IN THE FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

SARASOTA COUNTY PUBLIC HOSPITAL DISTRICT, d/b/a Sarasota Memorial Healthcare System, Inc.; LEE MEMORIAL HEALTH SYSTEM, d/b/a Lee Health; NORTH BROWARD HOSPITAL DISTRICT, d/b/a Broward Health; HALIFAX HOSPITAL MEDICAL CENTER, d/b/a Halifax Health; WEST VOLUSIA HOSPITAL AUTHORITY; SCHOOL BOARD OF MIAMI-DADE COUNTY; and SCHOOL BOARD OF PUTNAM COUNTY.

Appellants,

Case Nos. 1D23-1500
(1327,1394,1481,1484,1529,1570)

v.

OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS, STATE OF FLORIDA,

Appellee.

BRIEF OF *AMICi CURIAE* CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE FLORIDA JUSTICE REFORM INSTITUTE IN SUPPORT OF APPELLEE

On Appeal from a Final Order of the Second Judicial Circuit

William W. Large, Esq.
Florida Bar No. 981273
Justice Reform Institute
210 S. Monroe St.
Tallahassee, Florida 32301

Kenneth W. Sukhia, Esq.
Florida Bar No. 266256 Florida
Sukhia & Williams Law PLLC
241 E. 6th Ave
Tallahassee, Florida 32303
Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitution and Statutes

Publications

IDENTITY AND INTEREST OF THE *AMICI CURIAE*

The Chamber of Commerce of the United States of America (the Chamber) is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. The Chamber has many members that are either based in Florida or conduct substantial business here. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.[1]

The Florida Justice Reform Institute (the Institute) is Florida's leading organization of concerned citizens, business owners and leaders, doctors,

---

1 On multiple occasions, the Chamber has similarly argued against political subdivisions pursuing litigation beyond their authority. *See e.g.*,Brief of the Chamber of Commerce of the United States of America as Amicus Curiae in Support of Petitioner State of Ohio, In re: State of Ohio, No. 19-3827 (6th Cir. filed Sept. 9, 2019); Amicus Curiae Brief of Chamber of Commerce of the United States of America and California Chamber of Commerce in Support of Petitioners, Abbott Lab's v. Superior Ct., No. S249895 (Cal. filed Mar. 8, 2019); Brief of Amici Curiae Chamber of Commerce of the United States of America and the Pennsylvania Chamber of Business and Industry in Support of Appellants, Cnty. of Butler v. Centurylink Commc'ns, LLC, 66 WAP 2017 (Pa. filed Mar. 8, 2018).

and lawyers who seek the adoption of fair legal practices to promote predictability and personal responsibility in the civil justice system. The Institute has advocated practices that build faith in Florida's court system and judiciary. It represents a broad range of participants in the business community who share a substantial interest in a litigation environment that treats plaintiffs and defendants evenhandedly and that fosters finality and predictability in the law.

Amici recognize the nationwide opioid epidemic's enormous human and economic costs, as do the state attorneys general who have reached settlements aimed at combating the epidemic and alleviating its harm. Opioid addiction is a devastating social, economic, and public-health concern that deserves serious and long-lasting solutions. But follow-on claims brought on behalf of political subdivisions of States that have already settled with the same defendant will frustrate, not further, efforts to resolve litigation over the opioid epidemic and achieve meaningful solutions. Such municipal litigation against businesses threatens to displace the sovereign role of States in protecting their citizens. It also undermines the administration of justice by generating unnecessary litigation costs, leading to delayed and incomplete settlements, and causing a redirection of compensation away from those injured. This distortion of

the legal system has tremendously harmful consequences, not only for America's business community, but ultimately for the victims such lawsuits purportedly protect.

Amici file this brief because this case concerns the troubling surge of civil lawsuits against businesses brought by cities, counties, and other municipalities. Political subdivisions in Florida and across the United States have targeted *amici*'s members with burdensome lawsuits such as those the Appellants have sought to bring here. *Amici* are thus uniquely situated to assist this Court in understanding the dangers of allowing these lawsuits to proceed despite applicable releases in settlement agreements reached by state attorneys general on behalf of their respective States.

SUMMARY OF ARGUMENT

Appellant political subdivisions seek to litigate claims released by the State of Florida in a comprehensive settlement agreement entered into by the Florida Attorney General. "The public policy of the State of Florida, as articulated in numerous court decisions, highly favors settlement agreements among parties and will seek to enforce them whenever possible." *Sun Microsystems of Cal., Inc. v. Eng'g & Mfg. Sys., C.A.*, 682 So. 2d 219, 220 (Fla. 3d DCA 1996); *accord Robbie v. City of Miami*, 469 So. 2d 1384, 1385 (Fla. 1985) ("[S]ettlements are highly favored and will be

enforced whenever possible."). Consistent with that policy, the circuit court correctly held that the Attorney General validly released Florida political subdivisions' claims against certain opioid manufacturers, distributors, and pharmacies because the nationwide opioid crisis involves a matter of significant state interest within her broad settlement authority.

Allowing Appellants' claims to proceed despite the Attorney General's settlement and release would significantly harm America's business community, the entire national economy, and all Floridians. It would open the floodgates of municipality litigation, undermining the State's ability to implement a comprehensive response to a statewide public-health crisis and significantly reducing the settlement funds available to compensate the opioid epidemic's true victims. It would also have dramatic consequences for future public-harm litigation, signaling that there are few, if any, limits on political subdivisions' ability to pile on their own lawsuits after the state has sued, entered into settlements for massive dollar amounts and issued releases freeing the defendants from the threat of further liability. Tens of thousands of political subdivisions across America would be encouraged to compete with state authorities for a slice of the pie in future cases. Securing global settlements would become exceedingly difficult, if not impossible, denying businesses the finality and predictability needed to

move past litigation and confidently invest, hire, and grow. This Court should affirm the grant of summary judgment in favor of the Attorney General.

Standard of Review

This Court reviews a grant of summary judgment *de novo*. *Volusia Cnty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000).

ARGUMENT

I. The Florida Attorney General has authority to settle potential claims of political subdivisions on matters of state interest.

The Attorney General is the chief legal officer of the State of Florida, vested with both common-law and statutory authority to bring actions on the State's behalf. *See* Fla. Const. art. IV, § 4(b); Fla. Stat. § 16.01(4). "As the chief law officer of the state, it is [her] duty, in the absence of express legislative restrictions to the contrary, to exercise all such power and authority as public interests may require from time to time." *State ex rel. Landis v. S.H. Kress & Co.*, 155 So. 823, 827 (Fla. 1934), *superseded on other grounds by statute as recognized in State ex rel. Watson v. Dade Cnty. Roofing Co.*, 22 So. 2d 793, 794 (Fla. 1945).

The Attorney General's litigation authority includes the power to sue on the State's behalf for an alleged injury to the public. "[W]here the injury is to the public, the Attorney General has standing as a representative of

the people." *State ex rel. Boyles v. Fla. Parole & Prob. Comm'n*, 436 So. 2d 207, 210 (Fla. 1st DCA 1983); *see also Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 603-04 (1982) ("[I]f the health and comfort of the inhabitants of a State are threatened, the State is the proper party to represent and defend them." (quoting *Missouri v. Illinois*, 180 U.S. 208, 241 (1901)).

Such litigation authority of a state attorney general extends to matters of general state interest. *In re Certified Question from U.S. Dist. Ct. for E. Dist. of Mich.*, 638 N.W.2d 409, 414 (Mich. 2002); *see also Cleveland Elec. Illuminating Co. v. City of Painesville*, 239 N.E.2d 75, 78 (Ohio 1968) (holding that "a matter of general state interest" falls outside municipal authority when "regulation of the subject matter affects the general public of the state as a whole more than it does the local inhabitants"). And for good reason: Unlike local authorities, state attorneys general derive their authority from the statewide electorate and are thus accountable to it, either directly (as in Florida) or indirectly through the state officials that appoint them. The Florida Attorney General thus had standing to sue the Opioid Defendants[2] on behalf of the State for any actionable injuries incurred by its

[2] "Opioid Defendants" collectively refers to the defendants that were parties to relevant settlement agreements with the Attorney General, including

citizens as a result of the opioid crisis—a matter of significant state interest, *see* Fla. Exec. Order No. 17-146 (May 3, 2017) (declaring a Florida state of emergency due to the opioid epidemic).

Moreover, "[b]ecause the Attorney General possesses the authority to sue on behalf of the state in matters of state interest....the Attorney General necessarily has the authority to sue on behalf of the state's political subdivisions in matters of state interest." *In re Certified Question*, 638 N.W.2d at 414. That corollary litigation authority follows from political subdivisions' subordinate status, even in home-rule states such as Florida. *See id.* (noting that Michigan is a home-rule state). On matters of state interest, the Florida Attorney General "ha[s] authority to speak for the interests of" all "instrumentalities of Florida state sovereignty," which include political subdivisions. *Thompson v. Wainwright*, 714 F.2d 1495, 1501 (11th Cir. 1983). As political subdivisions, Appellants "derive their sovereign powers exclusively from the state." *Hollywood, Inc. v. Broward Cnty.*, 431 So. 2d 606, 609 (Fla. 4th DCA 1983). They are "created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them in its absolute discretion." *Nixon v.*

Johnson & Johnson; McKesson Corporation; Cardinal Health, Inc.; AmerisourceBergen Drug Corporation; CVS; Teva; Allergan; and Walgreens.

Missouri Mun. League, 541 U.S. 125, 140 (2004); *accord United States v. Kagama*, 118 U.S. 375, 379 (1886) (political subdivisions "are all derived from, or exist in subordination to" the States or the federal government). The Florida Attorney General thus had standing to sue the Opioid Defendants not only on behalf of the State, but also on behalf of the State's political subdivisions.

The Attorney General's authority to sue on behalf of the State and its political subdivisions includes the attendant power to settle such suits and release claims on matters of state interest. "[T]he power of a public body to settle litigation is incident to and implied from its power to sue and be sued." *Abramson v. Fla. Psych. Ass'n*, 634 So. 2d 610, 612 (Fla. 1994); *accord Op. of the Justices*, 373 A.2d 647, 649 (N.H. 1977) (state attorney general has authority to settle litigation on behalf of the State); *Pub. Def. Agency v. Superior Ct.*, 534 P.2d 947, 950 (Alaska 1975) (same); *State ex rel. Derryberry v. Kerr-McGee Corp.*, 516 P.2d 813, 818 (Okla. 1973) (same); *State v. Finch*, 280 P. 910, 912 (Kan. 1929) (same).

As a result, "the Attorney General has broad authority to sue and settle with regard to matters of state interest, including the power to settle such litigation *with binding effect on . . . political subdivisions*." *In re Certified Question*, 638 N.W.2d at 414 (emphasis added). Like her power to

sue on behalf of political subdivisions on matters of state concern, the Attorney General's accompanying power to settle and release their claims flows from her superior status as the State's chief law enforcement officer:

> [W]here the state expresses its position on issues clearly of state interest, subdivisions are subordinate to the state's position. . . . [T]he structure of the sovereign state and the constitutional and statutory powers granted to the Attorney General dictate that the [political subdivision] is ultimately subordinate to the state where, as here, the Attorney General acted to bind the state as a whole in a matter clearly of state interest. Thus, the law establishes that where the Attorney General has acted to limit the power of the counties to sue where an issue is of state interest, the county may not act to defeat the state's clear intention.

Id. at 415.

The Attorney General thus had ample authority to settle Florida political subdivisions' opioid-related claims because, as discussed, the opioid epidemic is a matter of significant state interest. Moreover, the Attorney General herself is vested with the broad discretion to determine what constitutes a state interest giving her the authority to sue and to settle on behalf of the state and its citizens. "'[T]he Attorney General's discretion to litigate . . . legal matters deemed by [her] to involve the public interest is the exercise of a judicial act" that "cannot be challenged or adjudicated.'" *Boyles*, 436 So. 2d at 210 (quoting *State ex rel. Shevin v. Yarborough*, 257 So.2d 891, 895 (Fla. 1972) (Ervin, J., concurring)); *see also State v.*

Gleason, 12 Fla. 190, 213 (1868). Allowing inferior political subdivisions to influence, control, or avoid the Attorney General's settlement negotiations or agreements on behalf of the State by demanding different remedies, settlement amounts, or other resolutions would fundamentally invert state political authority. Indeed, the Florida legislature confirmed the primacy of State over local authority to resolve opioid claims by establishing a comprehensive scheme for distributing the opioid settlement funds at the state and local level. *See* Fla. Stat. §17.42.

II. Parallel lawsuits by political subdivisions frustrate state policy and leave less compensation available for victims.

Improperly inverting state political authority has harmful real-world consequences. Allowing parallel claims by Florida political subdivisions to proceed despite the Attorney General's settlement releasing them would frustrate the State's coordinated policy response to a statewide public-health crisis and ultimately leave less compensation available for victims.

Political subdivisions increasingly compete with States over public-harm litigation—not just involving the opioid crisis, but also involving other hot-topic issues, such as climate change and data privacy. U.S. Chamber Inst. for Legal Reform, *Mitigating Municipality Litigation: Scope and Solutions* 9 (2019), https://instituteforlegalreform.com/wp-content/uploads/2020/10/Mitigating-Municipality-Litigation-2019-Research.pdf. Economic

incentives have principally driven this surge in affirmative municipal litigation. As municipalities have faced serious budget constraints and substantial limitations on the ability to raise revenue, affirmative municipal litigation has presented an enticing, seemingly "cost-less" opportunity to raise additional revenue. *Id.* at 6–7 (detailing budget constraints). After all, affirmative litigation by States and municipalities has at times resulted in historically large settlements. *Id.* at 5–6 (providing examples).

Unlike States, however, most municipalities lack the capacity to litigate such matters using their own employees as litigation counsel. Contingency-fee arrangements with private plaintiffs' firms make it possible for such entities to secure representation without paying legal fees. *Id.* at 6–9. These pervasive arrangements with outside counsel create fundamentally different financial incentives shaping the litigation than the incentives in litigation conducted by full-time civil servants, who receive no share of the recovery in any such litigation. Encouraged by financially motivated contingency-fee counsel, political subdivisions have little, if anything, to lose from pursuing affirmative litigation. *Id.* at 8

If allowed to proceed, the piling-on of municipal litigation would frustrate Florida's ability to implement a coordinated policy response to a statewide public-health crisis. Legislation, executive orders, and

memoranda of understanding from attorneys general nationwide demonstrate a collective effort to ensure that opioid settlement funds address the effects of the opioid crisis based on the needs of each state and *all* its citizens. *See, e.g.*, S. 7194, 2021-2022 Sen., Reg. Sess. (N.Y. 2021); Gov. Mike DeWine & Att'y Gen. Dave Yost, One Ohio Memorandum of Understanding (July 28, 2021), https://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/One-Ohio-MOU-Signed-by-AG-and-Gov.aspx. Florida is no exception. *See, e.g.*, Fla Stat. Ann. § 456.0301 (establishing instructional requirements for health professionals authorized to prescribe controlled substances); Fla. Exec. Order No. 19-97 (Apr. 1, 2019) (establishing the Florida Office of Drug Control and the Statewide Task Force on Opioid Abuse to combat the opioid crisis in Florida). A comprehensive statewide policy response is crucial when addressing such a significant and widespread public-health concern.

The State and its officers such as the Attorney General, as opposed to Florida's disparate political subdivisions, are best positioned to develop and implement such a comprehensive statewide response. This is particularly true when the State has already received settlement funds and disbursed those funds for the benefit of all its citizens. The Attorney General has actively pursued claims of public harm on behalf of all

Floridians. She recouped over $3.1 billion from the Opioid Defendants in the process, and the Florida Legislature has directed that recovery into financial relief to remediate the effects of the opioid epidemic. *See* Fla. Stat. § 17.42. Allowing political subdivisions to pursue released claims would thus result in double recoveries. Moreover, because the Attorney General and state legislators are accountable to all Florida's citizens, they have legal duties and other structural incentives to ensure that the settlement funds are disbursed equitably and appropriately for the benefit of all communities and individuals within Florida.

By contrast, the political subdivisions' public duties and incentives are necessarily narrower in scope. Although political subdivisions "are not as broadly accountable to the public" as the Attorney General, their affirmative lawsuits nevertheless "may affect matters of statewide or national concern and impact people far beyond the bounds of their individual jurisdictions." *Municipality Litigation* at 16. All Floridians can support or oppose the Attorney General's settlement by voting in the next election, but they cannot do so with respect to the actions of political subdivisions, much less when those subdivisions are represented by private plaintiffs' attorneys. If allowed to proceed, municipal lawsuits would allow political subdivisions to

demand conflicting remedies affecting the entire state without sufficient political accountability.

If political subdivisions have concerns with the Attorney General's opioid settlement, they should take them up with the Governor, state legislators, and voters—not the courts. They may disagree with that settlement, or fear that the amount recovered is insufficient for their purposes, or wish to have greater control over the funds. But none of these concerns allow Appellants and other Florida political subdivisions to pursue claims already settled and released by the Attorney General on behalf of the State and all its subordinate instrumentalities.

Parallel municipal lawsuits also harm the very citizens they are meant to protect by significantly increasing litigation costs and reducing the funds available to compensate victims. Potential funds for settlements are not unlimited, no matter how big the case or deep-pocketed the defendants. *See Municipality Litigation* at 16. The amount recoverable for victims does not automatically grow with the number of government plaintiffs. On the contrary, the increased litigation costs may actually *shrink* the available settlement pie—especially because discovery by political subdivisions is much more difficult and expensive than discovery by the Attorney General. *See, e.g.*, Fla. Stat. §§ 501.203(2), 501.206(1) (granting the Attorney

General certain broad investigative powers that political subdivisions lack). And "[a]s municipalities collect a greater share of the recoveries from private defendants, the compensation available to citizens for their actual injuries is reduced." *Municipality Litigation at 16.* Permitting layer after layer of political subdivisions to pursue separate claims creates a serious risk that liability will exceed the defendants' resources, reducing the likelihood of recovery for everyone. What's more, the amounts that political subdivisions seek, and the amounts for which they are willing to settle, may be inflated by the increasingly common contingency-fee arrangements used by municipal plaintiffs seeking no-risk recoveries.

Plaintiffs' attorney contingency fees further eat away at available compensation for victims where political subdivisions retain private outside counsel, which they often do. And where, as here, a political subdivision retains private attorneys from multiple firms, those attorneys "add yet another competing voice in settlement discussions." *Id.* at 17. Indeed, private attorneys' interests in collecting settlement funds may conflict with the interests of a political subdivision, and "market forces among plaintiffs' firms, such as competition for contingency fee litigation and the time value of contingency fees earned in the near-term, can drive plaintiffs' firms to disregard future claimants' interests in preserving settlement funds." *Id.* By

contrast, with more resources and funding, the State is less likely to encounter these external forces, and to the extent it does, contingency fees are statutorily capped. *See* Fla. Stat. § 16.0155(5).

III. Parallel lawsuits by political subdivisions frustrate global settlement, denying businesses finality and predictability.

Negotiation with the federal government and the 50 States is hardly simple, but it has proven to be a reasonably manageable dynamic, as the tobacco Master Settlement Agreement and the opioid settlements at issue illustrate. Allowing political subdivisions to pursue their own claims despite the contrary agreement of state attorneys general enlarges the negotiating table by orders of magnitude, converting thorny collective-action problems into insoluble ones. As of 2017, the most recent year for which data have been published, America has nearly 39,000 "general-purpose governments," defined as "all counties, cities, towns, townships, villages and other jurisdictions serving as the primary government in an area," and over 51,000 "special districts," defined as "school districts, water authorities, parks districts and other public entities serving a more specific function." See Michael Maciag, *Number of Local Governments by State*, Governing.com (Sept. 14, 2012), https://www.governing.com/archive/number-of-governments-by-state.html. Florida alone has over 1,700. *Id.*

If Appellants and hundreds of other Florida political subdivisions are allowed to pursue claims *even after* the Attorney General settled and released them, every future public-harm litigation will be fair game for the roughly 90,000 local authorities across the country. That prospect makes future global settlements in such litigation highly unlikely. No rational defendant would pursue settlement with the States if the immediate result will simply be follow-on lawsuits from thousands of political subdivisions. At the very least, the sheer number of litigants, plus concerns about hold-outs and pile-on suits, will dramatically prolong litigation, imposing massive costs that could well bankrupt defendants before settlements can ever be finalized.

Lingering uncertainty over litigation, particularly litigation involving such massive recoveries on a nationally intense issue, makes business planning difficult, harming not just defendants but the nation's entire economy. Businesses should be able to negotiate confidently with the single chief legal officer of each state in matters of statewide concern to resolve those matters conclusively on behalf of all the state's political instrumentalities, including political subdivisions. Defendants facing broad public-harm litigation depend on such settlement authority of state attorneys general to achieve finality and predictability and to continue their

operations without fear of multiple on-going lawsuits from subordinate entities.

CONCLUSION

As the chief legal officer of the State of Florida, the Attorney General validly released Appellant political subdivisions' opioid-related claims. This Court should accordingly affirm.

Respectfully submitted,

s/ Kenneth Sukhia
Kenneth W. Sukhia
Florida Bar No. 266256
Sukhia & Williams Law PLLC
241 E. 6th Ave
Tallahassee, Florida 32303
Counsel for *Amici Curiae*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served through the Court's E-Filing Portal System and by email, this 29th day of December, 2023, to:

George T. Levesque
Jason L. Unger
Stephen K. Varnell
GRAYROBINSON, P.A.
Post Office Box 11189
Tallahassee, FL 32302
Counsel for North Broward Hospital District, d/b/a Broward Health

Joseph W. Jacquot
Derek K. Mountford
GUNSTER
1 Independent Drive, Ste. 2300
Jacksonville, FL 32202
Counsel for School Board of Miami-Dade County

Frank P. Rainer
Kathleen Houseknecht
MEMORIAL HEALTHCARE SYSTEM
3111 Stirling Road
Hollywood, FL 33312
Counsel for Intervenor South Broward Hospital District d/b/a Memorial Healthcare System

Barry Richard
BARRY RICHARD LAW FIRM
101 E. College Avenue, Ste. 400
Tallahassee, FL 32301
Counsel for Halifax Hospital Medical Center d/b/a HalifaxHealth

Morgan R. Bentley
David A. Wallace
BENTLEY GOODRICH KISON P.A.
783 S. Orange Avenue, Third Floor
Sarasota, FL 34236
Counsel for Sarasota County Public Hospital District, d/b/a Sarasota Memorial Health Care System

Timothy M. Hartley
HARTLEY LAW OFFICES, P.C.
12 Sw. Seventh Street, Ste. 610
Fort Lauderdale, FL 33301
Counsel for Lee Memorial

Health System, d/b/a Lee Health

Steven W. Teppler
STERLINGTON, PLLC
228 Park Avenue S. #97956
New York, NY 10003
Counsel for Sarasota Public Hospital District, d/b/a Sarasota Memorial Health Care System, and Lee Memorial Health System, d/b/a Lee Health

J. Wayne Hogan
TERRELL HOGAN YEGELWEL,P.A.
233 E. Bay Street, 8th Floor
Jacksonville, FL 32202
Counsel for Putnam County School Board

John M. Guard
Chief Deputy Attorney General
Henry C. Whitaker
Solicitor General
Daniel W. Bell
Chief Deputy Solicitor General
David M. Costello
Deputy Solicitor General
Gregory S. Slemp
Special Counsel
Office of the Attorney General
PL01, The Capitol
Tallahassee, FL 32399-1050
Counsel for the Attorney General

s/Kenneth Sukhia
Kenneth W. Sukhia
Counsel for *Amici Curiae*

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief has been prepared in Arial Style, 14-point font in compliance with the requirements of Rule 9.045(b) of the Florida Rules of Appellate Procedure. This brief further complies with the volume limitations set forth in Rule 9.370(b) of the Florida Rules of Appellate Procedure (5,000 words). Excluding the parts exempt by Rule 9.045(e), this brief contains 3781 words.

s/ Kenneth Sukhia
Kenneth W. Sukhia
Counsel for *Amici Curiae*