

**IN THE CIRCUIT COURT,  
SEVENTH JUDICIAL CIRCUIT,  
IN AND FOR FLAGLER COUNTY**

**CASE NO: 2014 CA 000445**

FLAGLER-PALM COAST WATCHDOGS, LLC,

Plaintiff,

v.

BOARD OF COUNTY COMMISSIONERS  
OF FLAGLER COUNTY,

Defendant.

\_\_\_\_\_ /

**MOTION TO DISMISS COMPLAINT WITH PREJUDICE**

Defendant, Board of County Commissioners of Flagler County (hereafter “the County”), moves to dismiss the Complaint with prejudice and as grounds therefor states as follows:

1. The Court lacks jurisdiction over the subject matter of the complaint. The complaint seeks preliminary and permanent injunctive relief against the County based on allegations that a county commissioner committed a violation of the Florida Code of Ethics by failing to file Form 8B of the Florida Commission on Ethics in advance of a particular vote by the County Commission. Form 8B is used for identifying a voting conflict and is prescribed by the Florida Commission on Ethics. The complaint alleges that the factual circumstances surrounding the vote by the County Commission to purchase the former Bunnell Hospital on August 1, 2013 required the commissioner to file Form 8B, and the failure to file the prescribed form constituted a violation of Section 112.3143, Fla. Stat. The exclusive jurisdiction for investigating violations of the Ethics Code, including Section 112.3143, however, lies with the Florida Commission on Ethics.

The Commission is created by the Florida Constitution to investigate and determine all complaints of ethics violations. Art. II, § 8(f), Fla. Const.; Fla. Admin. Code § 34-5.0015; Garner v. the Florida Commission on Ethics, 415 So.2d 67 (Fla. 1<sup>st</sup> DCA 1982), rev denied, 424 So.2d 761 (Fla. 1983) (rejected claims that ethics code allegations should be handled by other agencies and affirmed denial of injunction against Ethics Commission based on its constitutional jurisdiction); Pedraza v. Hernandez, Case No. 12-19392-CA-27 (Fla. 11<sup>th</sup> Jud. Cir. Ct.), aff'd, per curiam, 95 So.3d 237 (Fla. 3d DCA 2012) (dismissal of complaint seeking circuit court adjudication of ethics code violation). Under Florida Chapter 112, Part III, final actions of the Ethics Commission are subject to review by the districts courts of appeal and not the trial courts. Fla. Stat. § 112.3241. The trial courts lack not only the authority but the unique resources and processes of the Ethics Commission to investigate and report violations of the Code of Ethics. The trial courts do not have the experience or the body of jurisprudence developed by the Commission since its creation in the 1970's for addressing violations of the Code of Ethics. See generally, <http://www.ethics.state.fl.us/>.

2. The plaintiff invokes the statutory provision that allows review of contracts entered into when an ethics violation has been established, specifically Section 112.3175. That statute only comes into play after an ethics violation has been determined. The statute does not confer any authority for a trial court to assume or take over the work of the Ethics Commission. The statute addresses “what comes next” after there is a determination of a violation. In short, there is no concurrent jurisdiction to determine a violation.

3. Even when viewed in the light most favorable to the plaintiff, the Court

lacks jurisdiction over the subject matter alleged, and the complaint must be dismissed. No amendment of the complaint can remedy these jurisdictional defects as to the alleged ethics violation.

4. The complaint fails to state a claim on which relief can be granted. There is an allegation that another county commissioner published his views on why he voted for the purchase, entitled “Why I Voted to Buy the Old Hospital Despite Reservations.” The complaint incorporates this by reference but isolates partial quotes. The plaintiff’s claim is that, because of these expressions, the County should be enjoined from expending any funds or resources in building the Sheriff Operations Center. The excerpted, edited quotes in fuller version provide:

“Now, after considerable lobbying from all sides (none of which came from any of the current owners, I might add), and after much hand-wringing by the staff in reviewing options looking for a consensus that the whole commission could support, here we are with a number of studies that reviewed architectural, engineering, environmental, and appraised values for purchase, plus a staff document summary of all information designed to help lead us to the right conclusion.

“Honestly, I can’t help but feel I’m being led, at times by the nose, to a conclusion to support the hospital purchase. But fortunately for me, I don’t mind researching issues on my own. I came to my own conclusions on some of the key issues prior to, and just after, reading the volumes of supporting information provided. Here is what I found out. ....”

These expressions are not actionable. No allegation or citation of authority is contained within the complaint to suggest otherwise. Indeed, the County’s vote to purchase land and to develop facilities for its elected Sheriff is within the responsibility of the County. See, e.g., Fla. Stat. §§125.01(1)(c); 129.01; 30.49(1) & (2). Further, in carrying out this responsibility, there is no statute that prescribes any procedure

forbidding an elected commissioner from expressing his or her rationale on why they voted a certain way. Similarly, there is no legal prohibition preventing an elected official from hearing the views or urgings of citizens and organizations on the matter of the resource needs of the Sheriff. Here, as with jurisdiction, no amendment of the complaint about the commissioner's published remarks can cure this defect in the alleged cause of action.

5. The remaining factual allegations of the complaint (which the Rules of Civil Procedure require the parties to accept as true on a motion to dismiss) do no more than express the opinion of the plaintiff that the purchase of the former hospital property was not wise. That the plaintiff has a different opinion about the property purchase than the decision by the governing, elected body of the County does not, without more, create a cause of action,

6. The plaintiff lacks standing to pursue its claims. The complaint is based on Section 112.3175, Fla. Stat., but to pursue such claims the plaintiff must either be a party to the contract or be a citizen "materially affected by the contract...." Id. 112.3175 (1)(b)3. "Materially affected" is defined in Section 112.312(16) as follows:

"Materially affected" means involving an interest in real property located within the jurisdiction of the official's agency or involving an investment in a business entity, a source of income or a position of employment, office, or management in any business entity located within the jurisdiction or doing business within the jurisdiction of the official's agency which is or will be affected in a substantially different manner or degree than the manner or degree in which the public in general will be affected or, if the matter affects only a special class of persons, then affected in a substantially different manner or degree than the manner or degree in which such class will be affected.

The plaintiff must therefore satisfy what is essentially a two-part test. First, the

plaintiff must show it has either: 1) an interest in real property located in Flagler County; or 2) an investment in a business entity located within Flagler County; or 3) a source of income or position of employment, office or management in a business that is located or doing business within Flagler County. Second, the plaintiff must show that one of these three enumerated interests will be "affected in a substantially different manner or degree, than the manner or degree in which the public in general will be affected." Id.

In this case, the plaintiff has asserted that it is a non-profit corporation founded to ensure public accountability and public transparency with publicly elected officials, and that by failing to enjoin further expenditures related to the County's purchase of the Bunnell Hospital, it will suffer "special damages by a frustration of its stated public purpose." The frustration of an organizational purpose is not one of the three interests that are encompassed by the "materially affected" element of standing. An organization purpose or goal is not a real property interest, nor does it equate to a business investment or position of employment.

Moreover, no facts have been alleged to demonstrate how the plaintiff's organizational purpose will be affected in a substantially different manner or degree, than the manner or degree in which the general public will be affected. The reality is that the plaintiff does not stand in a superior position to the rest of Florida's citizenry, with respect to the right to ensure public accountability and transparency, and if there has been a failure to be accountable or transparent, the plaintiff does not suffer a greater harm than the rest of the community. Absent the demonstration of a special injury, the plaintiff has no standing. See generally, St. John Medical Plans, Inc. v. Gutman, 696 So.2d 1294, 1295 (Fla. 3d DCA 1997), aff'd on other grounds, 721 So.2d

717 (Fla. 1998) (" 'Materially affected,' as defined in the statute, requires some type of special injury.").

7. Plaintiff has not satisfied the requirements for preliminary injunctive relief.

The essential elements for a preliminary injunction are i) likelihood of irreparable harm; ii) no adequate remedy at law; iii) substantial likelihood of prevailing on the merits; and iv) consideration of the public interest. See Dragomirecky v. Town of Ponce Inlet, 882 So. 2d 495, 497 (Fla. 5<sup>th</sup> DCA 2004). Plaintiff pleads only conclusory allegations. For example, with regard to irreparable harm, Plaintiff has not pled any commercial interest that is affected by the pursuit of a new Sheriff Operations Center. Further, there is an adequate remedy at law for any perceived ethics violations, i.e., filing a complaint with the Ethics Commission. There is no likelihood of prevailing given the lack of standing and the jurisdictional and other defects in the complaint. The public interest is protected by the Ethics Commission processes. On the allegations as pled, there simply is no basis for injunctive relief.

8. The complaint should be dismissed with prejudice.

(Attached are relevant cited authorities for the convenience of the Court.)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by Florida e-portal to Joshua D. Knight, Esq., Attorney for Plaintiff , The Law Office of

Joshua Knight, 9 Florida Park Drive, N., Palm Coast, FL 32137 at [jnight@knight-legal.com](mailto:jnight@knight-legal.com); [dbenton@knight-legal.com](mailto:dbenton@knight-legal.com), this 3rd day of July, 2014.

s/ Albert J. Hadeed  
ALBERT J. HADEED  
[ahadeed@flaglercounty.org](mailto:ahadeed@flaglercounty.org)  
Florida Bar Number 0180906  
Attorney for Defendant, Board of County  
Commissioners of Flagler County  
1769 East Moody Blvd., Bldg. 2  
Bunnell, FL 32110  
(386) 313-4005

CONSTITUTION  
OF THE  
STATE OF FLORIDA

AS REVISED IN 1968 AND SUBSEQUENTLY AMENDED

\* \* \* \*

ARTICLE II  
GENERAL PROVISIONS

\* \* \* \*

SECTION 8. **Ethics in government.**—A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:

\* \* \* \*

(f) There shall be an independent commission to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission.



**34-5.0015. Jurisdiction of the Commission.**

34 FL ADC 34-5.0015 Florida Administrative Code (Approx. 3 pages)

**Proposed Regulation**

West's Florida Administrative Code

Title 34. Florida Commission on Ethics

Chapter 34-5. Review, Investigation and Hearing of Complaints

Rule 34-5.0015, F.A.C.

Fla. Admin. Code r. 34-5.0015

**34-5.0015. Jurisdiction of the Commission.****Currentness**

Article II, Section 8(f) Florida Constitution, requires the Commission on Ethics "to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission." The rules of this chapter have been promulgated by the Commission to provide the practices and procedures under which the Commission shall exercise this constitutional function. A complaint concerning breach of public trust is any complaint, filed with the Commission in accordance with the rules of this chapter, which alleges that a public officer or employee has violated a provision of the State Constitution, or of Part III, Chapter 112, Florida Statutes, which establishes a standard of ethical conduct, a disclosure requirement, or a prohibition applicable to public officers or employees in order to avoid conflicts between public duties and private interests, including without limitation, a violation of Art. II, Sec. 8, Florida Constitution, or of Part III, Chapter 112, Florida Statutes. The rules of this chapter also have been promulgated by the Commission to provide the practices and procedures under which the Commission shall exercise its statutory function of investigating complaints of violations of the Code of Ethics for Public Officers and Employees contained in Part III, Ch. 112, Florida Statutes.

**Credits**

Adopted Sept. 21, 1977; Amended July 13, 1980; Transferred from 34-5.015; Amended July 28, 1998.

AUTHORITY: 112.322(9) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., 112.322, 112.324 FS.

Current with amendments available through June 30, 2014.

Rule 34-5.0015, F.A.C., 34 FL ADC 34-5.0015

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415 So.2d 67

Dr. Ambrose GARNER, Appellant,

v.

The FLORIDA COMMISSION ON ETHICS, Appellee.

No. AL-198.

District Court of Appeal of Florida,

First District.

June 2, 1982.

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Trenam, Simmons, Kemker, Scharf, Barkin, Frye & O'Neill, P. A., and W. Reynolds Allen for Hogg, Allen, Ryce, Norton & Blue, P. A., Tampa, for appellant.

Jim Smith, Atty. Gen., Patricia R. Gleason, Asst. Atty. Gen., and Philip C. Claypool, Staff Atty., Tallahassee, for appellee.

MILLS, Judge.

Garner appeals the trial court's denial of his motion for a preliminary injunction seeking to terminate proceedings before The Florida Commission on Ethics on two complaints against him and to enjoin the Commission from disclosing any of the materials connected with the proceedings. We affirm.

Two complaints were filed against Garner, President of Hillsborough Community College, alleging he misused his public position, contrary to Section 112.313(6), Florida Statutes (1981), by sexually harassing two female college employees. An additional allegation of the complaints charged that the acts of sexual harassment violated Section 112.313(2)(b), Florida Statutes (1981), which prohibits the solicitation or acceptance of gifts by public officers or employees.

After considering the complaints at an executive session, the Commission directed its staff to conduct an investigation of the charges. Following the investigation and submission of reports of investigation to the Commission, Garner was advised that the Commission was going to hold a "hearing to determine manner of

disposition of complaint" (probable cause hearing) pursuant to Florida Administrative Code Rule 34-5.06.

Garner filed a motion seeking to dismiss the complaints, arguing the conduct alleged was not within the Commission's jurisdiction. Upon being informed the Commission would rule on his jurisdictional motions immediately before the scheduled probable cause hearing and then decide whether to proceed on the complaints, Garner filed the injunction action in the Leon County Circuit Court.

The trial court refused to enjoin the Commission's proceedings but did enter a stay enjoining the Commission from disclosing any material connected with the proceedings until Garner's appeal of his ruling could be resolved.

The trial court did not err in refusing to terminate the Commission's proceedings.

First, the conduct alleged in the complaints, misuse of public position to sexually harass and to attempt to obtain sexual favors from subordinate employees, falls within the jurisdiction of the Commission. Section 112.313(6), Florida Statutes, prevents a public official or employee from using his or her official position to secure a

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special benefit, privilege, or exemption for himself or others. See Bruner v. Commission on

Ethics, 384 So.2d 1339 (Fla. 1st DCA 1980), which notes the Commission has previously proceeded on complaints alleging sexual harassment. Garner seeks to transform these complaints into charges of sexual discrimination which would be within the jurisdiction of the Florida Human Relations Commission Act, Section 23.161, et seq. The complaints, however, allege sexual harassment, not sexual discrimination.

We find no merit in Garner's contention that Section 112.313(6), Florida Statutes (1981), is unconstitutionally vague. See *Tenney v. Commission on Ethics*, 395 So.2d 1244 (Fla. 2nd DCA 1981).

Likewise, his argument that Title VII of the Civil Rights Act, 42 U.S.C., Section 2000e, et seq., may preempt the Commission's jurisdiction is without merit. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 100 S.Ct. 2024, 64 L.Ed.2d 723 (1980).

There was no error in the manner in which the Commission conducted its investigations before deciding to hold a probable cause hearing. As noted in *Tenney*, there is no requirement that Garner be afforded a full-blown adversary type proceeding before a determination of probable cause. "[The statute] requires the Commission inform the public official of the complaint, and it mandates that the Commission undertake an investigation before deciding the question of probable cause." *Tenney*, supra. The court in *Tenney* likened this investigation to that of a state attorney in preparing to file an information or a grand jury in determining whether to return an indictment. The Commission complied with its rules, the statutes, and the constitution in conducting its investigation.

Garner's argument that the disclosure of information in the Commission files after the probable cause hearing regardless of the Commission's finding, pursuant to Section 112.324(2), Florida Statutes (1981), violates his right to privacy is also without merit. The

Florida Supreme Court held in a similar challenge to public disclosure that individual disclosural privacy rights did not outweigh the public's right to see such reports. *Shevin v. Byron, Harless, Schaffer, Reid & Associates, Inc.*, 379 So.2d 633 (Fla.1980).

Although the Fifth Circuit Court of Appeal has determined there is a federal constitutional right of disclosural privacy, a balancing standard rather than the compelling state interest standard is used to measure the challenged action. *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981). In this case, we hold that the public's right to see the Commission's files outweighs Garner's disclosural privacy rights. The Legislature, by way of Section 112.324(2), Florida Statutes, and the people of Florida, through Article II, Section 8(f) of the Constitution, have mandated that the Commission's reports on complaints be made public.

Garner's last argument is that he has been denied equal protection because Section 112.324(3), Florida Statutes (1981), requires that complaints and investigatory materials concerning legislators and impeachable officers be kept confidential when no probable cause is found, but complaints and investigatory materials concerning lesser public officials like himself are disclosed regardless of the finding by the Commission. We are not persuaded by this argument.

The constitution controls over a statute when the two are in conflict. *Gray v. Moss*, 115 Fla. 701, 156 So. 262 (1934). Article II, Section 8(f) and (h) require that the Commission make public reports on all complaints. We are confident that the Commission will perform its duties as mandated by the constitution. Garner has not been denied equal protection. The protections and procedures provided by the Florida Constitution and statutes have been provided Garner.

The trial court's order denying Garner's petition for a preliminary injunction is affirmed. :

SHIVERS and WIGGINTON, JJ., concur.

**Page 761**  
**424 So.2d 761**  
**Garner (Ambrose)**  
**v.**  
**Florida Commission on Ethics**  
**NO. 62,287**  
**Supreme Court of Florida.**  
**Jan 20, 1983**

Appeal From: 1st DCA, 415 So.2d 67

Disposition: Pet. for rev. den.

IN THE CIRCUIT COURT OF THE 11<sup>TH</sup>  
JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

RODOLFO PEDRAZA,

Plaintiff

vs.

CASE NO.: 12-19392-CA-27

FRANK HERNANDEZ,  
Candidate for County Court Judge and  
PENELOPE TOWNSLEY, Supervisor  
of Elections, Miami-Dade County,  
Florida, in her official capacity,

JUDGE VICTORIA PLATZER

Defendants.

**ORDER GRANTING MOTION TO DISMISS**

THIS CAUSE came before the Court June 1, 2012 on Defendant Frank Hernandez's Motion to Dismiss. The Plaintiff, Rodolfo Pedraza, was represented by Michael Catalano, Esq. The Defendant, Frank Hernandez, was represented by Juan Carlos Planas, Esq. The Defendant, Penelope Townsley, was represented by Oren Rosenthal, Esq.

The Court, having reviewed the pleadings, relevant case law and statutes, having heard argument of counsel and being otherwise fully advised in the premises, hereby finds and orders as follows:

**FINDINGS OF FACT**

1. Plaintiff, Rodolfo Pedraza is a qualified elector in Miami-Dade County. He is also the spouse of Patricia Marino Pedraza, a sitting County Court Judge who is currently running to retain her seat in Group 1 of the Miami-Dade County Court.

2. Defendant, Frank Hernandez, is a Miami-Dade resident, who on April 20, 2012 filed to run for County Court Judge in Group 1, in the election is scheduled to take place August 14, 2012. In conjunction therewith, Hernandez filed with the Miami-Dade Department of Elections the forms necessary to qualify as a candidate for the Office of County Court Judge, including Form 6.
3. Defendant, Penelope Townsley, is the Supervisor of Elections for Miami-Dade County and is the Constitutional officer charged with administering the election. Townsley is joined as an indispensable party for the purpose of the relief sought, which is to disqualify Hernandez as a candidate.
4. On May 17, 2012, Plaintiff filed this suit challenging the validity of Mr. Hernandez's candidacy pursuant to §112.317(1)(c)1, Fla.Stat.(2011) and Art. II, §8, Fla.Const.. Plaintiff alleges that Mr. Hernandez made material false disclosures in the financial disclosure forms which were filed.
5. Defendant Hernandez has moved to dismiss Plaintiff's Complaint, alleging lack of jurisdiction by the Circuit Court, lack of standing by the Plaintiff and failure to state a claim for which relief can be granted.

#### CONCLUSIONS OF LAW

6. Art. II, §8, Fla. Const. is titled "Ethics in Government." §8 (a) requires that "All elected constitutional officers and candidates for such offices and, as may be determined by law, other public officer, (and) candidates...shall file full and public disclosure of their financial interests."
7. Art. II, § 8(l)(1), Fla. Const. defines full and public disclosure as meaning "...filing with the custodian of state records...a sworn statement showing net

worth...." To that end, candidates are required to file, *inter alia*, CE Form 6 with the Department of Elections in order to qualify as a candidate for judicial office. Form 6 is titled "Full and Public Disclosure of Financial Interests".

8. Art. II, § 8(f) , Fla. Const. requires an independent commission to conduct investigations concerning breaches of the public trust by those public officers not within the jurisdiction of the judicial qualifications commission. Hernandez, as a candidate for office, falls within that category. The Independent commission is further, at Art. II, § 8, (i) (3), Fla. Const. defined to mean the Florida Commission on Ethics.
9. §112, Part III, Fla.Stat.(2011) which is headed as " Code of Ethics for Public Officers and Employees" contains the only statutory means for enforcement of disclosure requirements for candidates. The Commission on Ethics is created pursuant to § 112.320, Fla. Stat. and serves as the independent commission provided for in §8, Article II, Fla. Const. The Commission on Ethics was established and empowered to investigate complaints of violations of § 8, Art. II, Fla. Const. and to make recommendations to the appropriate disciplinary body or official to take action. In this case, the appropriate official would be Defendant, Patricia Townsley, as Supervisor of the Division of Elections.
10. §112.3241, Fla. Stat. (2011), contained within Part III, specifically addresses appellate review of Commission action and indicates that "any final action by the commission taken pursuant to this part shall be subject to review in a district court of appeal upon the petition of the party against whom an adverse opinion, finding, or recommendation is made." *Id.*

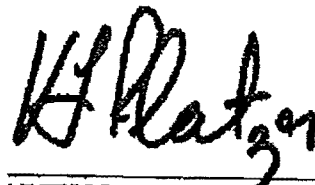
11. The question before the Court in this matter is whether the Commission on Ethics has exclusive jurisdiction to address this alleged violation or whether the Circuit Court has jurisdiction as well. The intent of the legislature was clearly that the Commission on Ethics handle these matters preliminarily and make recommendations to the appropriate governing body.

12. Based upon the foregoing analysis, the Court finds that it lacks jurisdiction over this case; rather, the Commission on Ethics is the more appropriate body to handle this matter.

13. In that the court finds it does not have jurisdiction in this matter, it does not reach the other grounds for dismissal raised by Defendant.

**WHEREFORE** it is **HEREBY ORDERED AND ADJUDGED** that Defendant's Motion to Dismiss is granted without prejudice.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 06/06/12 8:43 AM.



VICTORIA PLATZER  
CIRCUIT COURT JUDGE

<b>FINAL ORDERS AS TO ALL PARTIES</b>
<b>SRS DISPOSITION NUMBER 12</b>
THE COURT DISMISSES THIS CASE AGAINST ANY PARTY NOT LISTED IN THIS FINAL ORDER OR PREVIOUS ORDER(S). THIS CASE IS CLOSED AS TO ALL PARTIES.
Judge's Initials <u>VP</u>

The movant shall, using any method(s) mandated by the Florida Rules of Civil Procedure, serve all parties/counsel of record with a true and correct copy of this Order IMMEDIATELY and file proof of service with the Clerk.



**Page 1294**  
**696 So.2d 1294**  
**22 Fla. L. Weekly D1717**  
**ST. JOHN MEDICAL PLANS, INC., et al., Appellants,**  
**v.**  
**Alberto GUTMAN, Appellee.**  
**No. 96-1800.**  
**District Court of Appeal of Florida,**  
**Third District.**  
**July 16, 1997.**

James V. Johnstone; Karen Gievers,  
Miami, for appellants.

Gilbride, Heller & Brown and Dyanne E.  
Feinberg, Miami, for appellee.

Before NESBITT, JORGENSEN and  
FLETCHER, JJ.

JORGENSEN, Judge.

The appellants, St. John Medical Plans, Inc., St. John Clinic Medical Center, Inc., and Miguel Angel Cruz-Peraza [the "plaintiffs"], both individually and on behalf of the State of Florida, brought an action against the appellee, Alberto Gutman, a state senator. Pertinent to this appeal, which involves the fourth count of a six-count complaint, <sup>1</sup> is the plaintiffs' allegation that Gutman

that trust against abuse." Subsection (c) provides: "Any public officer or employee who breaches the public trust for private gain and any person or entity inducing such breach shall be liable to the state for all financial benefits obtained by such actions. The manner of recovery and additional damages may be provided by law." (Emphasis added.) Interpreting the clear language of subsection (c), we hold that this provision is not self-executing, as it cannot be implemented without some manner of recovery being established through legislative enactment. See State of Florida ex rel. Citizens Proposition for Tax Relief v. Firestone, 386 So.2d 561 (Fla.1980) (finding a constitutional provision to be self-executing where it clearly establishes a right which can be implemented without any legislative enactment); Gray v. Bryant, 125 So.2d 846, 851 (Fla.1960) (noting that the test for determining whether a constitutional provision is self-executing "is whether or not the provision lays down a sufficient rule by means of which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment."). Additionally, subsection (c) provides that liability is "to the state," indicating that standing is conferred on the State of Florida, not on individual citizens. <sup>2</sup> Therefore, the plaintiffs have no standing under the Florida Constitution. <sup>3</sup>

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misused his position as a state senator by receiving an inappropriate \$500,000 fee, and in so doing breached the public trust. The trial court dismissed this count with prejudice, finding that the plaintiffs lacked standing to bring the action. We affirm.

Article II, section 8 of the Florida Constitution, known as the "Sunshine Amendment," serves as the philosophical basis upon which a public official conducts the affairs of his or her office. The plaintiffs assert that they have standing under this section. The relevant portion is: "A public office is a public trust. The people shall have the right to secure and sustain

The plaintiffs' alternative argument is that they have standing under section 112.3175, Florida Statutes (1995). This statute allows a contract executed in violation of the Code of Ethics for Public Officers and Employees to be voidable by a party to the contract or, among

others, by "[a]ny citizen materially affected by the contract and residing in the jurisdiction represented by the officer or agency entering into such contract." "Materially affected," as defined in the statute, requires some type of special injury. § 112.312(16), Fla. Stat. (1995). The plaintiffs acknowledge that they have no special injury and thus no standing under these statutory provisions. <sup>4</sup> Instead, they urge us to recognize a broad grant of standing under the Sunshine Amendment and to declare unconstitutional this statutory definition of "materially affected." We decline to do so and again note that there is no constitutional standing here. Cf. School Bd. of Volusia County v. Clayton, 691 So.2d 1066, 1068 (Fla.1997) (reaffirming "long established precedent" that in order to have standing, a taxpayer must allege either a special injury distinct from other taxpayers or a constitutional violation of the legislature's taxing and spending powers); North Broward Hosp. Dist. v. Fornes, 476 So.2d 154 (Fla.1985) (noting that the court would "continue to adhere to precedent" and holding "that absent a constitutional challenge, a taxpayer must allege a special injury distinct from other taxpayers in the taxing district to bring suit").

We certify the following question to the Florida Supreme Court as one of great importance:

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Does article II, section 8(c) of the Florida Constitution, by itself and without any legislative enactment, provide individual citizens of Florida with a cause of action for breach of the public trust for private gain against a public official or employee?

Affirmed; question certified.

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1 This was the plaintiffs' second amended complaint; a variety of claims against a number of parties, including Gutman, remain pending below. These claims include unconstitutional taking of property, interference with a business relationship, civil conspiracy to tortiously interfere with an advantageous business relationship, breach of contract, and breach of covenant of good faith.

2 We do not reach the issue of whether a corporate entity can be an injured party under this constitutional provision.

3 But cf. Clayton v. School Bd. Of Volusia County, 696 So.2d 1215, 1216 n. 2 (Fla. 5th DCA 1997) (noting that while the appellant's complaint may not allege a "constitutional challenge" as contemplated by the Florida Supreme Court, it might at least have a "constitutional connection" with article II, section 8).

4 Additionally, Florida statutes do not provide for a qui tam action in situations such as this.