo Marguerite Jones, Executive Director of FIJA (hereinafter "Jones Affidavit"), A 5-7.

Florida Constitution.[3] While FIJA advocates for the exercise of a jury's right to nullification and refusal to enforce corrupt laws, in appropriate cases, its political position involves a recognized form of civil disobedience which cannot be censored consistent with First Amendment jurisprudence. FIJA's educational mission and objectives are frustrated by the issuance and potential enforcement of the Administrative Order.

In addition to seeking relief in its own right, FIJA has associational standing to challenge the Administrative Order. The Florida Supreme Court articulated the elements of associational standing, when an association is acting as the representative of its members, as follows:

> [A]n association must demonstrate that a substantial number of its members, although not necessarily a majority, are "substantially affected" by the challenged rule. Further, the subject matter of the rule must be within the association's general scope of interest and activity, and the relief requested must be of the type appropriate for a trade association to receive on behalf of its members.

Florida Home Builders Ass'n v. Dep't of Labor & Employment Sec., 412 So. 2d 351, 353-54 (Fla. 1982); *Accord NAACP, Inc. v. Florida Bd. of Regents,* 653 So. 2d 294 (Fla. 2003).

All FIJA supporters and volunteers have a common interest in educating the public in general, and prospective jurors in particular, about their rights to exercise

[3] Any future references to the "First Amendment" shall be deemed to include the parallel provisions of the Florida Constitution, found in Art. I, § 4.

jury pardons and jury nullification. FIJA, as an association, meets all the requirements set forth in *Florida Home Builders* and *NAACP* to establish associational standing in this challenge to the lower court's Administrative Order. FIJA has no formal "membership," but a substantial number of FIJA's supporters and volunteers are located in Central Florida, and are substantially affected by the challenged Administrative Order.[4] *See* Jones Affidavit, A 5-7. As set forth in the Affidavit of Petitioner James Cox, A 10-14, ("Cox Affidavit"), until the Administrative Order was entered, FIJA volunteers routinely exercised their First Amendment rights on the Orange and Osceola County Courthouse complexes by distributing FIJA pamphlets, engaging passers-by, including potential jurors in conversation, counseling, and education relating to their mission. *Id.* FIJA volunteers do not target identifiable jurors, or force people to take their pamphlets; they only offer the information, politely and without any hint of aggression. Cox Affidavit at ¶ 4, A 11. Should individuals wish to engage in conversation, FJIA volunteers are happy to talk with them about FIJA's issues. *Id.* Cox and other volunteers with FIJA, desire to continue engaging in their educational campaign which includes engaging in expressive activities near the Orange and/or Osceola courthouses. *Id., passim.*

[4] That FIJA is not a traditional "membership" organization does not obviate its ability to maintain associational standing. *See, e.g., Hunt v. Washington State Apple Advertising Comm.*, 432 U.S. 333 (1977) (state agency had associational standing to advance interest of state's apple growers). Moreover, FIJA has standing in its own right because the Administrative Order materially affects, and interferes with, FIJA's central purpose of educating prospective jurors.

Petitioner Cox assists in organizing FIJA's Florida activities. *Id.* at ¶ 2, A 10. He, along with any of the other numerous FIJA volunteers who have distributed FIJA pamphlets in the past at the Orange or Osceola County Courthouse complexes, or plan to do so in the future, face sanctions of arrest by the County Sheriff's offices, civil contempt of court, confinement, or fines pursuant to the Administrative Order. *Id.* at ¶ 14, A 13. FIJA thus meets the first prong of associational standing, as a substantial number of its supporters and volunteers who regularly engage in the advocacy at issue are affected by this judicial restriction on expressive activities.

The subject matter of the challenged Administrative Order precisely targets FIJA's, and only FIJA's protected speech. FIJA thus also meets the second prong of associational standing, as the subject matter of the Administrative Order is the subject matter of FIJA's mission and advocacy.

Finally, the relief that FIJA requests, quashing the Administrative Order under review, is the appropriate relief that would allow FIJA to continue with its protected expression and advocacy in the areas of the courthouse most critical to its mission; the interior plazas and walkways of the courthouse complexes, and the adjacent parking lots, where prospective jurors are most likely to appear. Restricting Petitioners to expressing their messages on public sidewalks or other areas away from the courthouse grounds where the intended recipients of their

messages are most likely to receive them, is an inadequate alternative solution. The individuals with whom Petitioners, and their volunteers, seek to interact are most likely to be driving in cars near the permitted zones, and thus Petitioners would not be able to hand out their literature to those individuals without causing a traffic hazard, and without risking potential arrest and prosecution under disorderly conduct laws. Cox Affidavit at ¶ 15, A 13.

Petitioner Cox is an individual supporter of FIJA, who assists in organizing its Florida activities. *Id.* at ¶ 2, A 10. He has distributed literature to passers-by on or near the courthouse grounds in Orlando, Florida, including the pamphlet included in the Appendix. A 8-9. See, Cox Affidavit at ¶ 4, A 11. Petitioner Cox is in genuine fear that he will be arrested by Orange County Sheriffs' Deputies, and/or held in contempt of court, if he continues to engage in this form of expressive activity. *Id.* at ¶ 14, A 13. Petitioner Cox is clearly impacted by the issuance and potential enforcement of the Order, and thus has standing to initiate the instant challenge.

As a direct and proximate result of the issuance and potential enforcement of the Administrative Order, Petitioners have ceased any further expressive activities at or near the courthouse grounds described in the Administrative Order. Jones Affidavit at ¶ 4, A 6; Cox Affidavit, at ¶ 17, A 14. Petitioners desire to resume

their educational mission[5] and expression, and thus seek relief from this Honorable Court.

B. Administrative Order No. 2011-03

After making a series of findings, including that "expressive conduct and dissemination of leaflets and other materials containing written information tending to influence summoned jurors as they enter the courthouse may be in violation of section 918.12, Florida Statutes" Chief Judge Perry's Administrative Order prohibits the following:

> 1. The dissemination of all leaflets and other materials to summoned jurors containing written or pictorial information tending to influence summoned jurors, as well as approaching a summoned juror for the purpose of displaying a sign to, or engaging in oral protest, education or counseling with information tending to influence summoned jurors on any matter, question, cause or proceeding which may be pending, or which may by law be brought, before him or her as such juror, shall be prohibited on the Orange County Courthouse complex grounds.
>
> The term "courthouse complex" and any restrictions on expressive conduct contained herein shall apply to the Orange County Courthouse complex grounds, which includes the adjacent courthouse parking garage, the courthouse courtyard, and all other grounds surrounding the courthouse, from the intersection of Orange Avenue and Livingston Street, to the intersection of Livingston Street and Magnolia Avenue, to the intersection of Magnolia Avenue and Amelia Street, to the intersection of Orange Avenue and Livingston Street. The public sidewalks that comprise the boundaries of this

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[5] Jones Affidavit at ¶ 7, A 7; Cox Affidavit at ¶15, A 13.

designated perimeter are excluded from this designation of the courthouse complex grounds.

2. The dissemination of all leaflets and other materials to summoned jurors containing written or pictorial information tending to influence summoned jurors, as well as approaching a summoned juror for the purpose of displaying a sign to, or engaging in oral protest, education or counseling with information tending to influence summoned jurors on any matter, question, cause, or proceeding which may be pending, or which by law may be brought, before him or her as such juror, shall be prohibited on the Osceola County Courthouse complex grounds.

   The term "courthouse complex" and any restrictions on expressive conduct contained herein shall apply to the Osceola County Courthouse complex grounds, which includes the adjacent courthouse parking lot, the courthouse courtyard, and all other grounds surrounding the courthouse, from the intersection of Bryan Street and Rose Avenue, to the intersection of Rose Avenue and Patrick Street, to the intersection of Patrick Street and Bryan Street, to the intersection of Bryan Street and Rose Avenue. The public sidewalks that comprise the boundaries of this designated parameter are excluded from this designation of the courthouse complex grounds.

3. Regardless of whether the conduct at issue occurs on the courthouse complex grounds, any person who influences the judgment or decision of any grand or petit juror on any matter, question, cause, or proceeding which may be pending, or which may be brought, before him or her as such juror, with intent to obstruct the administration of justice, may be in violation of section 918.12, Florida Statutes.

4. Anyone engaging in the type of expressive conduct as contemplated by this Order may be in violation of section 918.12, Florida Statutes, and/or may be found in contempt of court.

5. The Orange County Sheriff's Office, the Osceola County Sheriff's Office, or any other law enforcement agency, shall give a copy of this Order and advise anyone who is within the courthouse complex grounds, as described herein, violating the provisions of this Order, of the restrictions on expressive conduct contained within this Order. Further, law enforcement shall instruct anyone violating the provisions of this Order to cease and desist immediately.

6. Anyone who is observed continuing to engage in such conduct as contemplated by this Order, after receiving a copy of this Order and being instructed to cease and desist by law enforcement, may face indirect civil contempt of court proceedings. If found to be in contempt of court, penalties include confinement, fine or both.

A 2-4.[6]

C. Marion County Memorandum.

In contrast to the Ninth Judicial Circuit's flat ban on protected expressive conduct, the Administrative Judge of the Fifth Judicial Circuit properly concluded that "[b]ased on principles of free speech, whoever is distributing the handouts in question [the FIJA pamphlets, as reflected by the attachments to Judge Eddy's memo] has a right to do so." A 15-19. Judge Eddy concluded that "I believe we may trust jurors to follow the law as instructed by the judge," and distributed his memorandum to all Marion County judges, the State Attorney, and the Public Defender. *Id*.

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[6]The only portion of this Administrative Order that Petitioners do *not* challenge is Paragraph 3, which is consistent with §918.12, *Fla. Stat.* (2010).

The Administrative Order exceeds the Chief Judge's jurisdiction under *Fla. R. Jud. Admin.* 2.215; impermissibly amends §918.12, *Fla. Stat.* (2010) by removing the element of scienter;[7] and violates the Petitioners' free speech rights under the United States and Florida Constitutions.

IV. NATURE OF THE RELIEF SOUGHT

Based on the arguments and authorities that follow, Petitioners respectfully request that this Court grant the Petition, stay any enforcement pending disposition of this case, and quash Administrative Order No. 2011-03.

V. LEGAL ARGUMENT

A. Introduction

The Administrative Order departs from the essential requirements of law in that it is substantially overbroad, vague, imposes a prior restraint on protected expression, and conflicts with state law relating to jury tampering. Moreover, the Administrative Order is facially invalid as a content-based restriction on protected speech, which cannot survive strict scrutiny as it is not narrowly tailored, and fails to use the least restrictive means to accomplish the Chief Judge's stated goals. Accordingly, the Administrative Order is due to be quashed. FIJA has standing in its own right to seek review of the Administrative Order and can establish

[7] The statute requires that, in order for a violation to occur, the defendant must have engaged in the prohibited communication with the intent to obstruct justice. The Adminsitrative Order makes no reference to this essential element which divides criminal conduct from expressive activities that are protected under the First Amendment. *See* Section E, *infra*.

associational standing. Petitioner Cox is personally affected by the Administrative Order, and has standing to challenge the Administrative Order in his own right. *See* Section III. A., *supra*.

B. Petitioners' Political Speech is Protected by the First Amendment.

There can be no legitimate dispute that Petitioners' speech is protected under the First Amendment to the United States Constitution, and Article I, Section 4 of the Florida Constitution. Jury nullification and jury pardons – for which Petitioners advocate – are recognized forms of civil disobedience. *See Keenan v. State,* 379 So. 2d 147, 148 n. 5 (Fla. 4th DCA 1980) (noting that the terms "jury pardon" and "jury nullification" both refer to a jury's "power to acquit in nullification of the law and evidence").

Petitioners' speech is political, as it addresses matters of public concern and is a vehicle for "the unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Stough v. Gallagher*, 967 F.2d 1523, 1527 (11th Cir. 1992) (*quoting Roth v. United Sta*tes, 354 U.S. 476, 484 (1957)). The content of the signs evidences Plaintiffs' intent to inform the public as part of the public discourse. *See also Brochu v. City of Riviera Beach*, 304 F.3d 1144, 1158 (11th Cir. 2002). Not only are Petitioners constitutionally entitled to *convey* information and advocacy through their pamphlets and advocacy; the public, including potential jurors, is constitutionally entitled to *receive* that

information. Furthermore, the speech and conduct at issue is non-commercial, or "pure" speech. *See Animal Rights Found. of Florida, Inc. v. Siegel,* 867 So. 2d 451, 457-58 (Fla. 5th DCA 2004) ("Pure speech is that in which society has an interest wholly apart from the speaker's or listener's economic interest") (internal citations omitted).

"In its ultimate wisdom [the jury] has been given the power to 'temper ... justice with mercy.' If such be warranted, it can reduce the charge.... This is commonly known as [the] jury pardon." *Potts v. State,* 430 So. 2d 900, 903 (Fla. 1982) (quoting J. Milton, *Paradise Lost*); *Sanders v. State,* 946 So. 2d 953, 957 (Fla. 2007) (affirming well-established proposition that a jury pardon is "the jury's inherent power to pardon a defendant by convicting the defendant of a lesser offense" but expressing disdain for jury pardon as "a device without legal foundation" even though "despite their suspect pedigree, jury pardons have become a recognized part of the system"; declining to find failure to include such instruction ineffective assistance of counsel); *State v. Baker,* 456 So.2d 419, 420-21 (Fla.1984) (defining a jury pardon as "the nonconstitutional right of ... giving the jury an opportunity to find the accused guilty of an offense lesser in severity of punishment than that with which he was charged"). *See also Lages v. State,* 640 So. 2d 151, 154 (Fla. 2d DCA 1994) (Altenbernd, J., concurring) ("The jury's inherent power to pardon is regarded by some as a unanimous act of civil

disobedience in violation of the jurors' oaths, which is unavoidable under the constitutional right of trial by jury"); *Keenan v. State,* 379 So. 2d 147, 148 (Fla. 4th DCA 1980):

> Inherent in the concept of a lay jury composed of citizens who leave their normal life patterns, meld into a decision-making unit for the purposes of judging one of their number, and melt back into the community, is the ability to say no and the knowledge that it cannot be held against them. The jury serves as an ameliorating force tempering the rigidity of the law, and of the professionals who administer it, with the common sense realities of the community. In the criminal case, no man may be convicted without the verdict of his peers. If crime is unacceptable deviance from community values and standards, then a community judgment on that deviance must be made. In a democracy, people decide what is good for them, the government does not do it for them.

Beckwith v. State, 386 So. 2d 836, 842 (Fla. 1st DCA 1980) (*quoting* A. Scheflin, "Jury Nullification**:** The Right to Say No," 45 S.Cal.L.Rev. 168, 192 (1972)).

If jury pardons and jury nullification are so deeply rooted in our jurisprudence that they are deemed "inherent" powers, *see Saunders,* 946 So. 2d at 957; *State v. Estevez*, 753 So. 2d 1, 4 (Fla. 1999); *State v. Bruns,* 429 So. 2d 307, 310 (Fla. 1983); then Petitioners' speech that seeks only to inform the public and prospective jurors of their rights to exercise those powers cannot be banned simply because the judiciary in general, and the Chief Judge of the Ninth Circuit in particular, disapprove of that viewpoint. *See generally,* Erick J. Haynie, Commentary, *Populism, Free Speech, and The Rule Of Law: The "Fully*

Informed" Jury Movement and Its Implications, 88 J. Crim. L & Criminology 343, 378 - 79 (1997) (recognizing that "[d]espite the various remedial actions that might be taken to dilute FIJA's potency, the Sixth Amendment clearly grants the criminal jury unreviewable and almost absolute discretion in making its decisions. *Indeed, it is precisely the absolute power vested in the criminal jury that makes the FIJA movement so penetrating*") (emphasis added).

Although a judge has the inherent power to manage his or her courtroom, that power is tempered by the First Amendment. *See, e.g., Wood v. Georgia,* 370 U.S. 375 (1962) (test to determine whether out-of-court statement is contemptuous is whether it constitutes "a clear and present danger to the orderly administration of justice"); *Scott v. Anderson,* 405 So. 2d 228, 231 (Fla. 1st DCA 1981) ("clear and present danger" standard applies to contempt proceedings involving publications or statements made out of the presence of the court).[8] While Judges may disfavor jury pardons and jury nullification; they nevertheless cannot ban speech about those powers simply because they disagree with their exercise. Such viewpoint discrimination violates the First Amendment even though the courthouse

[8] In an unpublished Memorandum Opinion, the Ninth Circuit affirmed, without legal or factual analysis, the denial of an injunction against an court order prohibiting the distribution of jury education pamphlets, and ordering the removal of all vendors and distributors of newspapers from sidewalks bordering the San Diego County Courthouse. *See, Fully Informed Jury Ass'n v. County of San Diego*, 78 F.3d 593 (Table) (9th Cir. 1996). The memorandum opinion includes the caveat that "[t]his disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir.R. 36-3." *Id.* at n.**. The opinion is not precedential, and no court, as best Petitioners can determine, has ever cited to it.

complexes may not be public forums. *See, e.g., Huminski v. Corsones,* 396 F.3d 53, 92-93 (2d Cir. 2005) (Huminski had, in conveying his views of the Vermont justice system, posted signs on his van[9] parked next to the Rutland state courthouse on thirty different occasions, culminating in trespass offenses; in section 1983 suit, court of appeals held that although courthouse parking lots adjacent to courthouse "and courthouse grounds generally" are not public forums, trespass notices to protestor excluding him from those grounds were unreasonable restriction on Huminski's "expressive activity in a nonpublic forum"); *Sammartano v. First Judicial District Court,* 303 F.3d 959 (9th Cir. 2002) (although Carson City, Nevada courthouse building was not a public forum, members of motorcycle gang who, when entering courthouse for summoned court appearance, refused to remove clothing bearing symbols of their gang membership, and were charged with trespass; and their supporters, who also refused to remove clothing with motorcycle gang symbols when they entered courthouse to support their friends,

[9]The signs, which were 45" x 54", expressed the following:
JUDGE CORSONES: BUTCHER OF THE CONSTITUTION
* STRIPS DEFENDANTS OF RIGHT TO DEFENSE COUNSEL
* REINSTITUTES CHARGES VIOLATING ART 11, CH1, VT CONST.
* PUNISHES PROTECTED EXPRESSION WITH CRIMINAL CHARGES
* MALICIOUSLY DISREGARDS DOUBLE JEOPARDY BY
REINSTITUTING CHARGES AFTER CONVICTION AND FULL PUNISHMENT
* SUBVERTS DUE PROCESS BY VACATING BINDING PLEA
AGREEMENT POST-PUNISHMENT
* UNCONSTITUTIONALLY PUNISHES DEFENDANT FOR SEEKING REDRESS OF GRIEVANCES IN CIVIL COURT
* IGNORES AND ENCOURAGES PROSECUTORIAL VIOLATIONS OF THE CODE OF PROFESSIONAL RESPONSIBILITY

were entitled to preliminary injunction in section 1983 action because ban on clothing with motorcycle gang symbols was not viewpoint neutral).

In banning Petitioners' desired speech on the courthouse grounds, where its message would be most effective and impactful, the Administrative Order runs afoul of fundamental constitutional protections. Moreover, the Administrative Order stands alone at regulating speech on the courthouse grounds. Only the designated category of speech outlined in the Administrative Order is banned.

C. The Administrative Order is Overbroad

A law which encompasses more speech than is necessary to serve the government interest is unconstitutionally overbroad. *See, Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973); *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 256 (2002) ("The provision abridges the freedom to engage in a substantial amount of lawful speech. For this reason, it is overbroad and unconstitutional."). A government regulation is invalidated on its face if the overbreadth reaches a "substantial" quantity of protected speech. *See*, *Members of the City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 801 (1984); *Board of Airport Comm'rs of the City of Los Angeles v. Jews for Jesus,* 482 U.S. 569, 574 (1987). When a regulation is overbroad, the entire law is stricken even if it could be legitimately enforced in some other settings. *Broadrick*, 413 U.S. at 612-13. Court orders are subject to the same overbreadth analysis as statutes or regulations.

Chaffer v. McGregor, 6 F.3d 705 (11th Cir. 1993) *vacated on other grounds* 41 F.3d 1421 (11th Cir. 1994); *Anderson v. Dean*, 354 F.Supp. 639 (N.D. Ga. 1973); *Machesky v. Bizzell*, 414 F.2d 283 (5th Cir. 1969). The Administrative Order in question acknowledges, on its face, that it seeks to restrict expressive activities. Administrative Order at ¶ 1, 2, 4-6, A 2-4. It goes much further in its prohibitions than is contemplated by state law relating to jury tampering, since it restricts all expressive activities that may have some influential effect on a potential juror, no matter how incidental, without imposing any requirement that the responsible party have the intent to obstruct justice as required by §918.12, *Fla. Stat.* (2010). See Section E, *infra*.

The Order is broad enough so as to restrict any sort of protest, demonstration or educational effort that may touch on a subject that could be considered by a juror, during a trial. A protest sign calling for the legalization of marijuana could influence a potential juror deciding a drug possession case. A pamphlet detailing improper use of Tasers by police officers could influence a juror hearing an excessive force case. Incredibly, the literal terms of the Administrative Order even prohibit lawyers from tendering relevant exhibits or making final arguments to jurors, or witnesses testifying during trial, since such activities are certain to

"influence" those jurors on the case under consideration.[10] Countless such overbreadth examples exist, and under the terms of the Administrative Order, law enforcement officers stationed near the impacted courthouses are called upon to make judgment calls, based on their subjective predilections, regarding what speech may tend to influence a juror or potential juror, when deciding whether to arrest potential violators for contempt of court. Petitioners are permitted to support their overbreadth challenge by demonstrating how the Administrative Order may be applied to others in hypothetical circumstances. *See generally* Erwin Chemerinsky, *Constitutional Law: Principles and Policies* 79 (1997) (noting that overbreadth doctrine is an exception to the prohibition against third party standing: "It permits a person to challenge a statute on the ground that it violates the First Amendment rights of third parties not before the Court, even though the law is constitutional as applied to that defendant"); *Stall v. State*, 570 So. 2d 257, 271 (Fla. 1990)("Some constitutional rights are so important that even a hypothetical chilling effect must be avoided in the only way possible-by striking the overbroad statute on its face.") The stunning overbreadth of the Administrative Order calls out for its invalidation by this Court.

[10] The Administrative Order fails to exempt courtrooms – which are certainly on the "courthouse grounds" – from the purview of its restrictions on expressive activities.

D. <u>The Administrative Order is Vague</u>

The Administrative Order violates the First and Fourteenth Amendments because it is vague. To be constitutional, the Administrative Order must be reasonably intelligible and provide a fair notice to all those covered by the Administrative Order as to what conduct is permissible and what conduct is prohibited. *See, e.g.*, *Papachristou v. Jacksonville*, 405 U.S. 156, 162 (1972). "[O]ne against whom [an injunction] is directed should not be left in doubt about what he is to do." *Pizio v. Babcock*, 76 So.2d 654, 655 (Fla.1954). *See also Angelino v. Santa Barbara Enters., LLC*, 2 So.3d 1100, 1104 (Fla. 3d DCA 2009) (reversing entry of temporary injunction because vague language rendered the injunction overly broad).

The restrictions in the Administrative Order contain no knowledge requirement as to the identity of an individual as a summoned juror. Apparently, the Administrative Order imposes strict liability on a speaker irrespective of whether the speaker knew the recipient of the message was, in fact, a summoned juror. Moreover, law enforcement officials are provided with unbridled discretion to arrest individuals who engage in *any* expressive activity if, in the subjective judgment of the police officer, the expressive activities "tend to influence" a summoned juror. Law enforcement officers on the street are therefore imbued with immense discretion to arbitrarily arrest those who express messages that they

disfavor, or who do so in a manner that the officer deems distasteful. The First Amendment cannot rely on promises by the government to enforce vague and overbroad laws in a constitutional manner. *U.S. v. Stevens,* 559 U.S. __, 130 S.Ct. 1577 (2010) (rejecting the government's reassurance that an overbroad restriction on the possession and sale of depictions of animal cruelty would only be enforced consistent with the First Amendment).

The Administrative Order is not limited to actual one-on-one communications with summoned jurors, but extends to all expressive activities including protests, demonstrations or gatherings that happen to express a message that may tend to influence a passing juror. Impacted individuals such as Petitioners are left to guess as to whether any given communication may or may not tend to influence a juror, and are forced to self-censor out of fear that any given message may be deemed to be too "influential" on potential jurors so as to result in arrest and contempt proceedings. Free citizens should not be held to such vague standards when it comes to expressive activities, consistent with the Fourteenth Amendment's guaranty of Due Process. *See Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.,* 455 U.S. 489 (1982); *Grayned v. City of Rockford,* 408 U.S. 104 (1972).

E. <u>The Administrative Order Conflicts with State Law</u>

The Chief Judge exceeded his jurisdiction by entering an Administrative Order that conflicts with Florida's jury tampering statute, which provides as follows:

> Any person who influences the judgment or decision of any grand or petit juror on any matter, question, cause, or proceeding which may be pending, or which may by law be brought, before him or her as such juror, *with intent to obstruct the administration of justice*, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

§918.12, *Fla. Stat.* (2010) (emphasis added). The Administrative Order, in essence, creates a new offense, punishable by contempt penalties, that is substantially broader than §918.12, *Fla. Stat.* (2010), and that fails to include the elements that render the statute constitutional.

The prohibition against jury tampering includes a scienter requirement; that element of intent is critical where the conduct sought to be prohibited, *i.e*., speech or other expressive conduct, would "tend to chill the exercise of first amendment rights if intent were not required." *State v. Oxx*, 417 So. 2d 287, 289 (and cases collected therein at n.5) (Fla. 5th DCA 1982). The clause "with intent to obstruct the administration of justice" (contained in the statute) provides the element of scienter necessary to exclude otherwise protected speech or conduct from the purview of prohibited activity. Without such a limiting provision, the jury tampering statute would be patently unconstitutional.

Tampering with a jury includes such acts as "approaching a juror to find out how he stands with reference to a case, or sounding out a juror to ascertain whether he can be corruptly influenced . . ." *Baumgartner v. Jouchin*, 141 So. 185, 188 (Fla. 1932). However, the expressive conduct prohibited in the Administrative Order on review is not limited to such unlawful acts; the Petitioners' speech seeks to reach only the general conscience of the prospective jurors, "who, *outside of their own conscience, are answerable to no one for errors in their decisions*." *Id*. (emphasis added).[11] Since the Administrative Order fails to confine the scope of the expressive activities it seeks to prohibit to that which constitutes a crime under state law, this renders the Administrative Order invalid and unconstitutional.

F. The Administrative Order Constitutes a Prior Restraint

The Administrative Order violates Petitioners' First Amendment rights as a prior restraint on speech. "Any form of official retaliation for exercising one's freedom of speech, including prosecution, threatened prosecution, bad faith investigation, and legal harassment, constitutes an infringement of that freedom." *Izen v. Catalina*, 398 F.3d 363, 367 n. 5 (5th Cir. 2005) (quoting *Smith v. Plati*, 258 F.3d 1167, 1176 (10th Cir. 2001) (citations omitted)); *Complete Angler, LLC v. City of Clearwater, Fla*., 607 F.Supp.2d 1326 (M.D. Fla. 2009) (application of

[11] Petitioners do not contest that the jury tampering statute reaches both actual and prospective jurors. *Nobles v. State,* 769 So. 2d 1063 (Fla. 1st DCA 2000). However, as noted in sections C & D, *supra*, the Administrative Order is constitutionally overbroad and vague in its prohibitions.

sign code requiring removal of marine-themed mural on outside wall of their bait shop and banner reciting the First Amendment placed over the mural violated First Amendment); Erwin Chemerinsky, *Constitutional Law: Principles and Policies* 918 (2002) ("The clearest definition of prior restraint is an administrative system or a judicial order that prevents speech from occurring").

Prior restraints such as this Administrative Order, which is in the nature of an injunction, are presumed unconstitutional. *See Alexander v. United States,* 509 U.S. 544, 550 (1993) (describing temporary and permanent injunctions that forbid speech activities as "classic examples of prior restraints"). This presumption exists because "[p]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." *Neb. Press Ass'n v. Stuart,* 427 U.S. 539, 559 (1976) ("*Nebraska Press*"). *See also, Post-Newsweek Stations,* 968 So. 2d 608; *First Amendment Coalition v. Judicial Inquiry & Review Bd.*, 784 F.2d 467, 477 (3d Cir.1986) (*en banc*) ("Any prior restraint on expression comes to the court with a presumption of unconstitutionality.")

The Administrative Order constitutes a textbook prior restraint on speech, and must be reversed. Judicial abhorrence and prohibition of prior restraints attach even when there are substantial competing interests at stake. *See, e.g., Butterworth v. State,* 494 U.S. 624 (1990) (invalidating criminal statute to extent it prohibited witness from disclosing content of witness's grand jury testimony); *Fla. Star v.*

B.J.F., 491 U.S. 524, 533 (1989) ("[I]f a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order."); *Landmark Commc'ns, Inc. v. Virginia,* 435 U.S. 829 (1978) (invalidating state's criminal statute prohibiting publication of information regarding judicial review commission proceedings); *Nebraska Press* (invalidating, as improper prior restraint, pretrial gag order prohibiting publication of defendant's confession in highly publicized murder trial, despite state's competing interest in protecting defendant's right to fair trial); *New York Times Co. v. United States,* 403 U.S. 713 (1971) (*per curiam*) (the "Pentagon Papers" case) (prohibiting injunction, as improper prior restraint, against publication of stolen, classified government documents).

The Supreme Court "has ***never*** upheld a prior restraint, even faced with the competing interest of national security or the Sixth Amendment right to a fair trial." *Procter & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 226-27 (6th Cir. 1996) (citation omitted) (emphasis added). In addition to the two seminal cases – *New York Times* and *Nebraska Press* – the Supreme Court has rejected the most extraordinary remedy of a prior restraint even when weighed against significant other interests not present here, such as incitement of unlawful activity, *see Carroll v. President & Comm'rs of Princess Anne*, 393 U.S. 175 (1968); regulation of

obscenity, *see Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546 (1975); distribution of leaflets and picketing alleged to violate privacy interests, *see Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971); punishment for fraudulent solicitation, *see Sec'y of St. of Md. v. Joseph H. Munson Co.*, 467 U.S. 947 (1984); protection from defamation (*Near*); or the prevention of economic harm to corporations. *See CBS v. Davis*, 510 U.S. 1315 (1994). *See also Gagliardo v. In re: Branam Children,* 32 So.3d 673, 674 (Fla. 3d DCA 2010) (gag order, entered in family court proceeding, that prohibited distribution or publication of information relating to children orphaned by high-profile murder, violated First Amendment; "[p]rior restraints on speech and publication are the most serious and least tolerable infringement on First Amendment rights").

The stated bases of the Administrative Order do not justify a prior restraint. *Nebraska Press*, 427 U.S. at 559. The asserted need for prior restraint must be "manifestly overwhelming." *See Jacksonville Television, Inc. v. Florida Department of Health and Rehabilitative Services*, 659 So.2d 316, 317 (Fla. 1st DCA 1994) (citing *Florida Publishing Co. v. Brooke*, 576 So.2d 842 (Fla. 1st DCA 1991) (citing *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 849 (1978) (Stewart, J., concurring)). A prior restraint cannot be sustained absent "the highest form of state interest. Prior restraints have been accorded the most

exacting scrutiny in previous cases." *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97, 102 (1979).

As the United States Supreme Court held in *Bridges v. State of California*:

> [T]he likelihood, however great that a substantive evil will result cannot alone justify a restriction upon freedom of speech or the press. The evil itself must be "substantial," it must be "serious." And even the expression of "legislative preferences or beliefs" cannot transform minor matters of public inconvenience or annoyance into substantive evils of sufficient weight to warrant the curtailment of liberty of expression.

314 U.S. 252, 262-63 (1941) (citations omitted). While Petitioners recognize that judges have the right and obligation to control communications occurring in the courtroom, to ensure litigants' right to a fair trial, such right does not extend to allow the imposition of a total prior restraint on otherwise protected expression occurring outside the courtroom, merely because such expression may tend to impact or influence a juror's political beliefs. As such, the Administrative Order must be quashed.

G. The Administrative Order is Content Based and Cannot Survive Strict Scrutiny.

The Administrative Order is a classic example of a content based restriction on speech. On its face, it prohibits expressive activities about a specific topic. *See, Turner Broadcasting System, Inc. v. F.C.C.*, 512 U.S. 622, 643 (1994) ("As a general rule, laws that by their terms distinguish favored speech from disfavored

speech on the basis of the ideas or views expressed are content based."); *U.S. v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 811-812 (2000) ("[The law] focuses *only* on the content of the speech and the direct impact that speech has on its listeners … This is the essence of content-based regulation.")

The following example demonstrates how the Administrative Order is impermissibly content based. A private citizen who distributes pamphlets at one end of the Orange County Courthouse plaza, suggesting the commission of unlawful acts, namely the bombing of abortion clinics or the murder, as "justifiable homicide," of physicians who perform abortions, would not violate this Administrative Order. Indeed, her speech would be protected under *Brandenburg v. Ohio*, 395 U.S. 444 (1969). However, if Petitioner were to distribute, at the other end of the same Courthouse plaza, pamphlets urging jurors to consider exercising their lawful and inherent powers of jury nullification, his expressive conduct would violate the Administrative Order.[12] The Administrative Order is clearly content based.

The Supreme Court has little tolerance for content-based restrictions on speech:

> [T[he First Amendment, subject only to narrow and well-understood exceptions, does not countenance governmental control over the

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[12] *See*, Posting of Eugene Volokh, to The Volokh Conspiracy, *Suppression of Jury Nullifications Advocates' Speech Outside Courthouse,* http://volokh.com/2011/02/25/suppression-of-jury-nullification-advocates-speech-outside-courthouse/#comment-1142401 (Feb. 25, 2011, 12:15 pm).

> content of messages expressed by private individuals. *R.A.V. v. St. Paul*, 505 U.S. 377, 382-383 (1992); *Texas v. Johnson*, 491 U.S. 397, 414 (1989). Our precedents thus apply the most exacting scrutiny to regulations that suppress, disadvantage, or impose differential burdens upon speech because of its content. (additional citations omitted).

Turner Broadcasting System, 512 U.S. at 641-642; *See, also, Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 95-96 (1972). ("The essence of this forbidden censorship is content control. Any restriction on expressive activity because of its content would completely undercut the 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wise-open.'")[13]

Laws and policies which are based on the content of speech are analyzed under the strict scrutiny test:

> When a law burdens core political speech, we apply "exacting scrutiny," and we uphold the restriction only if it is narrowly tailored to serve an overriding state interest. *See, e.g., Bellotti*, 435 U.S., at 786, 98 S.Ct., at 1421.

McIntyre v. Ohio Elections Com'n, 514 U.S. 334, 347 (1995) (citing *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765 (1978). Under strict scrutiny a law or

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[13] The First Amendment also forbids "viewpoint discrimination" where government favors one perspective or one speaker over others. *See, e.g.*, *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819, 829 (1995) ("When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant (citation omitted). Viewpoint discrimination is thus an egregious form of content discrimination.")

policy will survive only if it is supported by a compelling government interest and regulates using the least restrictive means. *See U.S. v. Playboy Entertainment*, 529 U.S. at 813; *See, also*, *Weaver v. Bonner*, 309 F.3d 1312, 1319 (11th Cir. 2002) ("The proper test to be applied to determine the constitutionality of restrictions on core political speech is strict scrutiny."); The Eleventh Circuit necessarily applies the same test. *See, Federal Election Com'n v. Public Citizen*, 268 F.3d 1283, 1287 (11th Cir. 2001) ("When a law burdens core political speech, we apply 'exacting scrutiny' to determine whether the law is narrowly tailored to serve an 'overriding' state interest."). If a less restrictive alternative would serve the government's purpose, that alternative *must* be used. *Sable Com'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989).

The Chief Judge entered the Administrative Order apparently because he disagrees with the message that Petitioners' speech conveys. Irrespective of the motivations for entry of the Administrative Order, its plain language imposes a content-based restriction on speech. Therefore, the Administrative Order is subject to strict scrutiny review. *See State v. O'Daniels,* 911 So. 2d 247, 251 (Fla. 3d DCA 2005) (*citing Ward v. Rock Against Racism,* 491 U.S. 781, 791 (1989); *Clark v. Cmty, for Creative Non-Violence,* 468 U.S. 288 (1984)). To determine whether advocates, like Petitioners, are engaging in conduct that violates the Administrative Order, a Deputy Sheriff is obligated to examine the content of the speech that is

uttered, or the literature that is distributed. If the official determines that content is not likely to influence a juror, the speakers are presumably free to continue their expressive conduct. However, if the content runs afoul of the Administrative Order, then the advocates are subject to seizure,[14] contempt, confinement, and fines. The Administrative Order's restrictions are therefore clearly content-based regulations, which operate as prior restraints on Petitioners' constitutional right to freedom of expression. Because the Administrative Order is content based, this Court must review it to "ensure that it furthers a compelling state interest, and is narrowly-tailored to further the alleged interest through the least intrusive means." *Animal Rights Found.,* 867 So. 2d at 457 (quoting *North Florida Women's Health & Counseling Servs., Inc. v. State,* 866 So. 2d 612 n.16 (Fla. 2003); *O'Daniels.* Petitioners acknowledge that the State has a compelling interest in pursuing those who commit the crime of obstruction of justice, and in preventing the intent-based crime of jury tampering, *see, e.g., Nobles v. State,* 769 So. 2d 1063 (Fla. 1st DCA 2000), however the Administrative Order under review is not narrowly tailored to address the State's asserted interest.

The Administrative Order is not necessary to ensure the integrity of the judicial process. Courts have long evaluated a juror's competency by determining, through a series of questions and answers, "whether the juror can lay aside any bias

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[14] Some form of seizure would of course be necessary to bring any purported violator to the Chief Judge's attention.

or prejudice and render a verdict *solely on the evidence presented and the instructions on the law given by the court*." *Smith v. State,* 28 So. 3d 838, 859 (Fla. 2009) (internal citations omitted). Judges and counsel could simply ask venire members if they have recently communicated with, or received documents from, any jury rights advocates; if the answer is "yes," further inquiry will determine whether the potential juror can nevertheless follow the judge's instructions. A content-based restriction on speech must utilize the least restrictive means of accomplishing a given objective, and here, a flat ban on an entire category of protected speech is not the least restrictive method available to address any legitimate concern with juror influence.

To ensure that actual or potential jurors are not the targets of intent-based jury tampering as defined by §918.12, *Fla. Stat.* (2010), judges are always able to make appropriate inquiries if such serious allegations should surface and jury tampering remains a criminal offense that may be prosecuted by the State. Where such simple, common-sense inquiries are already an integral part of the trial process, they are a more narrowly-tailored way to meet the State's interest than the sweeping Administrative Order under review. First Amendment jurisprudence has consistently favored punishing prohibited activity after it occurs, rather than imposing a ban on speech beforehand. Thus, an injured person has the ability to pursue a defamation action against a malicious speaker, but may not obtain an

injunction against potential defamation, before it occurs. *Moore v. City Dry Cleaners & Laundry, Inc.*, 41 So.2d 865, 873 (Fla. 1949); see also *Reiter v. Mason*, 563 So.2d 749, 750-51 (Fla. 3d DCA 1990) (dissolving injunction that petitioner not "defame or disparage [respondent's] character or reputation").

For the sake of argument, even if the Administrative Order is not content based, the ban on expressive conduct on the Orange and Osceola County Courthouse complexes is not a reasonable time, place and manner restriction. By banishing Petitioners' protected expressive conduct to outlying sidewalks, the Administrative Order does not leave open adequate alternative channels for communication of Petitioners' message and mission. "The First Amendment mandates that we presume that speakers, not the government, know best both what to say and how to say it." *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 790-91 (1988). The inadequacy of the sidewalks as an alternative venue is considered from Petitioners' viewpoint, not that of the Chief Judge. *See O'Daniels,* 911 So. 2d at 254 ("Whether an alternative is ample should be considered from the speaker's point of view) (*citing; Weinberg v. City of Chicago,* 310 F.3d 1029, 1041 (7th Cir, 2002)).[15]

The public sidewalks surrounding the courthouse complexes are not adequate alternative channels of communication. There are few pedestrians, as the

[15] Petitioners do not argue that the courtrooms themselves are open to advocacy and distribution of their pamphlets.

complex is framed by busy thoroughfares, like Orange Avenue, on which cars travel at forty miles per hour. Cox Affidavit at ¶14, A 13. Petitioners' representatives would be required to create a traffic hazard in order to deliver their literature to drivers in oncoming traffic, and thus risk punishment under disorderly conduct laws. *Id*. Because the Administrative Order also bans FIJA volunteers from advocating in the parking garages that are part of the courthouse complexes, a significant portion of FIJA's intended audience cannot be reached.

H. The Administrative Order Irreparably Injures Petitioners, Who Have No Adequate Remedy at Law.

Where even temporary loss of First Amendment rights are threatened, irreparable injury is presumed. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (stating that the "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."); *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981). Petitioners have no adequate remedy at law, and face confinement, fines, or both if they engage in protected speech or conduct that is barred by the Administrative Order on review. *See, e.g., Columbo v. Legendre,* 397 So. 2d 1043, 1044 (Fla. 5th DCA 1981) (where petitioner was threatened with contempt for failure to obey patently void order, petitioner had no adequate remedy at law).

VI. CONCLUSION

As demonstrated above, the Administrative Order violates basic First Amendment protections on speech, as it seeks to censor Petitioners' expressive activities through a content-based prior restraint that is both overbroad and vague. Accordingly, the Administrative Order is unconstitutional and should be quashed.

WHEREFORE, Petitioners request that this Court issue an order to show cause why the Writ of Certiorari should not be granted, stay enforcement of the Administrative Order pending review by this Court, and thereafter issue a Writ of Certiorari, quashing the Administrative Order.

Dated this 1st day of March, 2011.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Petition for Writ of Common Law Certiorari and Appendix were served via U.S. Mail this 1st day of March, 2011, on The Honorable Belvin Perry, Jr., Chief Judge of the Ninth Judicial Circuit, 425 N. Orange Avenue, Orlando, FL 32801.

____
Lawrence G. Walters

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY, in compliance with *Florida Rule of Appellate Procedure* 9.210(2), that the size and style of type used in this Petition is 14 point, Times New Roman.

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Lawrence G. Walters