No. 21-6047

ORIGINAL

In The
SUPREME COURT OF THE UNITED STATES

APPEAL FROM PALM BEACH COUNTY
Fourth District Court of Appeals

Honorable Scott Kerner, Circuit Court
Judge
50-2018CA011407XXXXMB

Motion for Rehearing and Written Opinion denied on July 20, 2021
4D20-1221

Fortuno Jeanfort,
Petitioner,
v.

FLORIDA ATLANTIC UNIVESRITY BOARD
OF TRU STEES a/k/a FLORIDA ATLANTIC UNIVERSITY,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

Fortuno Jeanfort,
220 NW 20th Court,
Boynton Beach, Florida, 33435 (Temporary mailing address)
Petitioner

Christopher J. Whitelock, Esq.
300 S.E. 13th Street
Fort Lauderdale, FL 33316-1924
Counsel for Respondent

QUESTIONS PRESENTED

IntraDistrict courts all across the State have confused absolute immunity to State Universities themselves, versus the personal liability of (actual) public officials, allowing for State Universities to merely claim Absolute immunity as "magic words" to escape any gross negligence, tort liability pursuant to Article X section 13 of the Florida Constitution, 28 U.S.C §4101; and 18 U.S. Code § 1344

1. In contrast to the 1st DCA but in comparison to the 4th DCA and other district courts, Can a University defendant themself claim they are a Public Official as "magic words" to avoid bank fraud, gross negligence or any tort liability pursuant to Article X section 13 of the Florida Constitution, 28 U.S.C §4101, and 18 U.S. Code § 1344?

   In its affirmation, The Florida Fourth district court of appeal affirmed the Circuit Court's ruling solely on the basis of Absolute Immunity; however, did not address the other salient issue as to whether the Petitioner was allowed to plead in the alternative for a Negligence cause of action to moot any "Absolute Immunity" issue.

2. Whether the Fourth District Court of Appeals erred in holding in accord with the Third Appellate, but in contrast to the Second and Two other Appellate Courts, that under Cochran v. Craig, Florida Rule of Civil Procedure 1.110(g); and Federal Rule of Civil Procedures 8(a)(3); 8(d)(2) & 8(d)(3) the Petitioner was entitled to plead in the Alternative?

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Palm Beach County Fifteenth Judicial Circuit Court:

Fortuno Jeanfort. v. Florida Atlantic University Board of Trustees,

Civ. No. 502018CA011407 (April 29, 2021) (final order of dismissal by magistrate judge on defendant's motion to dismiss Plaintiff's Second Amended Complaint)

Palm Beach County Fourth District Court of Appeals:

Fortuno Jeanfort. v. Florida Atlantic University Board of Trustees,

Civ. No. 4D20-1221 (May 27, 2021) (affirmed the Circuit Court's order on defendant's motion to dismiss Plaintiff's Second Amended Complaint)

Palm Beach County Fourth District Court of Appeals:

Fortuno Jeanfort. v. Florida Atlantic University Board of Trustees,

Civ. No. 4D20-1221 (July, 20, 2021) (order denying the petition for rehearing and rehearing en banc)

Supreme Court of the United States:

Fortuno Jeanfort. v. Florida Atlantic University Board of Trustees,

Civ. No:

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STATUTES AND RULES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[✓] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____ ; or,
[] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[✓] has been designated for publication but is not yet reported; or,
[✓] is unpublished. unsure ?

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[✓] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[✓] A timely petition for rehearing was thereafter denied on the following date: July 20, 2021, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article X section 13 of the Florida Constitution provides:

Suits Against the State - Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.

Section (1) of 28 U.S. Code § 4101, provides:

The term "defamation" means any action or other proceeding for defamation, libel, slander, or similar claim alleging that forms of speech are false, have caused damage to reputation or emotional distress, have presented any person in a false light, or have resulted in criticism, dishonor, or condemnation of any person.

18 U.S. Code § 1344 - Bank fraud provides in pertinent

Whoever knowingly executes, or attempts to execute, a scheme or artifice-
(1) to defraud a financial institution; or
(2) to obtain any of the moneys, funds, credits, assets, securities or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises; shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

Section 836.02 of the Florida Defamation Statutes, provides in pertinent part:

Must give name of the party written about.—No person shall print, write, publish, circulate or distribute within this state any newspaper, magazine, periodical, pamphlet, or other publication of any character, either written or printed, wherein the alleged immoral acts of any person are stated or pretended to be stated, or wherein it is intimated that any person has been guilty of any immorality, unless such written or printed publication shall in such article publish in full the true name of the person intended to be charged with the commission of such acts of immorality.

Section 836.09 of the Florida Defamation Statutes, provides:

Communicating libelous matter to newspapers; penalty.—If any person shall state, deliver, or transmit by any means whatever, to the manager, editor, publisher or reporter of any newspaper or periodical for publication therein any false and libelous statement concerning any person, then and there known by such person to be false or libelous, and thereby secure the publication of the same he or she shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 836.11 of the Florida Defamation Statutes provides:

Publications which tend to expose persons to hatred, contempt, or ridicule prohibited.—

(1) It shall be unlawful to print, publish, distribute or cause to be printed, published or distributed by any means, or in any manner whatsoever, any publication, handbill, dodger, circular, booklet, pamphlet, leaflet, card, sticker, periodical, literature, paper or other printed material which tends to expose any individual or any religious group to hatred, contempt, ridicule or obloquy unless the following is clearly printed or written thereon:

(a) The true name and post office address of the person, firm, partnership, corporation or organization causing the same to be printed, published or distributed; and,

(b) If such name is that of a firm, corporation or organization, the name and post office address of the individual acting in its behalf in causing such printing, publication or distribution.

(2) Any person, firm or corporation violating any of the sections of this statute shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 9.200(a)(1) of the Florida Rule of Appellate Procedure provides:
Except as otherwise designated by the parties, the record shall consist of all documents filed in the lower tribunal, all exhibits that are not physical evidence, and any transcript(s) of proceedings filed in the lower tribunal, except summonses, praecipes, subpoenas, returns, notices of hearing or of taking deposition, depositions, and other discovery.

Section (g) of Florida Rule of Civil Procedure 1.110 states in pertinent part:

Joinder of Causes of Action; Consistency. A pleader may set up in the same action as many claims or causes of action or defenses in the same right as the pleader has, and claims for relief may be stated in the alternative if separate items make up the cause of action, or if 2 or more causes of action are joined. A party may also set forth 2 or more statements of a claim or defense alternatively, either in 1 count or defense or in separate counts or defenses. When 2 or more statements are made in the alternative and 1 of them, if made independently, would be sufficient, the pleading is not made insufficient by the insufficiency of 1 or more of the alternative statements. A party may also state as many separate claims or defenses as that party has, regardless of consistency and whether based on legal or equitable grounds or both. All pleadings shall be construed so as to do substantial justice.

Section (f) of the Rules Fla. R. Civ. P. 1.140 provides in pertinent part:

Waiver of Defenses. **(1)** A party waives all defenses and objections that the party does not present either by motion under subdivisions (b), (e), or (f) of this rule or, if the party has made no motion, in a responsive pleading except as provided in subdivision (h)(2)." *Rule 1.140 - DEFENSES*, Fla. R. Civ. P. 1.140

Federal Rule of Civil Procedure 8(a)(3) states:

A demand for the relief sought, which may include relief in the alternative or different types of relief.

Federal Rule of Civil Procedure 8(d)(2) specifically states:

Alternative Statements of a Claim or Defense. A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

Federal Rule of Civil Procedure 8(d)(3) provides:

Inconsistent Claims or Defenses. A party may state as many separate claims or defenses as it has, regardless of consistency.

STATEMENT OF THE CASE

Approximately 39 years ago, this Court held in Harlow v. Fitzgerald that only certain high ranking "government officials, including the President of the United States, prosecutors, and similar officials are afforded absolute immunity." Conversely, (federal) or lower ranking government officials are entitled to *qualified* immunity. 457 U.S. 800 (1982).

In Milkovich v. Lorain Journal, this Court held that "people, cannot say whatever they want and get protection for their comments by tacking on a couple of 'qualifying words. Milkovich, a school official, "was not a public figure and the defamatory statements were factual assertions, not constitutionally-protected opinions." 497 U.S. 1 (1990).

Assuming arguendo, this Court also held in Buckley v. Fitzsimmons, that even some Public Officials "are not entitled to absolute immunity for statements made during a press conference, out of court acts, nor for fabricating evidence which

causes injury. There is no common-law immunity for that Public Official's out-of-court statements to the press. Such comments have no functional tie to the judicial process just because they are made by that Public Official. Nor do policy considerations support extending absolute immunity to press statements, since this Court has no license to establish immunities from §1983 actions in the interests of what it judges to be sound public policy, and since the presumption is that qualified rather than absolute immunity is sufficient to protect government officials in the exercise of their duties." 509 U.S. 259 (1993) Pp. 16-18.

This case presents the question of whether the "Absolute privilege" standard of the Buckley rule is satisfied when State Universities (themselves) exploit this absolute immunity privilege as "magic words" to escape any civil or criminal tort liabilities.

1. Misidentifying Absolute immunity to the University itself, versus the personal liability of a *real* public official, officer, employee, or agent of the state

The Respondent, Florida Atlantic University, (herein referred as "FAU") owns, maintains and publishes a weekly newspaper called the University Pres. On January 16, 2017, FAU negligently published an article entitled "Recreation Center Employee Gets Stolen Pay Back After Months-Long Investigation" that accuses Petitioner of third-degree, grand theft larceny of another student's funds working in his lawful business trade as a Court Reporter. However, in reality, that victim's paycheck was actually overtaxed and carelessly deposited into the Petitioner's bank

account by the respondent's Payroll & Accounting Department. In spite of FAU's accounting department admitting it was their own employee's payroll error to deposit that student's funds into the petitioner's account, they nonetheless published the Petitioner of being the "FAU Thief Court Reporter" who had "Stolen the Money" anyway, as their desperate attempts to obscure or otherwise coverup their own employee's gross-negligence in mis-issuing student payments, to avoid bank fraud penalties, and to avoid any possible tort liabilities from the student victim and from the Department of Education.

As a result, On September 7, 2018, the Petitioner filed a complaint against the Respondent. After several failed motion to dismiss attempt(s) and a notice of appeal by the Respondent, on May 17, 2019, the Circuit Court and to the certain Sua Sponte Order from the Fourth District Court of Appeals Case No. 4D19-0865 dated April 23, 2019, denied the respondent's Motion to Dismiss on the basis that the "Defendant was not entitled to sovereign immunity." On January 6, 2020, Petitioner then filed a Second Amended Complaint, which asserted a cause of action for libel per se, libel, and an alternative count for negligence.

Finally, on January 27, 2020 after numerous dilatory attempts, the Respondent filed another motion to dismiss on several unsupported defenses, including sovereign immunity, lack of jurisdiction, control of the article, failure to state a cause of action, and a newly added "Absolute Immunity" in spite of never previously invoking this privilege anywhere in their affirmative defensives. See Wolfson v. Kirk "The questions of privilege and want of malice are not now before this court

and should await final decision at the trial." No contention is made in the brief of either party that this court is or the lower court was faced with questions involving the existence or application of any theory of privilege. We concur in the implicit view of the parties that we need not at this point be concerned with questions of privilege. Privilege is a matter of affirmative defense or avoidance and should be raised by the answer where it does not clearly appear from the averments of the complaint." 273 So.2d 774, 776 (Fla. 4th DCA 1973) quoting Richard v. Gray, supra, and O'Neal v. Tribune Company, supra.

On April 29, 2020, the lower court dismissed the Second Amended Complaint with prejudice reasoning Absolute immunity, Sovereign immunity and failure to state a claim, which led to Petitioner's timely appeal filed on May 19, 2020.

A. Direct appeal and several coercions to "drop the appeal or else" bad faith tactics

On direct appeal, in fear that the Petitioner's prior counsel(s) would debunk Respondent's pretense defenses and dishonest activities, Respondents threatened both of the petitioner's then-appellate attorneys to "drop the appeal or else" to have the unfair advantage against an indigent and amateur pro-se adversary.

In his Appellate Brief, Petitioner now as *pro se* but with limited legal guidance, was left to renew his argument that Petitioner was *not* suing any public official, officer, employee, or agent of the state, but instead suing the University (itself), and thus respondent, a State University (itself) does not qualify as a real

"Public Official" and never reported a real "Judicial Proceeding" in court. See Buckley v. Fitzsimmons. Petitioner also argued that pleading in the alternative is allowed under the Florida Rule of Civil Procedure 1.110(g); Federal Rule of Civil Procedure 8(a)(3); 8(d)(2) and 8(d)(3), and that the Petitioner did plead an alternative claim for Negligence. See Cochran v. Craig, 88 W. Va. 281, W. Va. Supreme Court (1921).

Moreover, Petitioner contended that FAU failed to attach any sworn statement, affidavit nor document swearing they relied on a real "Official report or Proceeding." Indeed, FAU failed to attach a copy of the actual "Official report" they claimed to have been quoting in any of the lower proceedings. Under Gregory v. Miami-Dade Cnty, "In support of the Officer's motion to dismiss, Defendants attach to their Motion to dismiss a copy of the police report completed by Miami–Dade Police Officer, J. Vega." 86 F. Supp. 3d 1333 (S.D. Fla. 2014). With FAU now having the unfair advantage, The Fourth District Court of Appeals affirmed the Circuit court's decision per curiam, providing no written opinion and overlooking the other precedential issues that acknowledges the split between Intradistrict Court's nationally within Petitioner's brief.

Petitioner timely filed a motion for rehearing, rehearing en banc, and for a written opinion, not only renewing his arguments that the respondent, a "University" is not a real "public official" and did not participate in a real "Judicial proceeding" under Buckley v. Fitzsimmons; but also stressed the precedential value, the conflicting decisions between IntraDistrict Courts, and the national significance

this per curium without a written opinion would have throughout the nation if Universities (themselves) continued to misuse the words "public official" and "Official proceeding" as "magic words" to escape any past, present or future liabilities for their wrongful actions causing injury to others. The Fourth District Court of Appeals denied Petitioner's motion for rehearing, rehearing en banc, and motion for a written opinion on July 20, 2021. In its reasoning, the Fourth District Court reasoned "the court correctly granted the motion to dismiss on the ground of absolute immunity. Fla. State Univ. Bd. of Trs. v. Monk, 68 So. 3d 316, 319–20 (Fla. 1st DCA 2011); Crowder v. Barbati, 987 So. 2d 166 (Fla. 4th DCA 2008)."

However, a perusal of Fla. State Univ. Bd. of Trs. v. Monk reveals it is not controlling in this case, as Monk concerned a good faith, "considerable testimonial evidence report" being made public by a *real* public official- The Chief Audit Officer- of alleged "academic misconduct violations of its academic honor code" concerning their learning specialist and Tutor.

Unlike FAU, the real public officials in FSU vs monk attached a copy of that *Official Government report* as evidence to support their motion to dismiss; invoked Absolute immunity as their affirmative defenses; claimed an interest, right or duty to that communication; took reasonable measures to ensure their report was accurate, and did not actually "name the Learning Specialist in the report." Additionally, FSU vs. Monk's Official Government report was not produced by a "University Student Newspaper" like FAU did in this instant case. In direct contradiction to FSU vs Monk, not only did FAU fail to attach any "government

report" in support of their motion to dismiss(s) to any of the lower proceedings, but they have also failed to attach any sworn statement or affidavit swearing they relied on a real "Official report." Both FAU and the Lower Courts failed to mention exactly who is the real Public Official in this case, let alone a "Chief audit officer in furtherance of his official duties." That is because there is no public official. There was no stolen money. FAU conveyed these negligent statements to their own Newspress in their desperate attempts to obscure or otherwise coverup their own employees negligence in mis-issuing student payments.

Lastly, The Appellate Court's reliance on Crowder v. Barbati, 987 So. 2d 166 (Fla. 4th DCA 2008) is also irrelevant to this instant case as Crowder held that the sheriff *personally*, and not the department, had absolute immunity for statements made on a website. The Plaintiff's in Crowder sued a real public official, personally. Thus, fundamental error occurred in the Appellate Court's per curium affirmance and will establish a precedent at odds with takings jurisprudence not just locally, but nationally.

REASONS FOR GRANTING THE PETITION

A. To establish the importance of the correct absolute immunity doctrine to both the proper vindication of constitutional guarantees, and the effective functioning who of who qualifies as a real Public Official

In Buckley v. Fitzsimmons, 509 U.S. 259 (1993) this Court adopted a set of prophylactic measures to protect only the *highest* qualifying judicial officials who are required to exercise discretion and the related public interest in encouraging

the vigorous exercise of official authority. However, this Court also held that those Public Officials are not entitled to absolute immunity for "statements made during a press conference," and for statements used for "fabricating evidence which causes injury. Most public officials are entitled only to qualified immunity." See Butz v. Economou, 438 U.S. 478, 513-17 (1978) "some executive officials are only entitled to *qualified immunity*, and reasoned that the risk of making unconstitutional determinations is outweighed by the need to preserve independent judgement, through "grants of absolute immunity to *judges* and other similarly situated decision makers."

In the United States, absolute civil immunity applies to the following people and circumstances:

1. Lawmakers engaged in the legislative process; Imbler v. Pachtman 424 U.S. 409, 418 (1976).
2. Judges acting in their judicial capacity; Imbler v. Pachtman,
3. Government prosecutors only while making charging decisions; Buckley v. Fitzsimmons, 509 U.S. 259 (1993).
4. Executive federal administrative officials while performing adjudicative functions; Butz v. Economou, 438 U.S. 478, 513-17 (1978)
5. The President of the United States; Nixon v. Fitzgerald, 457 U.S. 731 (1982)
6. Presidential aides who first show that the functions of their office are so sensitive as to require absolute immunity, and who then show that they were

performing those functions when performing the act at issue; Harlow v. Fitzgerald, 457 U.S. 800 (1982)

7. Witnesses while testifying in court (although still subject to perjury); Rehberg v. Paulk, 566 U.S. 356 (2012).

Nevertheless, respondent, a University, merely alleges they are entitled to absolute immunity but seems to have confused it with Qualified immunity, which balances two important interests—"the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." Pearson v. Callahan, 555 U.S. 223 (2009).

Here, the Court of Appeals accepted the trial court's findings that FAU published the false article of petitioner with the defamatory words "Stolen Money." The court also did not disturb the trial court's findings that the Petitioner was only suing the University (itself) for negligence, and no one else. Rudloe v. Karl et FSU Board of Trustees 899 So.2d 1161, 1163-1164 (Fla. 1st DCA 2005) held "Petitioner's second amended complaint adequately stated a claim for relief against FSU for negligent publication of defamatory material, a cause of action that would have been viable, if the complaint naming FSU had been timely filed. Quoting Ane,458 So. 2d at 242 (holding that "it is sufficient that a private plaintiff prove negligence" in a defamation action). "First, for there to be governmental tort liability, there must be either an underlying common law or statutory duty of care with respect to the alleged negligent conduct." Quoting Trianon Park Condo. Ass'n, Inc. v. City of

Hialeah,468 So. 2d 912, 917 (Fla. 1985). Unless a private plaintiff is a public figure, "it is sufficient that a private plaintiff prove negligence" in the defendant's publication. Ane,458 So. 2d at 242. The negligent fact checking alleged here was "tactical or `operational,'" and did not involve "basic governmental policy making," White v. City of Waldo,659 So. 2d 707, 711 (Fla. 1st DCA 1995), of the kind that occurs in "the discretionary planning or judgment phase." City of Hialeah,468 So. 2d at 919."

The Court of Appeals conceded the trial court's findings in spite of:

a. erroneously assuming that FAU, (the University itself) is a public official, officer, employee or agent of the state;
b. mistaking immunity of the state, versus the personal liability of a real public official, officer, employee, or agent of the state;
c. FAU never attaching any proof of the purported "official report" they claimed in support of their motion to dismiss(s);
d. It's incorrect definitions and cause of actions of libel per se and libel;
e. The petitioner pleading in the alternative for a count of negligence;
f. Falsely assumes respondent's article qualified as "reporting an official proceeding" and without any proof;
g. FAU's statements made with reckless disregard for the truth. See Rosenbloom v. Metromedia, 403 U.S. 29 (1971) in which this Court held the knowingly and recklessly false standard applies when the

story involves a matter of public concern. "It did not matter that Rosenbloom was a private citizen."

h. FAU never raising this absolute privilege in their affirmative defenses;

i. FAU never proving their assumptions that they had an interest, right or duty in that communication; and

j. FAU's article accusing petitioner of a grand theft of the third degree felony by attributing the words "stolen money" of over $500, thus triggering the Libel *per se* standard.

The decision by the Court of Appeals is plainly incorrect, as it both contradicts the bright-line holding of Buckley and the express purpose of the rule. The rationale of Buckley is that only "*certain* government officials, including the President, prosecutors, and *similar officials* are granted absolute immunity." However, Buckley held respondents were not acting as advocates for the State, but instead as investigators searching for clues and corroboration that might give them probable cause to recommend an arrest. Such activities are not immune from liability at common law. Even If such were "performed by police officers and detectives, such actions would be entitled to only *qualified* immunity." The same immunity applied to prosecutors performing those actions. This Court further held "Fitzsimmons' statements to the media were also not entitled to absolute immunity because there was no common-law immunity for prosecutor's out-of-court statements to the press," Harlow v. Fitzgerald, 457 U.S. 800 (1982).

Many other important features of the Supreme Court's current officer-immunity doctrines diverge significantly from the common law around 1871: (1) Only the Highest-ranking executive officers had absolute immunity at common law, while today they have only qualified immunity; (2) qualified immunity at common law could be overridden by showing an officer's subjective improper purpose, while today a plaintiff must satisfy the stringent clearly-established-law test; and (3) the plaintiff had the burden to prove improper purpose with clear evidence, while today there is confusion over this burden.

Restoring the common law around 1871 on state-officer immunities could address many modern problems with qualified immunity, and these three features from the common law provide a roadmap for reforming the doctrine. If only the highest-ranking executive officials have absolute immunity, that would sufficiently protect the separation of powers without resort to the clearly-established-law test—which frequently denies plaintiffs money damages when their constitutional rights are violated by lower-ranking executive officials (such as Federal Officials). At the same time, if plaintiffs in qualified immunity cases have the burden to prove lower-ranking officers' subjective bad faith with clear and convincing evidence, then officer defendants and courts will have significant procedural mechanisms to dismiss insubstantial claims before trial.

B. To avoid further abuse by State Universities who merely allege they are "public officials" as pretense to escape any tort liabilities pursuant to Article X section 13 of the Florida Constitution.

The present case is a textbook example of the false and abusive state official practices that also prompted the Buckley ruling. Under Buckley, absolute immunity is **not** granted to Public Officials for actions or statements made out-of-court. Furthermore, under Gertz v. Robert Welch, Inc., 418 US 323 – 1974 the First Amendment does not require a private individual who is publicly libeled to meet the burden of proof articulated in New York Times Co.

Similarly to Gertz, despite FAU admitting it was their own negligence to deposit student's funds into the petitioner's account and then failed to take reasonable measures to ensure their statements were accurate, they nonetheless published the false statements with reckless disregard for the truth anyway. Despite the Petitioner asserting a claim for Negligence solely against the University itself, and not an individual the Court of Appeals proceeded with its analysis without any acknowledgement that Petitioner incorporated the general negligence allegations to make factual references supporting the University's negligent administrative payroll error and negligent publication. Under Border Collie Rescue v. Ryan, 418 F.Supp.2d 1330, 1348 (M.D.Fla. 2006) "A plaintiff must prove that the defendant's fault in publishing the statement amounted to at least negligence – not necessarily malicious."

As this Court had cautioned, Gertz was not a public figure and thus only needed to prove negligence to recover in defamation suits against news media. Gertz v. Robert Welch, Inc., 418 US 323 – 1974. The Court of Appeal's erroneous decision circumvents this premise, effectively permitting Universities who commit negligence and wrongful torts to have absolute immunity thus injuring any private individuals whenever they want.

Despite the clarity of the Gertz , Buckley and Cochran rule, this Court has not yet settled on the Intradistrict conflicting question as to whether Universities (themselves) qualify as a real "Public Official," and whether a University is entitled to either absolute or qualified immunity whenever they commit negligence, fraudulent activities or any other wrongful tort through their "student news press" as a way to any tort liability pursuant to Article X section 13 of the Florida Constitution.

Under Philadelphia Newspapers v. Hepps, "where a newspaper publishes speech of public concern about a private figure, the private-figure plaintiff cannot recover damages without also showing that the statements at issue are false." , 475 U.S. 767 (1986). Under the facts then presented, in Harlow v. Fitzgerald, 457 U.S. 800 (1982) this Court upheld absolute immunity only to certain government officials including the President, prosecutors, and similar high ranking officials of the Court. The per curium affirmance by the Court of Appeals raises a matter of great public importance because it will:

A. Endangers Article X section 13 of the Florida Constitution that prevents State agencies from being immune to tort liabilities;

B. Endanger the legislative intent of Florida Defamation Law; Restatement (2nd) of Torts §558, §559, §575 (comment b), §571-74; as well Chapters 770 & 836 of the Florida Defamation Statute;

C. Allow for Universities to escape civil and criminal penalties and promote more negligent fact checking information released to the public;

D. Endanger this Court's precedence under Gertz v. Robert Welch, Inc., 418 US 323 – 1974; Buckley v. Fitzsimmons & Curtis Pub. Co. v. Butts, 388 U.S. 130 (1967);

E. Ignore the legislative direction in favor of a judicial revision of the statute that inhibits the injured, private party's elective remedies and damages against Universities;

F. Implicate the statutory rights and place inordinate burdens on all private persons nationwide who suffer damages from Negligent Universities who merely claim "Absolute immunity" as magic words to publish whatever they want; and

G. Nationally deprive injured private persons of their legal right to seek alternative remedies and damages under Florida Rule of Civil Procedure 1.110(g) that acknowledges the split between IntraDistrict Courts.

If all a University has to do to avoid any Florida Law, statutes, civil tort or criminal liability is to claim they are a "Public Official", then the Florida Law, Statues, Article X section 13 of the Florida Constitution, 28 U.S. Code § 4101, and this Court's Gertz v. Robert Welch, Inc, and Buckley precedence has been all but judicially voided. This seems particularly necessary when one considers these Legislatures, Statutes, Constitutions, and common laws were passed to be more protective—not less protective—of all injured private individual's election of remedies & damages in the United States. The per curiam affirmance by the Appellate Court on the other hand, appears to ignore that legislative direction.

C. The order of the Fifteenth circuit contradicts the pleading standards required by the federal rules of civil procedure and this court's relevant decisions

Notwithstanding the Petitioner having asserted an alternative count for Negligence against the University itself, the petitioner's Second Amended Complaint was nonetheless dismissed with prejudice. However, under Cochran v. Craig, 88 W. Va. 281, W. Va. Supreme Court (1921) "the law does not compel a plaintiff to select at his peril between alternative claims. He may assert both, leaving it to the jury as aforesaid. This is undoubtedly the more liberal and the more just rule, assuming that the court's purpose is to settle the dispute between the parties rather than to award a prize for good pleading"...."A party claiming an alternative right of recovery may assert and prosecute both claims in the same action, leaving it to the jury to determine which he is entitled to, if either, and proof

of one of them constitutes no abandonment of the other." Id. at (p. 296). Petitioner incorporated the general negligence count and allegations to make factual references supporting the University's negligent administrative payroll error and negligent publication

Furthermore, Alabama Great Southern R. Co. v. Sanders, 203 Ala. 57, 82 So. 17 (Ala. 1919) held "where the acts of negligence are alleged in the alternative, the complaint is held to be not fatally defective." Moreover, under Jackson v. Vaughn (1920) 204 Ala. 543, 86 So. 469, held in alleging that the defendant caused the injuries 'either wantonly **or** through negligence' the allegation was held to be good.

This case presents this Court with an opportunity to clarify the Buckley and Alabama Great Southern R. Co standard in the face of Universities actions that violate the Buckley & Alabama Great Southern R. Co. rules, Florida law, and Article X section 13 of the Florida Constitution rules.

D. To determine if Rule 9.200(a)(1) of the Florida Rule of Appellate Procedure was violated when Respondents unfairly introduced scandalous, immaterial and irrelevant information that were not presented in any part of the record, order, appeal, nor transcript of the hearing.

On February 12, 2021, and as a bad-faith tactic to get the unfair advantage against the Petitioner, Respondent filed several scandalous, immaterial and irrelevant information of the Petitioner that were mentioned nowhere apart of the

record, order, appeal, nor transcript of the hearing below to the Appellate Court. Not only did this untoward behavior place the Petitioner in an unfair advantage during the appeal, but it also conflicted with Rule 9.200(a)(1) of the Florida Rule of Appellate Procedure which states in relevant parts:

"Except as otherwise designated by the parties, the record shall consist of all documents filed in the lower tribunal, all exhibits that are not physical evidence, and any transcript(s) of proceedings filed in the lower tribunal, except summonses, praecipes, subpoenas, returns, notices of hearing or of taking deposition, depositions, and other discovery."

Thus, pursuant to Rule Fla. R. Civ. P. 1.140(f), Petitioner filed a Motion to strike the Appellee's immaterial and scandalous pleadings and exhibits that were never mentioned in the record. Under Rule Fla. R. Civ. P. 1.140(f) , "A party may move to strike or the court may strike redundant, immaterial, impertinent, or scandalous matter from any pleading at any time."

E. To allow pro-se litigants the fair chance & legal right to procedural due process to be represented by counsel on a meritorious appeal without receiving constant bad-faith threats

As previously mentioned, It is important to note that the Petitioner is placed in this unfortunate *pro se* position as a direct result of having at least 2 of his prior Appellate attorney's coerced by opposing counsel to abruptly "drop this appeal," as

part of their campaign of desperate attempts to get the unfair advantage against a *pro se* Litigant.

Although Petitioner acknowledges that *Pro se* representation is generally frowned upon in most courts, however still Constitutionally protected, Petitioner has exhausted several good faith efforts to obtain Legal counsel(s) throughout this litigation and appeal. Petitioner has exhausted a total of 3 attorneys to litigate against Respondent for their Negligent and dishonest actions that affect not only the Petitioner, but any private-persons who are injured by similarly situated Universities' wrongful actions. Courts have held that "an individual is legally entitled to self-representation." Under Elmore v. McCammon (1986) 640 F. Supp. 905 "... the right to file a lawsuit pro se is one of the most important rights under the constitution and laws."

Under Puckett v. Cox, 456 F. 2d 233 (1972) (6th Cir. USCA) a "pro se complaint requires a less stringent reading than one drafted by a lawyer per Justice Black in Conley v. Gibson."

FAU's counsels, who are outraged at the Petitioner for meritoriously exercising his legal right to this appeal, applied these bad-faith coercive tactics in fear that the Petitioner's prior counsel(s) would debunk FAU's *pretense* immunity defenses, gross negligence(s) and fraudulent activities. Jenkins v. McKeithen, 395 U.S. 411, 421 (1959) and Picking v. Pennsylvania R. Co., 151 Fed 2nd 240 held "Pro se pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers."

Although Petitioner is not an Attorney, Petitioner candidly expresses a belief based upon a good faith, reasoned, and studied judgment, that these questions are certified to be of great public importance; that reversible error occurred in the Lower Courts to be in direct conflict with decisions of other district courts of appeal; and that a granting of this Petition for a Writ of Certiorari will reveal express and direct conflicts with the decisions in:

Buckley v. Fitzsimmons, 509 U.S. 259 (1993); Rudloe v. Karl et FSU Board of Trustees 899 So.2d 1161, 1163-1164 (Fla. 1st DCA 2005); Cochran v. Craig, 88 W. Va. 281, W. Va. Supreme Court (1921); Gregory v. Miami-Dade Cnty., 86 F. Supp. 3d 1333 (S.D. Fla. 2014); Wolfson v. Kirk, 273 So.2d 774, 776 (Fla. 4th DCA 1973); Gertz v. Robert Welch, Inc., 418 US 323 –1974; Article X section 13 of the Florida Constitution; Federal Rule of Civil Procedure sections 8(a)(3); 8(d)(2); 8(d)(3); Fla. R. Civ. P. 1.140 (f) & 1.110 (g); Florida Defamation Statutes Sections 836.02; 836.09 and 836.11; and Florida Rules of Appellate Procedure Section 9.200(a)(1)

on the same question of law, or would allow this Court to certify the questions described above as one of great public importance, either of which alternatives would grant this Court with discretionary jurisdiction to review this case pursuant to Fla. Const. art. V, § 3(b)(3) and (4), and Fla. R. App. P. 9.030(a)(2)(A)(iv) and (v).

Absent intervention by this Court, the Florida Fourth District Court of Appeals' per curium decision will work to undermine the carefully-crafted procedural safeguards that this Court has spent the past 50+ years developing.

CONCLUSION (Sheet attached)

For the reasons set forth above, Petitioner requests the Court to grant the petition for a writ of certiorari.

Respectfully submitted,

Fortuno Jeanfort

220 NW 20th Court, BOYNTON BEACH, Florida, 33435

Petitioner,

October 18, 2021