IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIRST DISTRICT

CASE NO: 1D21-1524

L.T.NO.: 2019-CA1417-ALBERT HADEED

KIMBERLE WEEKS

Appellant

v.

DEPARTMENT OF LEGAL AFFAIRS

Appellee

ON APPEAL FROM THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA

APPLLANT'S INITIAL BRIEF-PRO SE

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ISSUES PRESENTED

1. **QUESTION:** Was entry of the Final Summary Judgement reversible legal err because the defendant filed for motion to Dismiss on August 5, 2020 [347-645] (Motion contained response to complaint AND this was stated in Response to Notice of Summary Judgement) stating in (1) defendants Fourteenth amendment has been violated and Article 1 Section 9 Due Process right has been violated and in (2) that Slapp action has been taken against the defendant by excessive cost and fee recovery being approximately 18x more than the costs and reasonable attorney fees claimed on the Petition for Costs and Attorney Fees under Statement of Claim and (3) outlines how repeatedly publically individuals who faced complaints that were defended by the County Insurer give updates on the status and the board of county commissioners has taken action on matters related to these individual cases that are not an action against the county or the board of county commissioners. In addition the motion to dismiss under (8) reveals how DOAH cases were combined with other cases, tainting this case, and how DOAH ALJ Van Wyk denied due process by prohibiting telephonic participation when she scheduled the hearing in Leon County rather than the County where the defendant resides, and the action occurred FS 95.11(3)(p) and FRA 2.561.Also in the Motion to Dismiss under (14) Jurisdiction and Due Process denied to defendant at Probable Cause Determination Hearings as policy of the Florida ethics commission. The ethics commission (16) recognizes limiting participation to those who may be faced with cost and fee recovery, but they ignored that fact and took no action to remedy the matter. The Motion for Summary Judgment [883-943] filed by the Plaintiff on February 17, 2021(Exhibit 1) Page 9 reveals that the Weeks filed a motion to change venue from Leon County to Flagler County, and ALJ Van Wyk denied the motion. Page 10 reveals that on Friday, May 12, 2017 Weeks filed a motion to appear telephonically at the hearing and again ALJ Van Wyk denied the motion. On April 6, 2021 The Defendant filed objections to plaintiff's Motion for Summary Judgment and Motioned for Directed Verdict in Favor of Defendant [825-861] which contained a notarized affidavit of Kimberle Weeks which identifies and confirms (2) the Florida Ethics Commission prohibited the Defendant's participation at the Probable Cause Determination Hearing, and verified how the Due Process violation of limiting participation was viewable by video (3) from April 15,2016 and (4) how the defendant appeared before the commission (link provided) on December 8, 2017 informing the commission how the defendant was not permitted to participate in the probable cause determination hearing and her due process

has been violated. The court was well informed my rights have been violated; I attempted to dismiss the case on these grounds.

FLORIDA LAW: Effective July 1, 2015, Florida has strong anti-SLAPP Laws. Florida Statute 768.295, which forbids SLAPP, suits. FS 768.295(1) it is the intent of the Legislature to protect the right in Florida to exercise the rights of free speech in connection with public issues. Strategic lawsuits against public participation (SLAPP) are prohibited. It is the intent of the Legislature to protect the right in Florida to exercise the right of free speech in connection with public issues. It is the policy of this state that a person or government entity not engage in SLAPP suits because such actions are inconsistent with the right of persons to exercise such constitutional rights of free speech in connection with public issues. Therefore, the Legislature finds and declares that prohibiting such lawsuits will preserve this fundamental state policy, preserve the constitutional rights of persons in Florida, and assure the continuation of representative government in this state. It is the intent of the Legislature that such lawsuits are expeditiously disposed of by the courts. FS 768.295 (2)(a)"Free speech in connection with public issues" means any written or oral statement that is protected under applicable law and is made before a governmental entity. FS 768.295(3) A person or governmental entity in this state may not file or cause to be filed, through its employees or agents, any lawsuit, cause of action, claim, cross-claim, or counterclaim against another person or entity without merit and primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue. FS 768.295(4) a person or entity sued by a governmental entity or another person in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section. A person or entity may move the court for an order dismissing the action or granting final judgment in favor of that person or entity, which the defendant did, but the motion was denied. FS 47.011 and FS 28.106.207 Hearings shall be held in the area of residence of the non-governmental parties and where the defendant resides, where the cause of action accrued. Due process was denied by holding hearings nearly 200 miles away and the court was motioned to dismiss this case and a notarized affidavit has been provided to the court by the defendant. The public on line videos, documentation in the filings too support due process violations.

ANSWER: As *The Florida Bar Journal* reported: "The 2015 Florida Legislature's passage of C.S./S.B. 13121 expands the state's anti-SLAPP provisions giving courts procedural

tools to throw out lawsuits early if primarily used to attack comment on public matters. Prior to the bill's passage, Florida's SLAPP protections were sharply limited to a narrow class of plaintiffs and activities. The 2015 law ("expanded" or "new law") extends SLAPP ACTIVITIES protections to cover private plaintiff suits and specified speech activities. ...

1. Flagler County Board of County Commissioners has demonstrated animus and malice toward the three citizens being sued. As the Eighth Circuit said in United States v. City of Black Jack, 467 F.2d 1208, 1211 (8th Cir. 1974), the law looks at "effects and not intent because clever people may easily hide their motivations." But in this case, intent is proved by the pejoratives heaped on Ms. Weeks and others engaged in First Amendment protected activity in filing ethics complaints, including preventing her as a public official from being placed on the board's agenda to come before the board on a public business matter because she was not a "team player," branding her a "bitch" they intended to "piss off" and branding three unrelated individuals as e "group" as "troublemakers," consolidating their cases in DOAH for punishment for reporting lawbreaking, e.g., to the Ethics Commission, et al.
2. "Team player" was President Richard Milhous Nixon's damming phrase, that indicates someone who will cover-up wrongdoing. "Not a team player" denotes someone who will not commit crimes. In *Abrams v. Baylor College of Medicine*, 581 F.Supp. 1570, 1574 (S.D. Texas 1984), affirmed in relevant part, 805 F.2d 528 (5th Cir. 1986), the Court rejected pretexts for discrimination in refusing to send Jewish physicians to a program in Saudi Arabia, including a "team player" requirement. A "team player" does not blow the whistle or criticize management. "Team player" is freighted with the speech-chilling implication that one is willing to "go along to get along," say what management wants to hear, and do what one is told by managers, no matter what the ethics or legality of the situation. In the political corruption case of *United States v. Salvatti*, 451 F.Supp. 195, 197-98 (E.D. Pa. 1978), one witness testified that "when she complained to the Mayor about Mr. Carroll's pressure, and advised him that the proposed payment to the Sylks would be totally improper and probably illegal, the Mayor chided her for **not being a team player**." See also *Fitzgerald v. Seamans*, 384 F.Supp. 688,697n7 (D.D.C. 1974), *affirmed*, 553 F.2d 220, 224 (D.C. Cir.

1977), *reversed, Harlow v. Fitzgerald*, 457 U.S. 800 (1982); Nixon v. Fitzgerald, 457 U.S. 731 (1982) (remarks of President Nixon et al. on need to fire heroic Department of Defense whistleblower A. Ernest Fitzgerald after he testified truthfully before Congress on C-5A transport cost overruns, with Nixon saying Mr. Fitzgerald was "not a team player"); *Broderick v. Ruder*, 685 F.Supp. 1269 (D.D.C. 1988)(sexual harassment at Securities and Exchange Commission); *Tomsic v. State Farm Mutual Automobile Insurance Co*, 85 F.3d 1472, 1474 (10th Cir. 1996); *Geddes v. Benefits Review Board*, 735 F.2d 1412, 1416, 1420 (D.C. Cir. 1984) (Washington Metropolitan Transportation Authority considered workers' compensation claimant not a "team player"); *Davis v. California*, 1996 WL 271001 (E.D.Cal.1996); *Schloesser v. Kansas Dept. of Health & Environment*, 766 F.Supp. 984 (D. Kansas 1991); *Stradford v. Rockwell International*, 48 Fair Empl.Prac.Cas. (BNA) 697, 49 Empl. Prac. Dec. P 38,828,1988 WL 159939 (S.D.Ohio); Seymour M. Hersh, "Annals of National Security: The Intelligence Gap -- How the digital age left our spies out in the cold," *The New Yorker*, December 6, 1999 at 58, 62.

3. Here, Ms. Weeks-Supervisor of Elections-Flagler County, reported law violations, including: (a) whispered conversation about sabotaging elections by prematurely revealing votes cast before Election Day; (b) efforts to reduce the number of precincts in possible violations of the Voting Rights Act and Fifteenth Amendments.

4. The Attorney General's SLAPP suits are the direct and proximate result of political influence by the controlling faction in Flagler County.

5. Our American Founders warned of factions in *The Federalist* No. 10; here one faction in an allegedly corrupt county has resorted to the courts and representation by the Florida Attorney General in an attempt to violate First Amendment rights.

6. Our First Amendment deserves "breathing space." *NAACP v. Button*, 371 U.S. 415, 433 (1963) *New York Times. v. Sullivan*, 3766 U.S. 254 (1974); *Gasparinetti v. Kerr*, 568 F.2d 311, 314-17 (3d Cir. 1977)(illegal restrictions on policemen's First Amendment rights); *Philadelphia Newspapers, Inc. v. Hepps*, 479 767, 772, 777 (1986)(O'Connor, J.)(newspaper entitled to breathing space in defamation case); *Hustler Magazine v. Falwell*, 485 U.S. 46, 52, 56 (1988) (Rehnquist, J.) (magazine parody of TV preacher entitled to breathing space); *Keefe v. Ganeakos*, 418 F.2d 359, 362 (1st Cir.

1969)(Aldrich, C.J.)(chilling effect on First Amendment illegal suspension of teacher over **Atlantic Monthly** article on Vietnam War); *Parducci v. Rutland*, 316 F.Supp. 352, 355, 357 (M.D. Ala 1970)(Johnson, C.J.)(chilling effect in illegal firing of English teacher over Kurt Vonnegut's **Welcome to the Monkey House**.

7. Despite constitutional law demanding that the First Amendment deserves "breathing space," is the Flagler County Commission is abusing Florida's administrative law to punish what its lawyers derisively term "a small group of people?"

8. Were the Florida Ethics Commission's SLAPP orders contaminated by denial of a right to be heard before petitions were dismissed? The record includes denial of a right to appear by telephone to distant citizens haled into the unfair forum of Tallahassee administrative law.

9. Were fees inflated by Flagler County's conflicted in-house and outside counsel, or withheld or backdated, and then summarily approved by the Ethics Commission and the Florida Division of Administrative Hearings (DOAH) as the amount awarded ($$72,970.55) is approximately 13X more than what is identified in "Claim for Attorney Fees" item 30 ($5,388.80) on the Petition for Costs and Attorney Fees as being incurred in the defense of the complaint through April 30, 2016.

10. Judge Learned Hand wrote five decades ago, "When a party is once found to be fabricating or suppressing documents, the natural, indeed the inevitable, conclusion is that [it] has some- thing to conceal, and is conscious of guilt." *Warner Barnes & Co. v. Kokosai Kisen Kubushiki Kaisa,* 102 F.2d 452, 453 (2nd Cir. 1939). As the First Circuit has held, it is only fair to "plac[e] the risk of an erroneous judgment on the party that wrongfully created the risk." *Nation-Wide Check Corp. v. Forest Hills Distributors, Inc.,* 692 F.2d 214, 218 (1st Cir. 1982).... "[S]poliation evidence ... is admissible to show consciousness of guilt." *United States v. Mendez-Ortiz*, 810 F.2d 76, 79 (6th Cir. 1986), interpreting F.R.Ev. Rule 404(b). 22 Wright & Graham, Federal Practice and Procedure: Evidence §§5178, 5240.*See also* Maguire & Vincent, *Admissions Implied from Spoliation or Related Conduct,* 45 Yale L. J. 226 (1935); II *Wigmore on Evidence* §§278(2), 291 (Chadboum Rev. 1979); 31A *C.J.S. Evidence,* §§ 152-3, 155, 156(1).

11. Were citizens denied a fair adjudicatory hearing and without allowing respondents to Were the Florida Ethics Commission SLAPP orders contaminated by ex parte contacts with Tallahassee lawyer Mark Herron, formerly Chair of the Ethics Commission, who specializes in defending public officials against ethics and elections complaints, in hundreds of cases at the Florida Ethics Commission and Florida Elections Commission?
12. Did the Florida Ethics Commission's SLAPP orders violate citizens' First and Ninth Amendment rights and rights secured by the Florida anti-SLAPP statute are violated by the complaints filed by the AG?
13. Is The Florida AG and Department of Legal Affairs aiding and abetting unconstitutional civil rights violations and contract violation of public policy involving Flagler County elected officials hiring Tallahassee lawyer Mark Herron to procure a precedent that would eviscerate the anti-SLAPP law and strip protection from persons filing ethics and elections complaints? See George W. Pring and Penelope Canan, *SLAPPs: Getting Sued for Speaking Out* (1996).
14. Were the Florida Ethics Commission's SLAPP orders contaminated by denial of a right to be heard before petitions were dismissed? The record includes denial of a right to appear by telephone to distant citizens haled into the unfair forum of Tallahassee administrative law.
15. Were fees inflated by Flagler County's conflicted in-house and outside counsel, or withheld or backdated, and then summarily approved by the Ethics Commission and the Florida Division of Administrative Hearings (DOAH) as the amount awarded ($72,970.55) is approximately 13X more than what is identified in "Claim for Attorney Fees" item 30 ($5,388.50) on the Petition for Costs and Attorney Fees as being incurred in the defense of the complaint through April 30, 2016.
16. Judge Learned Hand wrote five decades ago, "When a party is once found to be fabricating or suppressing documents, the natural, indeed the inevitable, conclusion is that [it] has some- thing to conceal, and is conscious of guilt." *Warner Barnes & Co. v. Kokosai Kisen Kubushiki Kaisa,* 102 F.2d 452, 453 (2nd Cir. 1939). As the First Circuit has held, it is only fair to "plac[e] the risk of an erroneous judgment on the party that wrongfully created the risk." *Nation-Wide Check Corp. v. Forest Hills Distributors,*

Inc., 692 F.2d 214, 218 (1st Cir. 1982).... "[S]poliation evidence ... is admissible to show consciousness of guilt." *United States v. Mendez-Ortiz*, 810 F.2d 76, 79 (6th Cir. 1986), interpreting F.R.Ev. Rule 404(b). 22 Wright & Graham, Federal Practice and Procedure: Evidence §§5178, 5240.*See also* Maguire & Vincent, *Admissions Implied from Spoliation or Related Conduct,* 45 Yale L. J. 226 (1935); II *Wigmore on Evidence* §§278(2), 291 (Chadboum Rev. 1979); 31A *C.J.S. Evidence,* §§ 152-3, 155, 156(1).

17. Were citizens denied a fair adjudicatory hearing and without allowing respondents to appear by telephone?
18. Were the FEC SLAPP orders contaminated by ex parte contacts with Tallahassee lawyer Mark Herron, formerly Chair of the Ethics Commission, who specializes in defending public officials against ethics and elections complaints, in hundreds of cases at the Florida Ethics Commission and Florida Elections Commission?
19. Did the Florida Ethics Commission's SLAPP orders violate citizens' First and Ninth Amendment rights and rights secured by the Florida anti-SLAPP statute are violated by the complaints filed by the AG?
20. Is The Florida AG aiding and abetting unconstitutional civil rights violations and contract violation of public policy involving Flagler County elected officials hiring Tallahassee lawyer Mark Herron to procure a precedent that would eviscerate the anti-SLAPP law and strip protection from persons filing ethics and elections complaints? See George W. Pring and Penelope Canan, *SLAPPs: Getting Sued for Speaking Out* (1996).

2. **QUESTION:** Was entry of the Final Summary Judgement reversible legal err because, the Motion For Substitution of Party was denied, without the successor *automatically* being substituted as a party as Florida Rule of Civil Procedure 1.260(d)(1) provides? The filed Motion to Dismiss, which was also the answers to the complaint, was also denied. The successor of Kimberle B. Weeks-Supervisor of Elections was to automatically be substituted upon Weeks' resignation of office, which took place approximately January 6, 2015, when the complaint action was in its infancy stage, and prior to Final Summary Judgment. Final Summary Judgment was filed against Kimberle Weeks, an individual, not Kimberle B. Weeks-Supervisor of

Elections who filed the sworn complaint with the Florida Commission on Ethics. Per Rule 1.260(d)(1) this action is wrongfully in the individual name of the "former" Supervisor of Elections as it should be in the name of the substitute successor Supervisor of Elections. The ethics complaint filed, which initiated this action, was filed to protect the integrity and security of elections, and the operations of the elections office. Allegations in the complaint filed with the ethics commission pertained to official election and election canvassing board issues and business, and the complaint was filed by the *then* Supervisor of Elections in 2014 in her official capacity. The sworn complaint form reflects the mailing address and phone number of the Supervisor of Election's Office, not the residential mailing address of an individual, Kimberle Weeks. The complaint form filed was notarized by staff member Katherine Mary Smith. When the Report of Investigation was released, which was long after Weeks resigned from public office, it identified the Complainant to be "Kimberle B. Weeks". Kimberle B. Weeks has not been Flagler County Supervisor of Elections since January 6, 2014. Kaitlyn "Kaiti" Lenhart, the successor, should have been substituted immediately upon Weeks' resignation from office in 2015 as she was appointed successor supervisor by then Governor Rick Scott and is the current Supervisor of Elections as there was a pending action at the time of resignation that did not dissolve for years following. Furthermore, the county provided representation for the Respondents through the County's insurer and the successor too would be entitled to representation as the complaint filed was totally related to the duties of the official and were for a public purpose. .

FLORIDA LAW: Florida Rule of Civil Procedure 1.260(d)(1) Public Officers; Death or Separation from Office (1) When a public officer is a party to an action in an official capacity and during its pendency dies, *resigns*, or otherwise ceases to hold office, the action does not abate and *the officer's successor is automatically substituted* as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An Order of substitution may be entered at any time, but the omission to enter such an Order shall not affect the substitution. The substitution of the successor of office should have automatically become a substitute upon the resignation of the official which took place approximately January 6, 2015, and been a party to the Final Summary Judgement and prior events that led to this point..

ANSWER: Because Kimberle B. Weeks-Supervisor of Elections was a party to an action in which proceedings would take place long after Weeks' 2015 resignation from public office before the pending outcome of the action would be known and occur. The sworn complaint filed in Weeks' official capacity "Ethics Commission Form 50) with the Florida Ethics Commission did bear the supervisor's title, office mailing address, and office phone number, and the complaint contained issues related to the elections office. The action was pending when Weeks resigned in 2015 and per R.Civ. P. 1.260(d)(1) allows for a substituted party when a public officer is a party to an action in an official capacity and during its pendency resigns, the officer's successor (Kaitlyn (Kaiti) Lenhart-Supervisor of Elections-Flagler County, FL) is *automatically* substituted as a party and proceedings following the substitution shall be in the name of the substituted party. *An order of substitution may be entered at any time but the omission to enter such an order shall not affect the substitution.* The court fails to recognize this substitution and because when Supervisor Weeks left public office it was unknown if the current action was going to take place or if the respondent was going to be found in violation so the Court has no way of disputing this successor substitute because the substitute should have taken over the action several years ago before it was known it would be a final summary judgement.

3. **QUESTION:** Was entry of the Final Summary Judgement reversible legal err because a change of venue requested with the lower court on approximately October 30, 2019 (NOT IDENTIDED ON THE RECORD ON APPEAL) was not honored? The Plaintiff stated the venue in Leon County, Florida was proper because the complaint filed that gave rise to the proceeding was filed with the Florida Commission on Ethics in Leon County, Florida, and because necessary legal work for the proceedings was performed in Leon County, Florida, the Division of Administrative Hearings was held in Leon County, Florida, and the final order awarding costs and fees by the Florida Ethics Commission was entered by the Florida Commission on Ethics in Leon County, Florida. It was requested too that the Division of Administrative Hearing hold its hearing in or near Flagler County, Florida and that request too was denied which prevented participation DENYING DUE PROCESS. The residence of the parties, the cause of action that prompted the complaint to be filed, the location where the complaint was filed from, and the location Tallahassee attorney Mark Herron came to recommend to the board to take action, and where the board approved the action for costs and fees to be recovered, which caused the action of cost and fee recovery, all occurred in Flagler County Florida. Flagler County is always where

investigators came from the ethics commission, and were records were maintained and witnesses resided.

FLORIDA LAW: FS 47.011 confirms that actions shall be brought only in the county where the defendant resides, where the cause of action occurred, or where the property in litigation is located and Florida Administrative Rule 28-106.207(1) states whenever practicable and permitted by statute or rule, hearings shall be held in the area of residence of the non-governmental parties affected by agency action, or at the place most convenient to all parties as determined by the presiding officer.

ANSWER: Because the DOAH hearing and Final Summary Judgment hearings were held in improper and invalid jurisdictions and venues, the proceedings lacked authority over the case. FS 47.011 does not provide for exceptions, and one cannot add to or take away from the law. The Statute clearly states "Actions shall be brought only in the county where the defendant resides, where the cause of action occurred. The defendant did not reside in Leon County, Florida, and the actions did not occur in Leon County, Florida, making Leon County an invalid jurisdiction and venue with no authority for Final Summary Judgment. Division of Administrative Hearings (DOAH) also held its hearing to determine entitlement to and to the amount of costs and fees in Leon County, Florida which too is not consistent with FL. Admin. Rule 28-106.207(1) and FS 47.011. The Administrative Hearing Law Judge held a telephone conference with both Kimberle Weeks and Dennis McDonald in regards to where venue and jurisdiction was to be, and both Kimberle Weeks and Dennis McDonald stated in or near Flagler County, Florida and the request to hold the Division of Administrative Hearing (DOAH) hearing in or near Flagler County, Florida was denied, DOAH too held the hearing in an improper venue and jurisdiction without authority, and doing so prevented participation, and telephonic participation too was denied. DENYING DUE PROCESS. The DOAH hearing was held by Law Judge Van Wyk in Leon County, Florida which is not consistent with FL. Admin. Rule 28-106.207(1) and FS 47.011. The Commission on Ethics only has one location in the State of Florida, and full participation in the Probable Cause Determination hearing was not permitted by the agency resulting in Due Process being denied to the Complainant. The Final Order was prepared and mailed by the Florida Ethics Commission, however the cause of action occurred in Flagler County, Florida where not only the defendant resides, but also the plaintiff, which is also the jurisdiction and venue of where the actions took place which resulted in The Ethics

Commission complaint to be initiated, and is where the complaint form was completed, notarized and mailed from, it is also where Leon County Attorney Mark Herron came to appear before the Board of County Commissioners at a public board meeting in Flagler County, Florida on approximately May 16, 2016, to "seek remedies" and recommend the board approve action to do so. Herron appeared without being noticed on the board's agenda. Herron was introduced by County Attorney Albert Hadeed and made the recommendation to seek costs and fees outside of General Business, under "County Attorney Reports and Comments". The board took action approving seeking costs and fee recovery knowing four of the five commissioners were party to the action being taken and that the county, nor the board, nor the individual paid costs and fees and they had nothing to recover; the county's insurer defended the complaint. The board also took an action on the recommendation even though Mark Herron was retained by the County's insurer to defend the complaints. Herron stated to the board all costs thus far have been paid by the County's insurer. Herron had been paid by the insurer, Herron nor the commissioners who took action had any costs incurred, nor did County Attorney Hadeed, but Hadeed colluded with Herron for Herron to come to Flagler County to go before the board without being noticed on the agenda and outside of public business. The insurer was not seeking recovery of costs and fees and authorized none per written documentation. Subrogation was not granted. The process of Cost and Fee Recovery began when Mark Herron came to Flagler County on May 16, 2016 after the Florida Ethics Commission dismissed the complaint and made it eligible for cost and fee recovery to be sought, thus making Flagler County the County where the cause of action occurred and not Leon County. Leon County Florida is approximately 191 miles from Bunnell, Florida, which is approximately a 4 hour and 17 minute drive one way. It is not reasonable for one to participate in hearings being approximately 191 miles one way, and this created a hardship and disadvantage and violated due process.

4. **QUESTION:** Did the lower court err in the Final Summary Judgment language in "(2)" and place cause for correction or remand of the Final Summary Judgment? It is stated the Flagler County Board of County Commissioner's "shall recover" $72,970.55 from Defendant, Kimberle Weeks by way of assignment by Charles Ericksen Jr. The assignment did not authorize the Flagler County Board of County Commissioners to "recover" from Defendant Kimberle Weeks. The assignment assigns "**any recovery of attorney fees and damages awarded to me (Charles Ericksen Jr) in these and other related proceedings "to" the County Commissioner"**. The

"Assignment of Attorney Fees Awards" filed with the Motion For Summary Judgment from, Charles Ericksen Jr, states "I herby assign **any recovery** of attorney fees and damages **awarded to me** in these and other related proceedings **to the County**", meaning the Flagler County Board of County Commissioners does not have authority to "recover" attorney fees from Kimberle Weeks, but Charles Ericksen Jr assigns any recovery of attorney fees and damages awarded to him in these and other related proceedings "to" the County". Charles Ericksen Jr further stated in "Assignment, Waiver, and Acknowledgement, filed with the Motion for Summary Judgement [730-796] that he agrees to execute any additional documents that may be required to effectuate this assignment of attorney fees and damages to the County. The Board of County Commissioners have no authority over the case, the case is not a case involving Flagler County or the Board of County Commissioner or the County. The complaint was filed against a single county commission, Charles Ericksen Jr, and it was sent to his home mailing address. It was not identified by "amount" on the "Statement of Claim" that the board, county or himself had incurred costs and fees in his defense; only the County's insurance provider did. However he was awarded approximately13x the amount that was identified ($5,388.80) that was paid by the County's insurer to defend him. Which is a SLAPP action to be retaliatory for filing a complaint against him and he accomplished that massive award with help and by me being denied the opportunity to be heard. The language of the Final Judgement was requested to be changed on May 5, 2021, but ignored [912-913].

FLORIDA LAW: Rule 34-5-0291 requires that the petition for cost and fees shall include the amount of costs and attorney fees expended by or on behalf of, petitioner though the date of the filing of the petition which $5388.80 is the amount identified in the "Claim for Attorney Fees" on the petition, line 31. $72,970.55 has been awarded by Summary Judgment. FS 112.317(7) allows for recovery of costs plus *reasonable* attorney fees *incurred* in the defense of the complaint, and costs plus *reasonable* attorney fees *incurred* in proving entitlement to and the amount of costs and fees. It is not reasonable to believe $72,970.55 had been paid to defend, prove entitlement, and recover incurred costs and incurred reasonable attorney fees, and all was decided at a DOAH hearing I was denied to attend telephonically that was held nearly 200 miles away.

ANSWER: The Respondent named in the Petition for Costs and Attorney Fees is Charles Ericksen Jr. The case cannot be transferred; the award of costs and fees was awarded to Charles

Ericksen Jr. He is the Plaintiff, he filed the petition for the monies, and he has to accept responsibility for using his position to approve using the county attorney, County's insurer, county resources, and Mark Herron to obtain this massive award. One can rob a bank and give away the money, but that doesn't dismiss the fact that they robbed the bank. They have been awarded approximately $350,000 for what the county's insurer paid approximately $40,000 to defend and they accomplished this together.

5. **QUESTION:** Did the lower court err as a matter of law when it entered a Final Summary Judgment past statute of limitations being cause for Final Summary Judgement to be remanded?

FLORIDA LAW: Per FS 95-11(3)(p) Limitations other than for the recovery of real property is within 4 years for many actions identified and for other actions not specifically provided for in the Statutes. The Florida Ethics Complaint that brought forth this action was filed approximately December 4, 2014, more than 6-years before the Final Judgment was filed.

ANSWER: Because A Florida Commission on Ethics complaint was filed on Approximately December 4, 2014 and a Final Judgment Order was filed Approximately April 23, 2021, the filing of the Final Summary Judgement would exceed the 4 year, Statute of Limitations.

STATEMENT OF THE CASE AND FACTS

Defendant filed a Motion to Dismiss on August 5, 2021[570.784] which included the 14 responses to the Complaint numbered 1-14. The Motion was denied. It contained SLAPP evidence such as cases for DOAH hearing to determine costs and fee eligibility and amount of costs combine three unrelated cases for the hearing, the ALJ holding a hearing approximately 200 miles from where I reside, and denying my motion to appear telephonically. Also contained in the filed motion was about jurisdiction being improper in Leon County, Florida. Leon County does not have jurisdiction. It is absurd to think one would have to drive 400 miles to attend a hearing (round trip) and that Court claims it has jurisdiction. FS 47.011 clearly states actions shall be brought only in the county where the defendant resides, where the cause of action accrued. My due process has been denied and was prevented from being able to defend my complaint filed with the Florida Ethics Commission because they held a Probable Cause Determination Hearing only

allowing the Defendant and his attorney to participate, which gave them an advantage and denied me the opportunity to make know deficiencies and errors of the Report of Investigation. I have been shut out to silence me which is a violation of FS 768.295 I have filed an affidavit on April 7, 2021 when filing Defendants amendments to her objection to Plaintiff's Motion For Summary Judgment and Motion for Directed Verdict in favor of Defendant filed on April 5, 2021 [1035-1073]. The ethics commission held a meeting on April 15, 2016 and discussed the issue of not having full participation at probable cause determination hearings, and said it could especially be an issue for those facing cost and fees claims, but they did nothing about it. The Plaintiff said the Defendant failed to file an Answer or deny the averments in the complaint, and that is not true and correct. The Motion to dismiss clearly has the Answers numbered 1-14 contained in the Motion on the first page. Plaintiff also states there they sought Summary Judgment since there was no dispute of material, there have been material disputes, due process and violation of my constitutional rights are some of them, as is the venue being improper and Leon County not having authority. The Plaintiff also filed a Motion on November 9, 2020 [866-875] to deem defendant's response to plaintiffs first request for admissions admitted, or in the alternative, to determine sufficiency of responses and Motion to compel better responses to plaintiff's first request for interrogatories and motion to compel production documents, and though that motion is on the Record On Appeal, I believe there was a cancellation or recall on that motion. The Plaintiff's Motion for Summary Judgment contains confirmation that the Defendant was denied to participate telephonically in the DOAH hearing which it is a violation of my right, and a way of silencing me. The hearing was in the improper jurisdiction in Leon County, and the case was advance regardless. Wrong jurisdiction, no authority...Final Judgment reversed. On April 7, 2021 Defendant filed amendments to her objection to Plaintiff's Motion for summary Judgement and Motion for Directed Verdict in Favor of Defendant on April 6, 2021 [825-861] the notarized affidavit again speaks of the violations of my free speech and due process. The affidavit on item 2 it references my due process being denied by the Florida Commission on Ethics when they denied me the right to participate in the Probable Cause Determination Hearing. Item 3 references the Commission talking about not allowing full participation in probable cause determination hearings on an on line

video of their meeting. They recognize the problem and continue on. Item 4 is where I went to Tallahassee on Dec 8, 2017 and went before the Commission to speak about my freedom of speech being denied and they listened and again carried on. They have silenced me to SLAPP me with nearly $200,000 in Judgements against me! Exhibits are attached to the Affidavit that further support the SLAPP actions I have been faced with to silence me, which have been illegal per FS 768.295(1)(2)(a)(3)(4)(5) Had I been able to participate in the Probable Cause Determination Hearing with the ethics commission I would have been able to defend my complaint and point out errors and omissions in the Report of Investigation. Had I been able to participate in the DOAH hearing I would have been able to prove the allegations in the complaint were not malicious, nothing material was incorrect, and I would have avoided the ALJ from allowing fabricated things unrelated to the complaint from being entertained as a distraction. This case has been advanced to the level it is now with without me being permitted to participate. I should have been able to put this fire out when it was smoldering. The Final Summary Orders were entered in a jurisdiction that did not have authority.

SUMMARY OF THE ARGUMENT

The lower court erred by entering a Final Summary Judgement against the wrong named person who was not listed under "1" on the Florida Commission on Ethics Complaint Form "50" that initiated this action. It was not "Kimberle Weeks" who was named on the sworn notarized Ethics Commission's Complaint form "50" under "1" "PERSON BRINGING COMPLAINT" when it was filed in December 2014. It was "Kimberle B. Weeks-Supervisor of Elections" as the "PERSON BRINGING COMPLAINT" On line "1" of the form. The address on the Final Summary Judgment and other court documents is also not the address listed on the Petition. Changing any information on the filed sworn ethics commission complaint form without written consent should null and void any action taken with changed information. Authorization was not given to change any of my information and I was not asked to update any records. The Report of Investigation reflects the complaint was filed by Kimberle B. Weeks of Bunnell, which too is not correct. The form required to file a complaint states under "1. Person Bringing Complaint" "Kimberle B Weeks Supervisor of Elections". It appears very little information on the ethics commission's COMPLAINT form "50" was relied upon after it was filed. The address on the

complaint for recovery of attorney fees and costs is not the address on the notarized Commission of Ethics Complaint Form under item "1" because they differ the one that does not match the record (the notarized complaint form which is Form 50) should be null and void. The complaint was filed by the supervisor of elections in her official capacity. The complaint form was notarized by elections office staff member and the mailing is not the address on the Final summary Judgment and other documents in the file. Because Kimberle B. Weeks-Supervisor of Elections resigned from office six years to the date of taking office a successor was appointed. There was a pending action as the complaint had not even been investigated; therefore, Rule 1.260(d)(1) substitutes the successor as a party. Just like would be the case if there was an unemployment case pending action. The Statute of limitations under FS 95.11(3)(P) is 4 years....the complaint was filed approximately December 4, 2014, approximately 6.4 years ago. Due to Statute of limitations the Final Summary Judgement should be remanded. Florida Statue 112.317(7) is clear that only cost incurred and reasonable attorney fees incurred in the defense and proving entitlement to and the amount of costs and fees is to be recovered. The cost identified in the "statement of claim" on the filed petition for fee and cost recovery identifies the cost incurred to defend against the complaint to be approximately $5,388.80 and the amount awarded is $72,970.55 plus interest.....approximately 13 times more to recover the costs and fees in defending against the complaint....that is not reasonable...and the language states costs and reasonable attorney fees incurred meaning the rate of the attorney fees charges has to be reasonable and the expense has to be incurred. This is unjust enrichment and this action was advanced prohibiting participation in the Ethics Commission Probable Cause Determination Hearing as well as the DOAH hearing which are violations of due process and Constitutional Rights and I would hope warrants the Final Summary Judgement to be remanded. DOAH denied venue change and denied telephonic participation! The Commission then put on filed documents that Kimberle Weeks did not attend the hearing. That is true, but because they denied me to do so. There is nothing reasonable about an 18x difference in what was incurred and what judgment was received. This is a SLAPP action to silence, and SLAPP actions against public participation is prohibited FS 768.295(1)(2)(a)(3)(4). Both Kimberle B. Weeks-Supervisor of Elections-Flagler County and Charles Ericksen Jr were public officials in 2014 when the complaint was filed.

STANDARDS OF REVIEW

The notarized Commission on Ethics Complaint Form (50) was an official document that no one had authorization to change or authorization to use any other filing information other than what is reflected on the required Form to initiate a complaint. Using any information that is not on the notarized Form which is what initiated the process should be deemed invalid and cause for recall of the Final Summary Judgment. One cannot add to or take away from the law. Therefore, if any laws or Rules were not complied with such as jurisdiction, venue, successor substitute, due process and freedom of speech any action taken against Kimberle Weeks should be null and void. The Statute regarding recovery of costs and fees is clear, the cost and fees must be incurred. Mark Herron stated he was paid $180/hr by the County's insurer to defend the complaint. If that is the cost incurred, that is all he should be entitled to recover. Being awarded $82,837.91 to recover $4,563.79 is not reasonable and is unjust. The fact that the Petition states participation to the DOAH hearing telephonically was denied is cause for a SLAPP action because due process is a right and it was denied. The Ethics Commission Probable Cause Determination hearing denied my due process as well and silenced me Holding a hearing nearly 200 miles away was unjust and FS 95.11(3)(p) was put into place to protect defendants so they could participate. Leon County lacked authority because the proceeding should have been held where the defendant resides and should be cause to mandate that the Final Summary Judgement be remanded. The language on the Final Order is misleading and incorrect as to what was stated in the affidavit. The affidavit allowed for recovery of costs and fees to go to the County, but it did not state the County had the authority to recover the cost and fees from Kimberle Weeks and that must be clear. I am sure if they could use the county to carry out their agenda, they certainly would.....this is how we got to where we are. The county boards of commissioners were taking an action on an item in which 4 of the 5 were an item to the action.

ARGUMENT

Due Process and our rights are guaranteed. I motioned the court and raised these issues and my motion was denied. I completed the affidavit and made it be known my rights and due process had been violated, and more than once. Just like when the ethics commission discussed it, then they carried on. The venue has been a huge problem and actions taken outside the jurisdiction where one doesn't have authority need to be reversed. The name and address on the completed complaint form that brought this action is not the name and address that is on this record. I

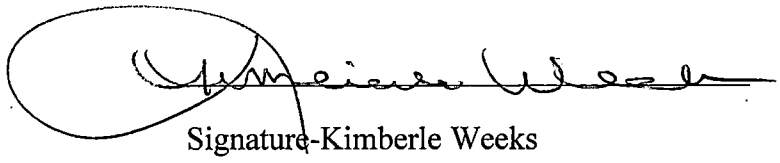
consider this to be invalid. I completed, as Supervisor of Elections a notarized sworn complaint form and not for the information to be changed. The complaint form, Form 50 on number 1 "Person Bringing Complaint" was filed with the name of Kimberle B. Weeks-Supervisor of Elections. The language on the Final Summary is misleading and must be clarified. The language must be consistent with that of the Affidavit. I wrote the Judge about this issue and provided an amended Order, but it went ignored. That document does not appear on the Record On Appeal.

CONCLUSION

For the reasons set forth above, Kimberle Weeks respectfully requests that this Court enter a mandate reversing the Lower Tribunal Court's final summary judgment with instructions that it vacate the final summary judgment and proceed in a manner consistent with this Court's decision.

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2021, a true and correct copy of the foregoing was sent by USPS Mail to: Anita Patel, Department of Legal Affairs, Office of the Attorney General, PL-01 The Capitol, Tallahassee, Florida 3239-1050.



Signature-Kimberle Weeks