

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA, FIRST DISTRICT

CASE NO: 1D22-0317

L.T. NO. 2021-CA-2038

STANDING UP FOR FLORIDA, INC.,  
a Florida political committee; and  
PRADEEP "RICK" ASNANI,

Appellants,

v.

FLORIDA VOTERS IN CHARGE, a  
Florida political committee; THE  
HUMAN CONNECTION, LLC, a  
Nevada limited liability company;  
Et al.,

Appellees.

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**APPELLANTS STANDING UP FOR FLORIDA, INC., AND PRADEEP  
"RICK" ASNANI'S MOTION TO SUPPLEMENT THE RECORD**

Appellants, Standing Up For Florida, Inc., ("SUF"), and Pradeep "Rick" Asnani ("Mr. Asnani"), by and through undersigned counsel and pursuant to Rule 9.200(f), Florida Rules of Appellate Procedure, move to supplement the record in this appeal with the January 21, 2022, Hearing Transcript on Appellees Florida Voters In Charge ("FVC-PAC"), The Human Connection, LLC ("Human Connection"), I & R Campaign Management Services

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("IRCMS"), and Grassfire, LLC's ("Grassfire"), Motion to Dismiss (attached as **Exhibit 1**).

We have contacted counsel for the parties and they have no objection to the motion.

WHEREFORE, SUF and Mr. Asnani respectfully request that this Court enter an order supplementing the record on appeal with the January 21, 2022 Hearing Transcript.

Dated: April 8, 2022

Respectfully submitted,

**HOLLAND & KNIGHT LLP**

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that undersigned counsel has electronically filed the foregoing document with the Clerk of the Court using the Florida Courts E-Portal. Pursuant to Fla. R. Jud. Adm. 2.516(b), I also certify that the foregoing document has been furnished to all counsel of record identified on the Service List below by e-mail on April 8, 2022.

By: /s/ William N. Shepherd  
William N. Shepherd

**CERTIFICATE OF COMPLIANCE**

This Motion complies with Florida Rule of Judicial Administration 2.520(a) and Florida Rule of Appellate Procedure 9.045 as it is in Arial 14-point font.

/s/ William N. Shepherd  
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# **EXHIBIT 1**

Florida Voters in Charge

vs.

Mark Jacoby

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Hearing Before:

Judge Angela Dempsey

January 21, 2022

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**PHIPPS REPORTING**

*Raising the Bar!*

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA

Case No. 2021-CA-2038

FLORIDA VOTERS IN CHARGE, a Florida political committee;  
THE HUMAN CONNECTION, LLC, a Nevada limited liability  
company; DUNTON CONSULTING, LLC, a New Jersey limited  
liability company; I & R CAMPAIGN MANAGEMENT SERVICES, a  
Washington corporation; and GRASSFIRE, LLC, a Florida  
limited liability company,

Plaintiffs,

v.

MARK JACOBY; CHRISTOPHER PETTIFORD, KARA OWENS; CORNERSTONE  
SOLUTIONS FLORIDA, LLC, a Florida limited liability  
company; STANDING UP FOR FLORIDA, INC., a Florida political  
committee; LET THE VOTERS DECIDE, LLC, a Florida limited  
liability company; and ONLY PETITION WORKS, LLC, a Missouri  
limited liability company,

Defendants.

~~~~~  
TRANSCRIPT OF REMOTE HEARING PROCEEDINGS  
RE: COUNTER-DEFENDANTS/THIRD-PARTY DEFENDANTS' MOTION TO  
DISMISS COUNTERCLAIM

BEFORE THE HONORABLE ANGELA C. DEMPSEY

Volume 1 (Pages 1-67)

Friday, January 21, 2022  
1:30 p.m. - 2:58 p.m.

Location: Via Zoom Web Conference

This cause came on to be heard at the time and place  
aforesaid, when and where the following proceedings were  
stenographically reported remotely by:

Tamra K. Piderit, FPR, FPR-C, RPR, RMR, RDR, CRR  
Certified Realtime Reporter

Job No. 229208

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|    | I N D E X               |           |
|----|-------------------------|-----------|
|    |                         | PAGE      |
| 1  |                         |           |
| 2  | PROCEEDINGS             |           |
| 3  | ARGUMENT                |           |
|    | By Mr. Herron           | 7, 54     |
| 4  | By Mr. McKee            | 9, 56, 53 |
|    | By Mr. Lombard          | 22, 63    |
| 5  | By Ms. Davis            | 23        |
|    | By Mr. Shepherd         | 23, 62    |
| 6  | By Mr. Simmons          | 39        |
|    | By Ms. Davis            | 51        |
| 7  | Ruling                  | 64        |
| 8  | Certificate of Reporter | 67        |
| 9  |                         |           |
| 10 |                         |           |
| 11 |                         |           |
| 12 |                         |           |
| 13 |                         |           |
| 14 |                         |           |
| 15 |                         |           |
| 16 |                         |           |
| 17 |                         |           |
| 18 |                         |           |
| 19 |                         |           |
| 20 |                         |           |
| 21 |                         |           |
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1 Thereupon,

2 The following remote proceedings began at 1:30 p.m.:

3 ~ ~ ~ ~ ~

4 THE COURT: We are here on 21-CA-2038. It looks  
5 like we have a court reporter.

6 THE STENOGRAPHER: Yes, Your Honor.

7 THE COURT: So we are here on two motions to  
8 dismiss this afternoon, one from the plaintiffs,  
9 Florida Voters in Charge, and one from Supervisor  
10 Earley.

11 I guess why doesn't everyone put their appearances  
12 on the record. If the lawyers for Florida Voters in  
13 Charge want to start, that would be great.

14 MR. McKEE: I'm sorry, we were on mute. Can  
15 everybody hear me?

16 THE COURT: Yes.

17 MR. McKEE: I apologize. Jim McKee on behalf of  
18 Florida Voters in Charge, The Human Connection, and  
19 I & R Campaign Management Services. With me is Ben  
20 Grossman.

21 MR. LOMBARD: Good afternoon, Your Honor. Ed  
22 Lombard on behalf of plaintiff Grassfire.

23 THE COURT: There is at least one other person.  
24 Who is here on behalf of Mr. Earley?

25 MR. HERRON: Mark Herron on behalf of Mark Earley,

1 Supervisor of Elections.

2 THE COURT: And then who is here for the Secretary  
3 of State?

4 MS. DAVIS: Ashley Davis on behalf of the  
5 Secretary of State.

6 THE COURT: Who, then, is present for the original  
7 defendants, now counter and third-party plaintiffs?

8 MR. SHEPHERD: Good afternoon, Your Honor.  
9 William Shepherd. I'm here also with Jeff Schacknow  
10 and Henry Moreno. We are here on behalf of the  
11 original defendants. We also represent Standing Up  
12 for Florida and Rick Asnani. Our co-counsel is David  
13 Simmons, who will be speaking for Mr. Asnani. I will  
14 be speaking for Standing Up For Florida.

15 Mr. Schacknow will be operating a PowerPoint, so  
16 when it is our time to present, if Your Honor would  
17 allow him to access the Zoom room, that would be  
18 appreciated. Thank you.

19 THE COURT: Okay. Sure.

20 Any lawyers that I missed?

21 So I, of course, have read the two motions, I have  
22 read the responses, I have read all of the attachments  
23 and reviewed the case law.

24 Out of the two movants, who would like to go  
25 first?

1 MR. HERRON: Your Honor. This is Mark Herron on  
2 behalf of Mark Earley. I will go first if that's  
3 okay.

4 THE COURT: Go ahead.

5 MR. HERRON: Your Honor, as you indicated, you  
6 read all the materials, which are voluminous. As you  
7 know, this action seeks to preclude Supervisor Earley  
8 from reviewing and validating signatures on petitions  
9 based on allegations that the sponsor of the amendment  
10 and the firms gathering the signatures are operating  
11 under a payment scheme in violation of Section 104.168  
12 and Section 100.371, Florida Statutes.

13 I'm going to try to make three points rather  
14 briefly with respect to our argument.

15 First, with respect to the duties that Supervisor  
16 Earley has under the statutes, he has no duty or  
17 responsibility to ascertain the method by which the  
18 signatures were gathered. His sole responsibility is  
19 to receive the petitions and verify or not verify the  
20 signatures on the petitions and transmit the numbers  
21 that he has verified to the Secretary of State.

22 With respect to the second point, I want to say  
23 that with respect to Section 100.371, there are two  
24 specific causes of action set forth in that statute.  
25 One, private citizens may challenge the registration

1 of petition gatherers; and two, the Attorney General  
2 may institute a civil action to enforce a violation of  
3 100.371. It doesn't allow any other person or entity  
4 to violate private cause of action to enforce that  
5 statute.

6 Finally, Your Honor, with respect to 104.186,  
7 Florida Statute, this is the statute that basically  
8 says it's against the law to have a paid-per-signature  
9 scheme in terms of gathering signatures. This is a  
10 criminal statute which is enforced by the state  
11 attorneys of the State of Florida.

12 Also, although I didn't include it in my  
13 paperwork, it is also -- enforcement of the statute is  
14 specifically granted to the Florida Elections  
15 Commission pursuant to Section 106.25(1) of the  
16 Florida Statutes, and I will quote the language in  
17 that statute, "Jurisdiction to investigate and  
18 determine violations of this chapter" -- which means  
19 106 at that point -- "and Chapter 104 is vested in the  
20 Florida Elections Commission."

21 So specifically the jurisdiction to enforce  
22 104.186 is going to the state attorneys and to the  
23 Florida Elections Commission.

24 In addition, under Section 106.272, the Florida  
25 Elections Commission may bring civil actions to enjoin

1 prohibited acts and practices, and there is no private  
2 right of action on any party to enforce the provisions  
3 of Chapter 104 or 106 as relevant to this case.

4 Your Honor, that's our -- the summary of our  
5 argument. As a result, we would ask that with respect  
6 to Secretary -- I mean Supervisor Earley that the  
7 Complaint be dismissed with prejudice.

8 THE COURT: Who would like to go next?

9 MR. McKEE: Your Honor, I am speaking next on  
10 behalf of Florida Voters in Charge and related  
11 entities.

12 We certainly agree with the points that Mr. Herron  
13 just made. I will touch on a few others and be brief  
14 and not duplicate what has already been mentioned.

15 Our motion is really rather straightforward in  
16 this case. The claims that are raised by the  
17 defendants, and I will go ahead and refer to them as  
18 defendants here just for ease of reference, but I'm  
19 referring to the counterplaintiffs when I say  
20 defendants. They were already considered and rejected  
21 by Judge Gillman at Palm Beach County Circuit Court;  
22 you had those pleadings and you reviewed her order.

23 I just want to make sure we're clear on the timing  
24 of how all this happened. Your Honor denied the  
25 defendants' motion to dismiss in this case

1 December 10th, and by "this case" I mean the Leon  
2 County action.

3 On December 15th, Standing Up For Florida, one of  
4 the defendants in this particular proceeding, ran down  
5 to Palm Beach County, filed basically the same exact  
6 claims that are now filed as part of the counterclaim,  
7 and also filed an emergency motion for temporary  
8 injunction. That was three business days after you  
9 denied their motion to dismiss in the Leon County  
10 action.

11 Now, because Standing Up For Florida claimed that  
12 their motion was an emergency, that their entire case  
13 was an emergency, Judge Gillman acted quickly. She  
14 reviewed the claims, and December 17th we had the  
15 order. She completely dismissed all the claims that  
16 they had filed. She dismissed the claims with  
17 prejudice. She found there was no private right of  
18 action under the statutes under 100.371. And because  
19 there was no private right of action, she found that  
20 Standing Up For Florida did not have standing to bring  
21 its claims.

22 Now, more importantly, she essentially found that  
23 private individuals -- key point there. Individuals  
24 and entities do not have authority to enforce  
25 Section 100.371 except in a very limited circumstance,

1 which is not present here. She found, as Mr. Herron  
2 mentioned, that the Attorney General is the  
3 appropriate entity to bring an enforcement action with  
4 respect to the allegations that are raised in this  
5 particular Complaint. And certainly as Mr. Herron  
6 mentioned, the Elections Commission also has  
7 jurisdiction over those allegations.

8 Now, I want to read a specific portion of Judge  
9 Gillman's order with one of the holdings. "The Court  
10 determines that Section 100.371 does not provide a  
11 private cause of action by which SUF," which is  
12 Standing Up For Florida, "may seek to enforce its  
13 provisions and thus SUF is without standing to  
14 prosecute its Complaint or its motion for temporary  
15 injunction."

16 For that reason, she denied both or she dismissed  
17 the Complaint and denied the motion.

18 Now, defendants have basically said we disagree  
19 with Judge Gillman's order, so we are going to come up  
20 here and file a counterclaim that includes the same  
21 exact claims. They certainly have the right to  
22 disagree with Judge Gillman's order, they have the  
23 right to move for reconsideration of her order; they  
24 chose not to. They had the right to appeal her order,  
25 and they didn't until three days ago. I will come

1 back to that in a bit, Your Honor.

2 Instead of moving for reconsideration with Judge  
3 Gillman, what they did is wait 24 days until the  
4 absolute last day to file an Answer in this case, an  
5 Answer to our original Complaint, and then refiled as  
6 a counterclaim the exact same claims Judge Gillman had  
7 already dismissed in Palm Beach County.

8 They are basically seeking a do-over here. That's  
9 not proper. Of course, they have also filed an  
10 emergency motion for temporary injunction here even  
11 though, again, they don't say what the emergency is.

12 We filed our motion to dismiss the counterclaims,  
13 and Mr. Earley and Mr. Lombard on behalf of  
14 Grassfire -- I should say Grassfire joined our motion,  
15 but Mr. Earley -- I'm sorry, Mr. Herron filed on  
16 behalf of Mr. Earley as well on Tuesday pursuant to  
17 the Court's direction.

18 We noted in that motion that the defendants had  
19 not yet even appealed Judge Gillman's order. Tuesday  
20 night, that same day, the defendants finally decided  
21 to appeal her order, 32 days after it was issued.  
22 That appeal is now pending in the Fourth District  
23 Court of Appeals. We can share the case number with  
24 you if you would like.

25 Why did they wait 32 days to appeal the order that

1 they said they disagreed with, especially if there are  
2 claims it's an emergency? No idea. It makes  
3 absolutely no sense.

4 So now we find ourselves in this very odd  
5 procedural posture where all of the claims the  
6 defendant filed in this case were dismissed by Judge  
7 Gillman, and the dismissal is out now on appeal to the  
8 Fourth DCA. At the same time they are trying to get  
9 the Fourth DCA to reverse that dismissal, they are now  
10 up here asking you to reconsider completely anew the  
11 claim that she has dismissed, and they are seeking  
12 further relief from the Fourth DCA. It's not proper.

13 Either the Fourth DCA is going to reverse Judge  
14 Gillman's order, in which case they're entitled to  
15 further proceedings in Palm Beach County before Judge  
16 Gillman, or the Fourth DCA is going to affirm her  
17 order of dismissal. In either instance, their claims  
18 cannot properly be brought before you in this court.

19 Your Honor, we don't think you need to go any  
20 further than that. We think it's very clear what  
21 should happen in this case. But even if you wanted to  
22 revisit issues that were already considered by Judge  
23 Gillman, her order is at a minimum persuasive  
24 authority, and we would submit to you that her order  
25 was absolutely correct.

1           The plain language of Sections 104 and 186 -- I'm  
2           sorry, with 104.186 and 100.371 simply do not create a  
3           private right of action, and that's exactly what she  
4           determined. Section 104.186, as Mr. Herron mentioned  
5           earlier, is a criminal statute. It states that a  
6           person who violates the provisions of that statute  
7           commits a misdemeanor in the first degree. There is  
8           no private right of action to enforce a criminal  
9           statute, that we know for certain.

10           Where the legislature chooses a criminal penalty,  
11           not a private cause of action, we know who has the  
12           ability to enforce compliance with that, and there is  
13           First DCA case law on point there.

14           Now, Judge Gillman recognized under  
15           Section 100.371, there is, likewise, not a private  
16           right of action except with one particular instance.  
17           Section 100.371(3)(b) does provide a private right of  
18           action for a citizen who wants to challenge whether or  
19           not a particular petition circulator is actually  
20           registered.

21           So if we had a case, and that's certainly not this  
22           case, but if there was a case where a citizen wanted  
23           to challenge whether a petition circulator was  
24           actually registered and seek an injunction preventing  
25           that particular petition circulator from obtaining

1 signatures until they are registered, then they do  
2 have the right to do that under 100.371(3)(b). So the  
3 legislature was very, very specific saying you do have  
4 a private right of action in this limited instance.  
5 That's the only limited instance under 100.371 where a  
6 private right of action is included.

7 If you drop down to Section 100.371(8), that  
8 specifically provides that if the Secretary of State  
9 reasonably believes that a person or entity has  
10 committed a violation of this section, the Secretary  
11 may refer the matter to the Attorney General for  
12 enforcement. And it goes on to provide that the  
13 Attorney General can institute a civil action for a  
14 violation of that section or to prevent a violation of  
15 the section.

16 So, Your Honor, it's very clear that where the  
17 legislature wants to provide a private right of  
18 action, it did so, and it certainly knows how to do  
19 so. For provisions like 104.186, it provided only a  
20 criminal penalty. For other provisions like the ones  
21 we talked about in 100.371(3), the legislature  
22 provided broad remedies, a criminal penalty and a  
23 mechanism for enforcement by the Attorney General and  
24 a private right of action.

25 In still other instances, such as all of the other

1 provisions of Section 100.371, other than subpart 3,  
2 the legislature essentially picked the middle ground  
3 and provided only for enforcement by the Attorney  
4 General pursuant to Section 100.371(8).

5 So there simply is no basis under the statutes to  
6 say that a private right of action exists. The First  
7 DCA has, in fact, agreed and has held that no private  
8 cause of action exists to enforce the provision of  
9 Chapter 104.

10 In the Smith v. Tynes case that we cited to you,  
11 there is a lawsuit that was brought by a losing  
12 candidate, and the basis of his lawsuit seeking to  
13 contest the results of an election alleged numerous  
14 violations and various provisions of Chapter 104 and  
15 106 of the Florida Statutes. After the trial court  
16 dismissed the case with prejudice, finding that the  
17 Complaint failed to state a cause of action, the DCA  
18 affirmed. They specifically held that no private  
19 cause of action exists to enforce those statutes even  
20 by a losing candidate, who obviously has a far greater  
21 interest in the issue than do the defendants here.

22 Now, importantly what the First DCA said in the  
23 Smith case, and I will just read a brief section here,  
24 "Regarding the alleged violations of Chapter 104 of  
25 the Election Code, the respective statutory provisions

1 expressly provided for civil and criminal penalties  
2 for such violations. Section 104.051 provides that an  
3 official who neglects to perform his duties under the  
4 Election Code is guilty of a first-degree misdemeanor,  
5 and the official who performs his duties under the  
6 Election Code fraudulently or corruptly is guilty of a  
7 third-degree felony."

8 They go on to mention another statute there that  
9 provides the criminal penalties that were provided  
10 and say, "To summarize, while sanctions exist for the  
11 type of irregularities alleged in the Amended  
12 Complaint, those sanctions are not designed to be  
13 imposed by way of a civil cause of action by an  
14 unsuccessful candidate."

15 The same is true here. As with Smith v. Tynes,  
16 what we have here is an allegation that a provision of  
17 Chapter 104 was violated. That provision includes  
18 criminal penalties, and here we have the defendants  
19 saying we want to sue, we want to bring a private  
20 right of action to try to enforce that criminal  
21 statute. They can't do that for the reasons Judge  
22 Gillman stated and for the reasons the First DCA  
23 affirmed in Smith v. Tynes.

24 Now, the defendants cite Floridians Against  
25 Extended Gambling in the Browning case as

1 theoretically standing for the assertion that they  
2 always have standing under those two cases. Just  
3 general citizens have standing to sue in any respect  
4 regardless of everything else talked about. That's  
5 simply not true.

6 I would also point out that neither of those cases  
7 concerns 100.371 or Section 104.186 and neither  
8 mentions standing.

9 I would also mention the fact that defendants are  
10 proceeding pursuant to a declaratory judgment statute  
11 does not change the result at all. We sent to you the  
12 Long v. Dansler case where Judge Terry Lewis  
13 recognized the appropriate question when considering  
14 the ability to seek a declaratory judgment is whether  
15 the person seeking the judgment is entitled to do a  
16 declaration of rights at all. He went on to note that  
17 if the statutes that are at issue don't provide a  
18 private right of action, then you can't bring a  
19 declaratory judgment either. In fact, he dismissed a  
20 similar case on that same basis. That is the Long  
21 case.

22 We would also note with respect to the declaratory  
23 judgment issue, the defendants are not parties to the  
24 contracts that they want to argue about or seek a  
25 declaration of rights. So any assertion that they are

1 unsure of their rights under these contracts is,  
2 obviously, completely untrue.

3 To wrap up shortly here, back to the Palm Beach  
4 County order for a bit. The only arguments that are  
5 raised by the defendants that you shouldn't apply  
6 Judge Gillman's order are, respectfully, absurd.

7 First, they are arguing that their claims here are  
8 different because they cited different case law to you  
9 than they cited to Judge Gillman. Well, that's  
10 completely irrelevant whether they have or not. They  
11 don't get to file a different case and say we are  
12 going to argue different case law this time, let's see  
13 how this judge rules. They don't get to keep filing  
14 in different circuits and arguing different case law,  
15 and there is no legal basis cited for that  
16 proposition.

17 Second, they argue that you shouldn't dismiss  
18 their claims because they didn't attach Judge  
19 Gillman's order to their counterclaim. So they  
20 effectively point out that you should pretend it  
21 doesn't exist for purposes of considering our motions  
22 to dismiss. That's absolutely ridiculous, and that's  
23 not the law.

24 They specifically reference Judge Gillman's order  
25 in their counterclaim. They mention that Judge

1 Gillman dismisses it down in Palm Beach County. They  
2 even attached the order to their motion for temporary  
3 injunction. So any assertion that you are not allowed  
4 to look at that order is absurd.

5 Third, they argue that their claims are different  
6 because they have mentioned that somebody who is not a  
7 party to this case was arrested for battery. We don't  
8 know who the person is that they are alleging was  
9 arrested for battery; it has absolutely no relevance  
10 here. It certainly doesn't change their claims even  
11 if it's true, and it certainly doesn't change legal  
12 conclusions that were reached by Judge Gillman.

13 Fourth, they argued that they need the declaration  
14 because it's relevant to the underlying Complaint.  
15 That's absurd. They have pled as an affirmative  
16 defense that the contracts at issue are illegal.  
17 There is an enormous difference between an affirmative  
18 defense and declaratory judgment action. They are  
19 obviously not entitled to the declaratory judgment.

20 The Secretary of State and the Supervisor of  
21 Elections who have been brought in as third-party  
22 defendants in this case have absolutely no relevance  
23 to the affirmative defense. Their only reference is  
24 to the declaratory judge. The injunction that the  
25 defendants seek is also obviously not relevant to

1 that.

2 Finally, they say, well, the catchall, we think  
3 Judge Gillman was wrong, so we want you to take  
4 another look. Well, if she was wrong, they can argue  
5 that to the Fourth DCA, and that certainly is what  
6 they have decided to do.

7 I apologize. One other point. They make a  
8 passing reference to the fact that -- to the  
9 allegation that Judge Gillman did not consider whether  
10 an individual citizen, Mr. Asnani, has a cause of  
11 action and argued that Judge Gillman's order was  
12 limited to just whether the committee, whether  
13 Standing Up For Florida, had a private cause of  
14 action. That's absolutely not true.

15 If you look at page 3 of Judge Gillman's order,  
16 she says, "The legislature did not incorporate a  
17 private Attorney General provision vesting private  
18 individuals or entities with authority to enforce  
19 Section 100.371."

20 At the bottom of that page she notes again with  
21 respect to Section 100.371(8) it does not extend such  
22 authority to private parties. So any assertion that  
23 her order does not apply to individuals just like it  
24 would corporations is, likewise, absurd.

25 Your Honor, for all of those reasons, we would

1 respectfully request that the counterclaim be  
2 dismissed with prejudice.

3 I believe Mr. Lombard might have a few minutes.

4 THE COURT: Mr. Lombard.

5 MR. LOMBARD: Thank you, Judge. I don't have much  
6 to add. I do want to say on behalf of Plaintiff  
7 Grassfire, we join everything that Mr. McKee just  
8 said.

9 Let me just kind of boil this down to two points,  
10 and I will be quiet. One, they don't get a do-over.  
11 That's not how it works.

12 Two, there is simply no private cause of action  
13 under the statute for the claims they are trying to  
14 assert. Those two points alone compel this Court to  
15 grant the motion to dismiss.

16 That's all I have to add. Thank you, Judge.

17 THE COURT: Okay. Let me just confirm with  
18 Ms. Davis. You did not file a motion to dismiss on  
19 behalf of the Secretary of State; is that correct?

20 MS. DAVIS: That is correct, Your Honor. And when  
21 we set this hearing, I believe that we said we  
22 wouldn't need any time to participate because it's  
23 been set and pled by Standing Up For Florida, the  
24 third-party plaintiff, against us that we are only  
25 necessary for relief.

1           They seem to have changed their stance on that in  
2           their response to the motion to dismiss, so we would  
3           just like five minutes after the movants and the  
4           responses are argued to just make a brief response to  
5           the issue that they raised.

6           THE COURT:   Okay.   That sounds reasonable.

7           MS. DAVIS:   Thank you, Your Honor.

8           Also, after appearances were entered on the  
9           record, Mr. Bradley McVay has stepped into my office.  
10          He is off camera, but he is here in the proceedings.

11          THE COURT:   Okay.   Thank you for mentioning that.  
12          Mr. Shepherd.

13          MR. SHEPHERD:   Thank you, Judge.   And if you would  
14          permit Mr. Schacknow to enter the room to share his  
15          screen, I will wait until he begins sharing his  
16          screen.   He says he is in the room.

17          THE COURT:   I think I do need to make him a  
18          cohost.   I see him on the participant list, but I  
19          don't see him on the main screen.   Yes, I do.   There  
20          you go.   Sorry.   He should be able to share his screen  
21          now.

22          MR. SHEPHERD:   Thank you, Judge.   You can see  
23          that, Judge?

24          THE COURT:   Yes.

25          MR. SHEPHERD:   Thank you.

1           So William Shepherd on behalf of Standing Up For  
2 Florida. Judge, we are here to respond to the motions  
3 to dismiss filed by those who sued us originally and  
4 alleged that we had tortiously interfered with  
5 contracts.

6           We have brought this counterclaim on the day that  
7 our Answer was due, which also required us to file our  
8 compulsory counterclaims. Those rely on the illegal  
9 structure and nature of the contracts, but our  
10 counterclaims go beyond that because it focuses on the  
11 sworn testimony of the counterdefendants and the  
12 plaintiffs who are engaged in wide-scale election  
13 fraud, Judge, throughout our state. It's not just the  
14 contracts that underlie it, although because of that  
15 the contracts form the basis of this illegal scheme  
16 and make their petitions which have been gathered void  
17 from the outset. The contracts are, therefore,  
18 unenforceable.

19           In addition to the illegal compensation scheme,  
20 Judge, we also pled a series of specific fraud  
21 allegations. Those are pled in our counterclaim in a  
22 series of paragraphs detailed in 8, 10, and 23, more  
23 specifically detailed in paragraph 69 of our  
24 counterclaim.

25           In response to that, Judge, the plaintiffs don't

1 deny these allegations but instead say that the Court  
2 should not be able to look at the evidence, and they  
3 ask the Court to dismiss our counterclaim on the  
4 grounds of standing, that we as electors and I as a  
5 representer of -- representative of a PAC have no  
6 standing to bring before the Court evidence of fraud,  
7 forgery, and illegal payment structures that would  
8 invalidate the petitions that have been gathered and  
9 form the basis of their attempt to change Florida's  
10 Constitution.

11 Judge, these motions to dismiss must be denied  
12 because Florida law empowers Floridians in the citizen  
13 initiative process to bring allegations of illegality  
14 in petition gathering directly before the Court for an  
15 expedited review. That is what we are here to do,  
16 Judge. It is that constitutional amendment process  
17 that's set out in Article 11, Section 3 of the  
18 Constitution that says, "The power to propose the  
19 revision or amendment of any portion or portions of  
20 this Constitution by initiative is reserved to the  
21 people."

22 That is what makes this a unique process and a new  
23 unique setting in terms of election cases and cases  
24 that are before the Court. The Supreme Court has  
25 looked at this for over a hundred years. It was first

1 in 1912 in Crawford v. Gilchrist when the Governor  
2 himself brought a case before the Court to seek to  
3 enjoin the Secretary of State from posting a  
4 constitutional amendment. He was there, yes, as  
5 Governor Gilchrist, but also, as the Supreme Court  
6 recognized, as a citizen, a taxpayer, and an elector.  
7 That is what gave him standing.

8 I think it's important to not confuse standing  
9 with cause of action. I believe there is confusion  
10 both in the argument and in the order that was  
11 discussed before. The issue before the Court today is  
12 do my clients as electors and citizens and taxpayers  
13 have the ability to bring evidence of fraud before the  
14 Court.

15 The Gilchrist case relied upon the DCA in this  
16 circuit, Judge, in Floridians Against Expanded  
17 Gambling. They adopted the language of Crawford. In  
18 that they said a PAC opposing a constitutional  
19 initiative -- and if we think about our setting in  
20 this case, that's exactly where we are -- Standing Up  
21 For Florida and Rick Asnani, both the PAC and the  
22 individual as an elector, are opposed to the amendment  
23 that's put forth by the plaintiffs in this case. They  
24 are working diligently and expending time, resources,  
25 and effort.

1           In the Floridians Against Expanded Gambling case,  
2           the plaintiffs were in exactly the same posture, and  
3           they brought a declaratory judgment action to enjoin  
4           illegally obtained petitions; this was in 2006. They  
5           sued the sponsor of the PAC, just as we have. We have  
6           sued Florida Voters in Charge. They sued the  
7           Secretary of State, just as we have, and they sued 16  
8           Supervisors of Elections.

9           We have sued the Supervisor of Elections in Leon  
10          County as it relates to this case, a counterclaim that  
11          also involves the Secretary of State. We sued the  
12          Supervisor of Elections in Palm Beach County.

13          Judge, I believe based on recent case law out of  
14          the First in the last six months, that based on home  
15          rule issues, we would have to sue the supervisors in  
16          various other counties to bring claims against them.  
17          They are each independently elected constitutional  
18          officers in different postures.

19          Our case today before you involves a strategy and  
20          posture similar to the Floridians Against Expanded  
21          Gambling. We are a PAC, we have sued the sponsor PAC  
22          and the Secretary of State and the Supervisor of  
23          Elections. In this case we have sued one.

24          Judge, in that case, the Floridians opponents,  
25          just as our opponents have, filed a motion to dismiss

1 arguing that the PAC lacked standing, but the Leon  
2 Circuit Court denied that motion against the opponent  
3 PAC and the Secretary of State allowing those claims  
4 to proceed against the opposing PAC and against the  
5 Secretary of State.

6 However, it did dismiss the Supervisor of  
7 Elections claim, but that was not on a standing issue.  
8 That was because the suit had been untimely filed.  
9 The Supervisor of Elections duties had already been  
10 performed. The case went forward against the PAC and  
11 the Secretary of State.

12 We are asking that that First DCA analysis of  
13 Floridians Against Expanded Gambling in a  
14 petition-gathering case be applied to the facts of  
15 ours, which I believe are in a similar posture.

16 The Circuit Court in Leon County looked at another  
17 case in a similar posture, and that was Dockery v.  
18 Hood. In that suit, the Secretary of State was sought  
19 to be enjoined from using illegally obtained  
20 petitions.

21 Again, we are seeking to prohibit the Secretary of  
22 State from using illegally obtained petitions.  
23 Petitions obtained not just because the payment  
24 structure is illegal, but obtained through fraud and  
25 forgery as we alleged in our Complaint throughout the

1 state of Florida. In that case, when looking at the  
2 standing issue, the Court said we find that  
3 Mr. Dockery has legal standing to litigate these  
4 issues. It's undisputed he is a citizen and a  
5 taxpayer of the state of Florida. This, without more,  
6 likely provides the requisite legal standing.

7 Judge, that's the same analysis when they were  
8 looking at Crawford v. Gilchrist with the Governor.  
9 He was there as the Governor, but the Supreme Court  
10 said he is there because he is a citizen, a taxpayer,  
11 and elector and, therefore, a proper party. The  
12 Dockery case went on to conclude and said if Dockery  
13 does not have standing, no one would.

14 THE COURT: Wasn't Dockery also on the board of  
15 the rail authority?

16 MR. SHEPHERD: He was, Judge. Yes, you are right.  
17 But that authority in which he had that jurisdiction  
18 and interest was not the exclusive category with which  
19 they found he had standing. Just as in Gilchrist, it  
20 was not that he was the Governor, it was he was a  
21 citizen and taxpayer, or just as in Floridians, it was  
22 the PAC and the elector who had standing.

23 You are correct, Dockery was a member of one of  
24 the boards that was the -- that was one of the issues,  
25 just as Mr. Asnani is the president of the PAC. I may

1 have misstated his title, but the head of the PAC that  
2 is the plaintiff in this case.

3 Judge, trial courts are the proper venue for  
4 electors to bring these suits. It was in Floridians  
5 Against Expanded Gambling, a Leon Circuit Court  
6 ultimately waited to hold an expedited hearing on the  
7 requested declaratory judgment but allowed the  
8 election to proceed with the intent and stated goal  
9 that the election cured the fraud that might have  
10 occurred in the petition-gathering process.

11 Although there is some appeal to that sort of  
12 analysis, the First District said that that's not the  
13 proper way to handle this type of matter in a  
14 petition-gathering process. When you have allegations  
15 of fraud, you cannot cure the fraud based on an  
16 election. There must be a speedy resolution on the  
17 question of illegality. We in our efforts and our  
18 briefs intend to call witnesses to demonstrate before  
19 the Court this wide-scale illegality.

20 In that First DCA case, they cited the Supreme  
21 Court's holding in Crawford and said it's the trial  
22 court's duty to facilitate rather than retard that  
23 determination of whether illegality is occurring in  
24 the petition-gathering process.

25 This goes on, Judge. A few years later in the

1 Browning court where the Browning -- the Supreme Court  
2 explains the mechanisms that are available to protect  
3 election integrity. Browning, following Floridian,  
4 the Supreme Court in Browning, it has a PAC and an  
5 individual voter, just like our context here with a  
6 PAC and an individual voter. The Supreme Court was  
7 looking at a petition revocation statute that had to  
8 do with the petition-gathering process going into  
9 the -- for ballot integrity issues in exactly the same  
10 posture we are, which is a constitutional amendment.

11 The Court in Browning said there are already  
12 sufficient mechanisms in place, and they went on to  
13 list a whole host, just as counsel for the plaintiffs  
14 in this case says.

15 Yes, there are other things that can be done. The  
16 State Attorney could charge his clients. The sheriff  
17 could arrest his clients. The Florida Election  
18 Commission could take certain actions and fine them,  
19 the statewide prosecutor could bring action, and the  
20 individual state attorneys could throughout our state.  
21 Ultimately there was also Supreme Court review of  
22 amendment language before it's placed on the ballot.

23 The Browning case also says that individual  
24 electors have an inherent right to seek judicial  
25 review and to seek that judicial redress, and that's

1 what we are here for, Judge, because that individual  
2 elector inherent right is not removed if any of the  
3 other rights are changed. If there is some sort of  
4 voter registration law change or criminal penalties  
5 for fraud and forgery are added to or subtracted from,  
6 that doesn't change the individual elector's inherent  
7 right to seek redress, as we are trying to do here  
8 before the Court.

9 Browning specifically cites to Floridians Against  
10 Expanded Gambling as a proper and important method to  
11 challenge that illegality. You see in the first block  
12 there they are citing to Floridians, and in the second  
13 they say, "At a minimum, there is also a judicial  
14 mechanism through which initiative proposals that  
15 depend upon forgery or fraud may be excluded from the  
16 ballot. Nothing in our opinion today should be  
17 construed as affecting the presumably inherent right  
18 of Florida's electors to provide testimony and  
19 properly authenticated admissible evidence that their  
20 purported signatures were forged or procured through  
21 fraud."

22 That's exactly what we are trying to do, Judge, is  
23 to have the opportunity to present that to the trial  
24 court.

25 It's important, I think, also to look at the

1 dissent in that case. I often don't look at dissents  
2 as thinking they are instructive, but I think this is  
3 particularly instructive because it's not a question  
4 of disagreeing with the constitutional right of the  
5 elector to bring these issues before the Court. But  
6 Justice Polston said in that decision it's not that  
7 the -- the plurality concludes that there is no need  
8 for the revocation statute because signatures obtained  
9 fraudulently may be set aside by litigation.

10 That's exactly what we are doing here, and he  
11 cites to Floridians Against Expanded Gambling. We are  
12 trying to use that litigation tool that electors have  
13 to try and seek revocation based on fraudulently or  
14 improperly obtained signatures.

15 What Justice Polston points to is that's a very  
16 difficult process, and the legislature has come up  
17 with an easier process, a revocation process, and that  
18 seems quicker and more efficient.

19 What he does not say is, oh, because the  
20 legislature came up with a new process, that  
21 eliminates the right of the individual elector to ever  
22 go to court. No, he is saying going to court is  
23 difficult and challenging.

24 Judge, I'm trying to present my evidence to you,  
25 and the opponents are trying to keep me from doing

1 that. This is difficult and challenging. It doesn't  
2 mean that just because there are additional tools that  
3 are added by the legislature that it somehow revokes  
4 the tool that we have in the courts.

5 But what the movants claim in their motion to  
6 dismiss is that electors' rights really never existed,  
7 that somehow in 2019 when the legislature created a  
8 cause of action for the Florida Attorney General, that  
9 was perhaps the first time, in their view, that  
10 allegations of fraud and deceit could be brought  
11 before the Court. If Floridians never had the ability  
12 to sue, to challenge impropriety in the constitutional  
13 amendment process, then what were those inherent  
14 rights for electors to enjoin constitutional ballot  
15 placement that are discussed in Crawford, Floridians,  
16 and Browning? What was the Court talking about there?  
17 That's been the law for over a hundred years.

18 We are not trying to plead or take the role of the  
19 Attorney General. She has her own independent role,  
20 obligations, and responsibilities and can evaluate  
21 cases and bring cases with which she has the resources  
22 and ability to do. But that decision investing of  
23 individual power in the Attorney General does not take  
24 away power from the electors to challenge. This is a  
25 declaratory judgment action seeking injunctive relief,

1 just as was sought in Floridians and approved of in  
2 Browning.

3 This new tool that was created, again, does not  
4 eliminate that exact right that existed before,  
5 because Section 3, as Browning points out, is  
6 self-executing. It means the provision lays down a  
7 sufficient rule by which the right or purpose or gives  
8 the intended accomplishment may be determined,  
9 enjoined, or protected without the aid of legislative  
10 enactment.

11 We are here to protect that constitutional right  
12 regardless of whether there is any legislative  
13 enactment, because this is a constitutional power that  
14 comes from the people.

15 The fact that the 2019 amendment added additional  
16 powers, the Attorney General may institute a civil  
17 action for a violation of this section, that does not  
18 eliminate the electors' rights.

19 THE COURT: So isn't subsection (3) of 100.371,  
20 isn't that a pretty limited cause of action?

21 MR. SHEPHERD: It is, Judge. Our cause of action,  
22 though, is broader. We are here on a constitutional  
23 basis, not on an individual Attorney General cause of  
24 action, or if you are referring to the cause of action  
25 related to the unregistered petition circulator, this

1 is a much broader allegation of misconduct that we  
2 have pled.

3 Yes, are they using unregistered circulators?  
4 Without a doubt throughout the state, but that's only  
5 a small portion of what is being alleged here.

6 Judge, I believe their reliance on Smith v. Tynes  
7 is misplaced. They would cite that as the controlling  
8 case law and say that their reliance on Smith v.  
9 Tynes, which as he pointed out rightly so, an election  
10 case in which a losing Clay County candidate for  
11 school superintendent, I believe, lost his race and  
12 then sued. The Court said you are unable to sue on  
13 this particular statute as a candidate, and you have  
14 even failed to allege any illegality in the election  
15 process.

16 Well, our Complaint, Judge, is full of allegations  
17 of illegality. We are in a Constitution petition  
18 case, not an election case.

19 I think it's also important to know that Smith in  
20 1982 does not cite to the Crawford decision. The  
21 Crawford decision had been on the books since 1912.  
22 Likewise, Floridians Against Expanded Gambling in '06  
23 and Browning in 2010, which I believe control on this  
24 issue, don't cite back to Smith because Floridians  
25 Against Expanded Gambling and Browning are both

1 constitutional amendment cases. They are not the type  
2 of case that Smith v. Tynes was. They are unrelated  
3 not just as I see it, but in the eyes of the Supreme  
4 Court and the First DCA.

5 Judge, even if the Court did not believe that  
6 somehow Smith was related, it's been overruled by  
7 Floridians Against Expanded Gambling and Browning,  
8 cases that happened more than 20 years later and  
9 directly address the illegality in the  
10 petition-gathering process. So for that reason, I  
11 believe that the Smith case is not instructive to the  
12 Court as you are trying to ferret through these  
13 allegations.

14 Judge, in their motion to dismiss, in two separate  
15 instances, they say that we have failed to make any  
16 allegations of fraud or forgery of any signature and  
17 that they repeat again that there are no allegations  
18 of fraud.

19 Our counterclaim pleads widespread fraud. One  
20 only needs to, frankly, turn on the TV last night or  
21 see the letter that the Secretary of State made  
22 public -- or was public to me at least yesterday.  
23 Complaints of fraud are coming in from Supervisors of  
24 Elections throughout the state. Our counterclaim,  
25 Judge, in fact, even attaches the probation order as

1 Exhibit 11 of one of their own agents who was arrested  
2 and sentenced for forgery and fraud as it related to  
3 gathering petitions in this very matter, and the  
4 sheriff's office there in Highlands County in its  
5 press release said he is tied to more than 400 of  
6 these.

7 To say that we have not pled it with sufficiency  
8 or really pled it at all I think is a misreading of  
9 the Complaint. If the Court believes that further  
10 fraud allegations need to be pled, we can certainly do  
11 that.

12 This is that paragraph 69. Forging signatures on  
13 petitions all over Florida including the signatures of  
14 government staff and then the arrest of Mr. Crumedy  
15 and his sentence.

16 Judge, those are the reasons we think that the  
17 movants have failed to meet a burden, not just an  
18 attack on standing, but any other attack they would  
19 allege against our counterclaim.

20 The evidence is before the Court. We are asking  
21 the Court at an appropriate time to give us the  
22 opportunity to present that evidence to the Court,  
23 just as we believe the First DCA and the Supreme Court  
24 has said is a right of electors.

25 I will now cede the rest of my time to cocounsel

1 for Mr. Asnani, who will address additional issues  
2 related to this.

3 I will ask Mr. Schacknow to stop sharing his  
4 screen and you may proceed along. Thank you, Judge.

5 THE COURT: Mr. Simmons.

6 MR. SIMMONS: Yes, may it please the Court. David  
7 Simmons, with de Beaubien, Simmons, Knight,  
8 Mantzaris & Neal representing Mr. Asnani.

9 I want to pick up with the comments that  
10 Mr. Shepherd made regarding Chapter 2019-64, which is  
11 the bill that the counterclaim defendants rely upon  
12 saying that somehow or the other it took away rights  
13 from citizens such as Mr. Asnani to be able to pursue  
14 an action like this.

15 The simple fact of it is that the purpose of that  
16 legislation was to enhance and increase the integrity  
17 of these petition-gathering processes, it was not to  
18 limit it, and it was not to take away the rights of  
19 individuals who otherwise may have standing.

20 As a matter of fact, when one looks at the statute  
21 itself with the additional language relating to  
22 Section 104.186, as well as the language that relates  
23 to the requirement that petition circulators be  
24 individuals or an entity that is circulating  
25 petitions, and they must register.

1           The fact of it is that legislators well know that  
2 when legislation is enacted such as this, it does not  
3 and cannot be interpreted as taking away the rights of  
4 existing law pursuant to the Court's interpretation of  
5 that law. As a matter of fact, the cases are replete  
6 with the statement that the Court's interpretation of  
7 law, the legislature is deemed, is presumed to know  
8 how that exists. And when they go ahead -- when the  
9 legislature does that, they go ahead in light of and  
10 literally layering on top of what the Courts have  
11 interpreted the law to be, in this case, the standing  
12 of Mr. Asnani, and, of course, the political committee  
13 of which he was and is the president.

14           Simply stated, all across the United States, the  
15 law is overwhelming that new laws that are passed by  
16 legislature do not repeal the existing laws unless  
17 there is an express statement to that effect or in the  
18 event that interpreted such, that it is clear and by  
19 implication that there was an intent to take away  
20 those rights. That just simply doesn't exist, and  
21 that wasn't intended with respect to Section -- in  
22 Chapter 2019, and it's 64 and its provisions.

23           I'm also wanting to argue to Your Honor about what  
24 we are looking at. We are looking at three  
25 counterdefendants in this case. The one that is

1 making the arguments about the lack of standing is the  
2 plaintiffs.

3 In this case, Your Honor, the plaintiffs are the  
4 ones who have sued bringing us all into court, and in  
5 that litigation, they have alleged that there has been  
6 tortious interference with contractual relationships.  
7 They asked for damages, they asked for emergency  
8 injunction relief, and they also allege that there has  
9 been a tortious interference with business  
10 relationships, the business relationships that are the  
11 foundations that constitute these contracts that are  
12 sued upon.

13 Well, simply stated, Your Honor, by bringing that  
14 action, one of the affirmative defenses to those  
15 contracts that they claimed were tortiously interfered  
16 with is, in fact, the defense of -- and it's an  
17 affirmative defense, which is shown under  
18 Rule 1.110(d) where they list in the Florida Rules of  
19 Civil Procedure the affirmative defenses that exist,  
20 there is a list of them. One of them is illegality.  
21 Well, they acknowledge in their motion to dismiss that  
22 that is, in fact, an appropriate affirmative defense  
23 to be raised.

24 On page 26 of their motion to dismiss, they say,  
25 "The defendants have asserted their position about the

1 validity of the contracts is a defense to their  
2 tortious interference with those contracts."

3 Perhaps, but there is a meaningful difference  
4 under the law between asserting defensively that one  
5 did not tortiously interfere because the contract was  
6 invalid and affirmatively seeking a declaration and  
7 injunction to stop certification of signatures for the  
8 constitutional amendment initiative.

9 Well, where the plaintiffs -- and where they  
10 acknowledge that there is standing, of course,  
11 because, Your Honor, as the Courts here in the state  
12 of Florida have made real clear, and looking at  
13 Trawick's own evidence, which also discusses it, a  
14 defendant always has standing. On the most rare of  
15 instances does a defendant not have standing to go  
16 ahead and defend.

17 In this case, the plaintiff is asking that there  
18 be an injunction as well as damages against the  
19 defendants/counterclaimants.

20 So under those circumstances, Your Honor, what  
21 happens is there clearly is standing to raise the  
22 affirmative defense and there is also standing to  
23 raise the counterclaim, which is a compulsory  
24 counterclaim that is lost unless it is raised.

25 So what happens here is that the

1 plaintiff/counterdefendants are failing to make the  
2 difference, the clear difference, between why we are  
3 in this court. We are in this court because they have  
4 sued for tortious interference. They have waived any  
5 claim that there is no standing. And, of course, the  
6 counterclaim that is brought is a compulsory  
7 counterclaim that will be lost unless it is brought.  
8 It is in conjunction with and inextricably intertwined  
9 with the affirmative defense of illegality.

10 As a matter of fact, there is a case that is  
11 literally, literally analytically the same as this  
12 one. The Court did say that the counterclaim, there  
13 is standing for the party who has sued to do that and  
14 raise it. That is the Let Miami Beach Decide v. The  
15 City of Miami Beach. It is a Third DCA case. It is  
16 2013, 120 So.3d, page 1282, and Your Honor will see  
17 that in that case what happened is that -- there  
18 was -- there was a lawsuit brought by the City in that  
19 case. You can substitute for that the plaintiffs,  
20 because they have sued the political committee and  
21 they have alleged because the counterclaim there is no  
22 standing. The Third District Court of Appeals  
23 specifically rejected that.

24 As a matter of fact, on page 5, the Court said  
25 standing with regard to the first question, the City

1 waived the issue of standing. First, the City waived  
2 the issue by naming the political committee as the  
3 defendant in the declaratory action. In other words,  
4 this counterclaim is part and parcel of that.

5 And the Court goes on and says, this is on page 6,  
6 "Thus, it is not possible to view the legality of the  
7 first ballot question without reviewing the equality  
8 of the second ballot question. The ballot questions  
9 as framed are inextricably intertwined."

10 The City's declaratory judgment action brought the  
11 legality of the lease approval question into play.  
12 The Court then says that there is, in fact, the  
13 standing to bring the counterclaim.

14 Then, Your Honor, looking at these cases, there  
15 are a whole group of cases which we have cited, and  
16 they come to the conclusion that when you have a  
17 compulsory counterclaim, and we already know that  
18 there is a complaint for tortious interference with  
19 contractual relationships, the very contractual  
20 relationships that make the basis of this lawsuit and  
21 when this counterclaim is made and it's compulsory,  
22 there is -- there is standing to bring that  
23 counterclaim.

24 I also want to point out, Your Honor, that in this  
25 situation, in this situation, the defendants have an

1 easy solution if they want to properly bring these  
2 issues of standing and also collateral estoppel before  
3 you. Those are affirmative defenses. Florida law is  
4 clear that standing is an affirmative defense and  
5 collateral estoppel is an affirmative defense. So  
6 what happens is those cannot be raised in a motion to  
7 dismiss. They cannot. Because the matters deal with  
8 things extraneous to the four corners of the Complaint  
9 in this case -- in this case, the counterclaim.

10 So what has happened, Your Honor, is they have  
11 sought to introduce evidence far outside this  
12 counterclaim. Your Honor looks at the motion to  
13 dismiss that they have filed, and they make all of  
14 these evidentiary efforts of saying that certain  
15 things happened here, certain things happened in Palm  
16 Beach County. The simple fact of it is it's  
17 reversible error to entertain those kind of assertions  
18 that have been made here because you are limited to  
19 the four corners of the Complaint in this case, the  
20 counterclaim. There is nothing that would support any  
21 kind of arguments relating to either collateral  
22 estoppel or standing which must be raised and dealt  
23 with.

24 They can go ahead and answer, they can raise their  
25 affirmative defenses, and, you know, we can have a

1 hearing, a temporary injunction hearing, which is  
2 evidentiary, or we can have an expedited trial, or  
3 there can be motions for summary judgment where  
4 evidence is taken. To go ahead -- cases are replete  
5 here in the state of Florida that it is automatically  
6 reversible error to entertain any kind of affirmative  
7 defense such as collateral estoppel or standing  
8 without having -- if it's outside the face of the  
9 Complaint, and it certainly is outside the face of the  
10 Complaint.

11 I also want to point out, Your Honor, that even if  
12 there were a look at the issue of the proceeding that  
13 occurred in Palm Beach County, Your Honor, the  
14 plaintiffs take the torture, literally tortured  
15 analysis, that somehow or other they fit within the  
16 provisions of the requirement for compliance with  
17 collateral estoppel. They try to say that they --  
18 because, Your Honor, as you are well aware, collateral  
19 estoppel in the state of Florida requires mutuality  
20 and that the parties must be able to enforce as well  
21 as have enforced against them the provision. In other  
22 words, identity of parties.

23 They tried to suggest to you that they can get  
24 around the rule of identity of parties. They tried to  
25 suggest to you that just out of fairness or whatever

1 else, that somehow or the other, that somehow or the  
2 other, that they can rely upon and stand in the shoes  
3 of the Palm Beach County Supervisor of Elections.  
4 That somehow or the other -- they can't even claim  
5 privity.

6 The point of it is that rule there in Palm Beach  
7 County cannot be relied upon by this Court. As a  
8 matter of fact, the issues are entirely different in  
9 this case because this case relies upon a lawsuit that  
10 has been brought by the plaintiffs against the  
11 defendants/counterclaimants, and they have brought  
12 this before Your Honor in the sense of a tortious  
13 interference of contractual relationships for which  
14 there is the absolute right to raise the affirmative  
15 defense as well as to test that in a compulsory  
16 counterclaim that cannot be lost as a result of the  
17 existence of any kind of assertions that the  
18 defendant -- excuse me, the plaintiffs may have.

19 I will also point out, Your Honor, when one reads  
20 the Palm Beach County case, Your Honor will see that  
21 the ruling by the Court is limited to an  
22 interpretation with respect to Section 100.371. It  
23 does not rely upon what is the main gist of this  
24 lawsuit. This lawsuit relies upon Section 104.186,  
25 and in 104.186, the initiative petitions that are

1 collected based upon the allegation and the evidence  
2 that would be proven that were based upon a  
3 per-petition payment are void. They are invalid.

4 By the way, Your Honor, any time somebody raises  
5 as an affirmative defense after they have been sued  
6 that the contracts for which there is the basis for  
7 this lawsuit, in this case, tortious interference with  
8 those contracts, that affirmative defense is of  
9 illegality, specifically listed as an affirmative  
10 defense under Rule 1.110(d). That affirmative defense  
11 is one which we are not trying to enforce the statute  
12 and put someone in prison or put them in jail or find  
13 them to be someone who is in the sense of should be  
14 fined.

15 Anytime that there is a raising as an affirmative  
16 defense or as a compulsory counterclaim, this issue as  
17 to the validity of a particular contract, it is  
18 something that anyone who has been sued is entitled to  
19 go ahead and raise. They are not trying to put --  
20 talking about the defendant/counterclaimant. They are  
21 not trying to take over the responsibilities of the  
22 government in pursuing any kind of criminal penalties.  
23 What we are entitled to do is raise the fact that  
24 these contracts are, in fact, invalid.

25 Simply stated, Your Honor, simply stated, we have

1 here a case in which Mr. Asnani is entitled as a  
2 citizen, just as Mr. Shepherd has so properly pointed  
3 out to you, that has the right to raise these as a  
4 citizen. Certainly with respect to the issue of  
5 collateral estoppel and the issue of standing, these  
6 are affirmative defenses that are wholly inappropriate  
7 to be raised at this point in time in this litigation,  
8 as the cases in Florida specifically stated,  
9 constitute reversible error to even be able to  
10 consider them at this point in time.

11 So the next thing that I would point out, Your  
12 Honor, again, is that even if there were to be  
13 considered, collateral estoppel cannot apply in this  
14 case based upon the fact that the facts are entirely  
15 different, the purpose of this is entirely different,  
16 and that there is no identity of parties whatsoever.  
17 And how the plaintiffs/counterdefendants can suggest  
18 to you that there exists the necessary identity of  
19 parties is simply in error.

20 With that, Your Honor, we would ask that Your  
21 Honor deny the motion to dismiss, permit this case to  
22 pursue and continue so that the rights of Mr. Asnani  
23 as well as the defendant/counterclaimants can be  
24 properly presented in a forum such as this for which  
25 there is a right.

1           With respect to Mr. Earley's suggestion about, you  
2 know, basically asking why is he here, the answer is  
3 because he ends up certifying these -- he doesn't --  
4 his job is to certify these things, and the argument  
5 is that he is a proper party, should be included  
6 because -- not to get any special relief against him,  
7 but because he is, in fact, a proper party to be  
8 included in this so that the complete relief can be  
9 given; that is the reason. Not to try to assert in  
10 any way anything against Mr. Earley, but simply the  
11 assurance that complete relief is given by this Court.

12           With respect to the Secretary of State, Your  
13 Honor, the Secretary of State has not filed a motion  
14 to dismiss. And we submit that whatever happens with  
15 respect to the Secretary of State, turning this  
16 information of the fraud that has occurred over to the  
17 Attorney General is a matter that is separate and  
18 distinct from what is going on with respect to a  
19 lawsuit brought by the plaintiffs for which they have  
20 waived any claim that there is a lack of standing.

21           Of course, as the Let Miami Beach Decide  
22 specifically on point says that the counterclaim is  
23 appropriate as well.

24           Your Honor, we would, therefore, ask that the  
25 motion to dismiss be denied. Thank you.

1 THE COURT: Okay. Thank you.

2 Ms. Davis?

3 MS. DAVIS: Thank you, Your Honor. Thank you for  
4 indulging me for a brief few minutes.

5 It touches upon the argument that Mr. Simmons just  
6 made, and it appears on page 24 of Standing Up For  
7 Florida's response to the motion to dismiss.

8 Standing Up For Florida makes a two-sentence  
9 argument that if the movants are correct and there is  
10 a lack of private right of action, then the case  
11 should still proceed against the Secretary of State  
12 because she didn't move for dismissal or join in any  
13 of the motions either. But if the movants are correct  
14 and there is no private right action, then there is no  
15 cause of action against any party. There is no cause  
16 of action. There is no jurisdiction to decide  
17 anything. So it doesn't matter that the Secretary  
18 didn't move herself or join in a motion.

19 To further explore that, the Secretary is a  
20 third-party defendant. The Complaint against her is a  
21 third-party complaint. That Complaint is completely  
22 dependent upon the counterclaim against the sponsor  
23 committee and the counterdefendants. If and only if  
24 the third party succeeds upon that counterclaim that  
25 the method of collection is illegal or not, and if

1 that illegality infected the count in any way, the  
2 Secretary -- the question would only move to the  
3 Secretary for providing relief of possibly removing  
4 the petition from the ballot. But if the counterclaim  
5 goes away, then so does the third-party complaint.

6 I would suggest that even if I'm wrong and the  
7 case continues against just the Secretary, the  
8 third-party plaintiffs would certainly have to amend  
9 their Complaint to state a direct cause of action  
10 against the Secretary. I would argue that they would  
11 lack standing to do so.

12 The allegations -- the alleged wrongdoing is  
13 against and asserted to be caused by a completely  
14 different party. Those alleged actions, even Standing  
15 Up For Florida, the third-party plaintiff, argues the  
16 Secretary has absolutely no knowledge of. She  
17 certainly can't defend against the actions of a  
18 completely different party that she has no knowledge  
19 of. There is a lack of standing for that.

20 So while the Secretary of State may be necessary  
21 for relief, it's only if and when there is some  
22 determination against some parties if the cause of  
23 action exists that the method of collection was  
24 illegal and that illegality tainted the requirements  
25 to certify that petition for ballot placement and take

1 it away from the electorate. That's only after the  
2 plaintiffs, as it's currently pled now and stands,  
3 only if the third-party plaintiffs first succeed on  
4 the counterclaim. If the counterclaim goes away and  
5 is dismissed for lack of a private right of action,  
6 then there isn't a third-party complaint, and we don't  
7 continue against just the Secretary.

8 None of the cases that have been cited proceeded  
9 just against the Secretary to somehow defend against  
10 the actions, the collection methods of a petition  
11 sponsor to reach the sufficient constitutional  
12 numbers. Floridians Against Expanded Gambling the  
13 Secretary was a defendant, but the opponent committee  
14 was the one defending and alleging that the sponsor  
15 committee engaged in some sort of illegal collection  
16 efforts that tainted the constitutional number and  
17 distribution requirements. The Secretary was there if  
18 and when those allegation were actually proven and to  
19 argue what impact that would have on whether or not  
20 the petition should be removed from the ballot.

21 So I say all that and thank you for indulging me  
22 of this argument of Standing Up For Florida is  
23 incorrect, that if the movants win and the case is  
24 dismissed against us, that we can proceed solely  
25 against the Secretary, that's just false.

1 Thank you, Your Honor.

2 THE COURT: Okay. Thank you.

3 Mr. McKee, did you want to reply.

4 MR. McKEE: Yes, Your Honor, if I can, and if  
5 Mr. Herron wants to reply first.

6 THE COURT: Okay. You are right.

7 MR. HERRON: Yes, Your Honor. And briefly, this  
8 is Mark Herron on behalf of Mark Earley.

9 Three quick points. This case will turn on  
10 whether there is a private right of action to enforce  
11 Section 104.106, Florida Statutes. The arguments are  
12 before you. The case law is that there is no private  
13 right of action to enforce that. It's either through  
14 the State Attorney or the Florida Elections  
15 Commission.

16 Number two, the analogy that's attempted to be  
17 made that this case is equivalent to Floridians  
18 Against Expanded Gambling are not entirely accurate.  
19 Again, the issues in Floridians Against Expanded  
20 Gambling were challenging the validity of signatures  
21 necessary to meet the constitutional requirements that  
22 there be sufficient petitions in one-half of Florida's  
23 Congressional districts, and that was the attack  
24 directly on the signatures, not specifically on how  
25 these were gathered.

1           Number three and finally is there was reference to  
2 say that this case is all about or includes  
3 allegations of sufficient allegations with respect to  
4 fraud and deceit. And citing to paragraph 69, my  
5 quick review of the Complaint is paragraph 69 is more  
6 like a throw-away paragraph.

7           If you look to paragraph 80 as well as the relief  
8 sought by the third-party plaintiffs, paragraph 80  
9 talks specifically about there is a need for a  
10 declaration with respect to compensation scheme and  
11 employment relationships, and the relief sought also  
12 deals exclusively with the compensation scheme. There  
13 is no reference to any efforts to challenge fraud and  
14 deceit in obtaining voter signatures. It's all about  
15 what's above that.

16           I would point out that even if the fraud and  
17 compensation scheme is illegal, okay, you are going to  
18 invalidate signatures of voters who understood what  
19 they were signing, signed it, and you are going to  
20 void and throw out their signatures because of  
21 something that they did not do. It's done by the  
22 third parties that are in this dispute among  
23 themselves. You'll be affecting the rights of voters  
24 to put matters on the ballot.

25           Thank you, Your Honor, for the opportunity to

1 respond.

2 THE COURT: Thank you.

3 Mr. McKee?

4 MR. McKEE: Yes, Your Honor. I just have a few  
5 points.

6 First, I certainly agree with the points that  
7 Mr. Herron made. I think the last point is very, very  
8 important that the actual relief that is sought by the  
9 defendants is to invalidate valid signatures of  
10 Florida voters. These are not -- they are not seeking  
11 to invalidate these alleged forged or fraudulent  
12 signatures, they are seeking to invalidate actual  
13 signatures from valid Florida voters that they believe  
14 should be invalidated based on some allegedly improper  
15 pay scheme, so we certainly agree with him on that.

16 I want to just correct a few statements that were  
17 made that are just flat-out wrong earlier. First, the  
18 assertion that Section 104.186 was not at issue in the  
19 Palm Beach County case and the fact or the assertion  
20 that the order did not pertain to 104.186 is just  
21 absolutely contrary to what you have before you in  
22 writing.

23 If you look at Judge Gillman's order, page 2 of  
24 that order specifically references Section 104.187.  
25 And more importantly, if you look at the Complaint

1 that they filed, that the defendants filed, Standing  
2 Up For Florida filed in Palm Beach County, they  
3 specifically allege that the "illegal acts that were  
4 taken" was illegally paying petition circulators in  
5 violation of 104.186.

6 Section 104.186 in this alleged illegal payment  
7 scheme is exactly what they sued under in Palm Beach  
8 County, so the assertion that these are two different  
9 cases is flat-out absurd.

10 Next, the defendants throughout this case have  
11 been very, very free about throwing out the term  
12 "fraud." That is certainly contrary to everything I  
13 have ever been taught as an attorney. That's not what  
14 they are suing for in this case. Set aside the fact  
15 that they are very free with that term.

16 If you look at Count 1 -- this is a one-count  
17 Complaint that you have before you. If you look at  
18 that count, similar to what Mr. Herron mentioned, it  
19 becomes very, very clear by looking through that count  
20 what is actually alleged, that they are not suing for  
21 fraud, they are suing based on a violation or alleged  
22 violation of 104.186. Paragraph 62 says, "An absolute  
23 dispute exists over whether the payment structure  
24 implemented by counterdefendant FVC-PAC, its agents,  
25 and the rest of the counterdefendants is a prohibited

1 compensation scheme under Florida law."

2 Paragraph 73 makes it clear that that is the  
3 controversy they are seeking a declaratory judgment  
4 on.

5 Paragraph 75 says, "The Court's determination as  
6 to the illegality of this employment relationship,"  
7 and then goes from there. They are talking about the  
8 compensation scheme and the employment relationship  
9 there that are relevant to that.

10 Paragraph 77 states that or makes clear that the  
11 dispute that they are referring to is forms that they  
12 believe were illegally obtained based on the  
13 compensation scheme.

14 Paragraphs 79 and 80 also make that very clear.  
15 Paragraph 79 specifically says all of these petitions  
16 were collected pursuant to an illegal payment scheme  
17 and are illegal and void ab initio.

18 And then paragraph 80, of course, probably the  
19 most clear paragraph, "There exists a bona fide,  
20 actual, present, and immediate need for declaration  
21 that the compensation scheme and employment  
22 relationships between GES and counterdefendants and,  
23 in turn, counterdefendants and its petition  
24 circulators, are illegal under Florida's election law  
25 because they are premised on compensation based on the

1 number of signatures gathered. See Florida Statute  
2 104.186."

3 So, again, the assertion, the attempt to now claim  
4 that their Complaint is anything other than a  
5 Complaint specifically asking you to issue a  
6 declaration about 104.186 is absolutely absurd and is  
7 contrary to the actual written product they provided  
8 to you.

9 The other point I want to make is they  
10 specifically alleged fraud in their Palm Beach County  
11 Complaint as well. When -- one of the paragraphs that  
12 they mentioned earlier in this attempt to claim that  
13 their claim is all about fraud and not about  
14 Section 104.186, they referred you to paragraph 23 of  
15 their counterclaim filed in this case.

16 If you look at paragraph 23, and if you compare  
17 paragraph 23 of their counterclaim in this case to  
18 paragraph 13 of the Complaint that they filed in Palm  
19 Beach County, as far as I can tell, they are identical  
20 or virtually identical. The Palm Beach County case,  
21 specifically their Complaint, specifically says that  
22 flood of money in a short window of time has combined  
23 to lead to wide-scale fraud and then goes on from  
24 there. There again, in addition to 104.186, they are  
25 throwing out fraud as an attempt to make their

1 Complaint more colorful than anything else.

2 Another very important thing I think to note is  
3 they cite a Mr. Crumedy in paragraph 69 of the Leon  
4 County counterclaim. They allege a single Grassfire  
5 employee, Derrell Crumedy, was arrested and sentenced  
6 for forging signature of a staff member.

7 Mr. Shepherd stated that he was employed for  
8 purposes of this initiative, the initiative that we  
9 are talking about. That is directly contrary to the  
10 exhibit that was attached by Mr. Shepherd to the  
11 Complaint.

12 If you turn to the counterclaim, if you look at  
13 the actual counterclaim, and I believe this is  
14 Exhibit -- Composite Exhibit 11, there is an order of  
15 probation and attached to the order of probation is a  
16 story about Mr. Crumedy. The story says the case came  
17 to light in August of 2019.

18 Your Honor, this particular -- the petition, the  
19 initiative petition that we are here on today, the  
20 petition that Florida Voters in Charge is seeking to  
21 obtain signatures for wasn't even filed until 2021,  
22 until, I believe, mid-2021. Anything that happened  
23 with Mr. Crumedy in August of 2019 is absolutely  
24 irrelevant to this particular case. This is nothing  
25 more than an attempt to smear the plaintiffs. It's

1 highly improper and the statements that were made are  
2 absolutely not true, demonstrably not true based on  
3 the actual pleadings here.

4 Again, so let me try to bring this all in for a  
5 landing. If we ignore the very, very loose  
6 allegations of fraud which are completely  
7 unsubstantiated, if we ignore the references to  
8 Mr. Crumedy and other things that are entirely  
9 unrelated and have been far before Florida Voters in  
10 Charge was even affiliated in any way with any of  
11 these entities, the fact is they are asking you to  
12 rule directly contrary to the order that was entered  
13 by Judge Gillman in Palm Beach County. That is at its  
14 core exactly what is being asked of you here, and I  
15 believe Mr. Herron made that point as well.

16 If you are not inclined to rule differently than  
17 Judge Gillman, who has considered all these issues,  
18 then dismissal with prejudice is the appropriate  
19 remedy. Even if you are inclined to review all of  
20 these issues for all of the reasons we stated earlier,  
21 dismissal with prejudice is still the appropriate  
22 remedy.

23 Their claim is based on 104.186 and it's based on  
24 100.371. Those are the exact claims that Judge  
25 Gillman has rejected. That's what they are appealing

1 in the Fourth DCA. They have chosen their forum, they  
2 need to go argue in the Fourth DCA. If they are  
3 correct in the argument that they made, they will  
4 retain a reversal in the Fourth DCA in theory and can  
5 litigate their case down there.

6 That's all I have, Your Honor.

7 THE COURT: Okay. Thank you.

8 MR. SHEPHERD: Judge, if I might have just one  
9 minute?

10 THE COURT: I will give you a minute.

11 MR. SHEPHERD: Judge, I would point to this letter  
12 that has just become public from the Secretary of  
13 State December 3rd. The title of it is "Re:  
14 Fraudulent constitutional initiative petitions," and  
15 it goes through a host of things that I have just  
16 become aware of from Ms. Davis's office.

17 If the Court were inclined to think that we have  
18 not alleged fraud sufficiently, if Mr. Herron's  
19 comment that paragraph 69 is somehow not as relevant  
20 as other paragraphs in the Complaint, I would seek  
21 leave to amend to investigate the additional  
22 information that the Secretary of State has provided  
23 to law enforcement and the Attorney General so that I  
24 could plead that with greater specificity. I disagree  
25 that the paragraph -- one paragraph is more valuable

1 than another.

2 As it relates to Mr. Crumedy, I believe that we  
3 have alleged and would prove at hearing that although  
4 his sentence is for things that have happened in the  
5 past, there are other matters that we would prove that  
6 would relate specifically to this, and I believe  
7 Mr. McKee's firm is aware of that.

8 So that is -- that's all I have in response,  
9 Judge.

10 MR. McKEE: Your Honor, might I just briefly  
11 respond? I apologize. Might I have ten seconds?

12 THE COURT: Okay.

13 MR. McKEE: Your Honor, I am not aware of what  
14 Mr. Shepherd thinks I am aware of. Certainly if he is  
15 aware of any allegations regarding Mr. Crumedy or  
16 anybody else, I would be very happy for Mr. Shepherd  
17 to share those with me. Whatever letter he is  
18 referencing, I have not even seen yet and I don't  
19 think it's appropriate for consideration today.

20 I apologize. I believe Mr. Lombard wants to be  
21 heard as well.

22 THE COURT: Mr. Lombard.

23 MR. LOMBARD: Judge, I won't bother you much. Two  
24 quick points.

25 They made a strategic and tactical decision to go

1 to Palm Beach instead of bringing this to you when you  
2 denied their motion to dismiss. They have got to live  
3 with the consequences of that strategic tactical  
4 decision. They are in the Fourth DCA. I think it  
5 would be improper for this Court now to consider the  
6 very claims that the other Court has jurisdiction over  
7 at this point. That's number one.

8 Number two, as to Mr. Simmons' argument about  
9 affirmative defenses, he is arguing a motion to strike  
10 an affirmative defense. That's not what we are here  
11 for. We will get to that some other day. Today it is  
12 a motion to dismiss an affirmative claim seeking to  
13 invalidate signatures and seeking to enjoin two  
14 constitutional officers from doing their duties.

15 So what they may be able to use as a shield to  
16 avoid damages for tortious interference, they may not  
17 use as a sword in a counterclaim with a third-party  
18 Complaint, so you should dismiss the Complaint.

19 Thank you, Judge.

20 THE COURT: Okay. Thank you.

21 I want to thank everyone for their presentations  
22 today. They were very helpful.

23 Based on everything, I am going to find that  
24 Sections 100.371 and 104.186 do not provide a private  
25 cause of action other than that real limited one in

1 371(3) regarding challenging a particular circulator's  
2 registration, and that's not the allegations that we  
3 have here.

4 So based on all the arguments made in both motions  
5 as well as the order by Judge Gillman in the Fifteenth  
6 Circuit, which I find that order very persuasive, I  
7 was also able to review the order in the Long v.  
8 Dansler case, and I thought that was persuasive as  
9 well. So based on all of those things and the  
10 arguments presented, I am going to deny -- sorry.  
11 Rather, I'm going to grant both motions to dismiss.

12 So I'm going to rely on the movants in each of  
13 those to prepare orders, and, of course, run them by  
14 the other side.

15 MR. SHEPHERD: Judge, will you set time for leave  
16 to amend?

17 THE COURT: Because I'm finding there is no  
18 private cause of action, I don't see how it could be  
19 amended in any fashion to present a cause of action,  
20 so it will be with prejudice.

21 MR. McKEE: Your Honor, we will prepare those  
22 motions -- or the orders, I apologize.

23 THE COURT: Okay. Anything else before we  
24 conclude today?

25 MR. McKEE: No, Your Honor.



C E R T I F I C A T E

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I, Tamra K. Piderit, Florida Professional Reporter, Florida Professional Reporter-C, Registered Professional Reporter, Registered Merit Reporter, Registered Diplomat Reporter, and Certified Realtime Reporter, certify that I was authorized to and did stenographically report the foregoing remote proceedings, and that the transcript is a true and complete record of my stenographic notes.

Dated this 24th day of January, 2022.



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Tamra K. Piderit  
Florida Professional Reporter  
Florida Professional Reporter-C  
Registered Professional Reporter  
Registered Merit Reporter  
Registered Diplomat Reporter  
Certified Realtime Reporter

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| <hr/> <p>(</p> <hr/> <p>(3)<br/>35:19</p> <hr/> <p>0</p> <hr/> <p>06<br/>36:22</p> <hr/> <p>1</p> <hr/> <p>1<br/>57:16</p> <p>1.110(d)<br/>41:18 48:10</p> <p>10<br/>24:22</p> <p>100.371<br/>7:12,23 8:3<br/>10:18,25<br/>11:10 14:2,15<br/>15:5 16:1<br/>18:7 21:19<br/>35:19 47:22<br/>61:24 64:24</p> <p>100.371(3)<br/>15:21</p> <p>100.371(3)(b)<br/>14:17 15:2</p> <p>100.371(8)<br/>15:7 16:4<br/>21:21</p> <p>104<br/>8:19 9:3 14:1<br/>16:9,14,24<br/>17:17</p> <p>104.051<br/>17:2</p> | <p>104.106<br/>54:11</p> <p>104.168<br/>7:11</p> <p>104.186<br/>8:6,22 14:2,4<br/>15:19 18:7<br/>39:22 47:24,<br/>25 56:18,20<br/>57:5,6,22<br/>59:2,6,14,24<br/>61:23 64:24</p> <p>104.187<br/>56:24</p> <p>106<br/>8:19 9:3<br/>16:15</p> <p>106.25(1)<br/>8:15</p> <p>106.272<br/>8:24</p> <p>10th<br/>10:1</p> <p>11<br/>25:17 38:1<br/>60:14</p> <p>120<br/>43:16</p> <p>1282<br/>43:16</p> <p>13<br/>59:18</p> <p>15th<br/>10:3</p> <p>16<br/>27:7</p> <p>17th<br/>10:14</p> | <p>186<br/>14:1</p> <p>1912<br/>26:1 36:21</p> <p>1982<br/>36:20</p> <p>1:30<br/>5:2</p> <hr/> <p>2</p> <hr/> <p>2<br/>56:23</p> <p>20<br/>37:8</p> <p>2006<br/>27:4</p> <p>2010<br/>36:23</p> <p>2013<br/>43:16</p> <p>2019<br/>34:7 35:15<br/>40:22 60:17,<br/>23</p> <p>2019-64<br/>39:10</p> <p>2021<br/>60:21</p> <p>21-CA-2038<br/>5:4</p> <p>23<br/>24:22 59:14,<br/>16,17</p> <p>24<br/>12:3 51:6</p> <p>26<br/>41:24</p> | <p>2:58<br/>66:6</p> <hr/> <p>3</p> <hr/> <p>3<br/>16:1 21:15<br/>25:17 35:5</p> <p>32<br/>12:21,25</p> <p>371(3)<br/>65:1</p> <p>3rd<br/>62:13</p> <hr/> <p>4</p> <hr/> <p>400<br/>38:5</p> <hr/> <p>5</p> <hr/> <p>5<br/>43:24</p> <hr/> <p>6</p> <hr/> <p>6<br/>44:5</p> <p>62<br/>57:22</p> <p>64<br/>40:22</p> <p>69<br/>24:23 38:12<br/>55:4,5 60:3<br/>62:19</p> <hr/> <p>7</p> <hr/> <p>73</p> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 58:2<br><b>75</b><br>58:5<br><b>77</b><br>58:10<br><b>79</b><br>58:14,15<br><hr/> <b>8</b> <hr/> <b>8</b><br>24:22<br><b>80</b><br>55:7,8 58:14,<br>18<br><hr/> <b>A</b> <hr/> <b>ab</b><br>58:17<br><b>ability</b><br>14:12 18:14<br>26:13 34:11,<br>22<br><b>absolute</b><br>12:4 47:14<br>57:22<br><b>absolutely</b><br>13:3,25 19:22<br>20:9,22 21:14<br>52:16 56:21<br>59:6 60:23<br>61:2<br><b>absurd</b><br>19:6 20:4,15<br>21:24 57:9<br>59:6<br><b>access</b><br>6:17 | <b>accomplishment</b><br>35:8<br><b>accurate</b><br>54:18<br><b>acknowledge</b><br>41:21 42:10<br><b>acted</b><br>10:13<br><b>action</b><br>7:7,24 8:2,4<br>9:2 10:2,10,<br>18,19 11:3,11<br>14:3,8,11,16,<br>18 15:4,6,13,<br>18,24 16:6,8,<br>17,19 17:13,<br>20 18:18<br>20:18 21:11,<br>14 22:12 26:9<br>27:3 31:19<br>34:8,25<br>35:17,20,21,<br>24 39:14<br>41:14 44:3,10<br>51:10,14,15,<br>16 52:9,23<br>53:5 54:10,13<br>64:25 65:18,<br>19<br><b>actions</b><br>8:25 31:18<br>52:14,17<br>53:10<br><b>acts</b><br>9:1 57:3<br><b>actual</b><br>56:8,12 58:20<br>59:7 60:13<br>61:3 | <b>add</b><br>22:6,16<br><b>added</b><br>32:5 34:3<br>35:15<br><b>addition</b><br>8:24 24:19<br>59:24<br><b>additional</b><br>34:2 35:15<br>39:1,21 62:21<br><b>address</b><br>37:9 39:1<br><b>admissible</b><br>32:19<br><b>adopted</b><br>26:17<br><b>affecting</b><br>32:17 55:23<br><b>affiliated</b><br>61:10<br><b>affirm</b><br>13:16<br><b>affirmative</b><br>20:15,17,23<br>41:14,17,19,<br>22 42:22 43:9<br>45:3,4,5,25<br>46:6 47:14<br>48:5,8,9,10,<br>15 49:6 64:9,<br>10,12<br><b>affirmatively</b><br>42:6<br><b>affirmed</b><br>16:18 17:23<br><b>afternoon</b><br>5:8,21 6:8 | <b>agents</b><br>38:1 57:24<br><b>agree</b><br>9:12 56:6,15<br><b>agreed</b><br>16:7<br><b>ahead</b><br>7:4 9:17<br>40:8,9 42:16<br>45:24 46:4<br>48:19<br><b>aid</b><br>35:9<br><b>allegation</b><br>17:16 21:9<br>36:1 48:1<br>53:18<br><b>allegations</b><br>7:9 11:4,7<br>24:21 25:1,13<br>30:14 34:10<br>36:16 37:13,<br>16,17 38:10<br>52:12 55:3<br>61:6 63:15<br>65:2<br><b>allege</b><br>36:14 38:19<br>41:8 57:3<br>60:4<br><b>alleged</b><br>16:13,24<br>17:11 24:4<br>28:25 36:5<br>41:5 43:21<br>52:12,14<br>56:11 57:6,<br>20,21 59:10<br>62:18 63:3 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                                                                     |                                                                           |                                                                             |                                                                                                                             |
|-------------------------------------------------------------------------------------|---------------------------------------------------------------------------|-----------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| <b>allegedly</b><br>56:14                                                           | <b>appealed</b><br>12:19                                                  | 62:3 64:8                                                                   | <b>attached</b><br>20:2 60:10,15                                                                                            |
| <b>alleging</b><br>20:8 53:14                                                       | <b>appealing</b><br>61:25                                                 | <b>arguments</b><br>19:4 41:1<br>45:21 54:11<br>65:4,10                     | <b>attaches</b><br>37:25                                                                                                    |
| <b>allowed</b><br>20:3 30:7                                                         | <b>Appeals</b><br>12:23 43:22                                             | <b>arrest</b><br>31:17 38:14                                                | <b>attachments</b><br>6:22                                                                                                  |
| <b>allowing</b><br>28:3                                                             | <b>appearances</b><br>5:11 23:8                                           | <b>arrested</b><br>20:7,9 38:1<br>60:5                                      | <b>attack</b><br>38:18 54:23                                                                                                |
| <b>amend</b><br>52:8 62:21<br>65:16                                                 | <b>appears</b><br>51:6                                                    | <b>Article</b><br>25:17                                                     | <b>attempt</b><br>25:9 59:3,12,<br>25 60:25                                                                                 |
| <b>amended</b><br>17:11 65:19                                                       | <b>applied</b><br>28:14                                                   | <b>ascertain</b><br>7:17                                                    | <b>attempted</b><br>54:16                                                                                                   |
| <b>amendment</b><br>7:9 25:16,19<br>26:4,22<br>31:10,22<br>34:13 35:15<br>37:1 42:8 | <b>apply</b><br>19:5 21:23<br>49:13                                       | <b>Ashley</b><br>6:4                                                        | <b>attorney</b><br>8:1 11:2<br>15:11,13,23<br>16:3 21:17<br>31:16 34:8,<br>19,23 35:16,<br>23 50:17<br>54:14 57:13<br>62:23 |
| <b>analogy</b><br>54:16                                                             | <b>appreciated</b><br>6:18                                                | <b>Asnani</b><br>6:12,13 21:10<br>26:21 29:25<br>39:1,8,13<br>40:12 49:1,22 | <b>attorneys</b><br>8:11,22 31:20                                                                                           |
| <b>analysis</b><br>28:12 29:7<br>30:12 46:15                                        | <b>approval</b><br>44:11                                                  | <b>assert</b><br>22:14 50:9                                                 | <b>August</b><br>60:17,23                                                                                                   |
| <b>analytically</b><br>43:11                                                        | <b>approved</b><br>35:1                                                   | <b>asserted</b><br>41:25 52:13                                              | <b>authenticated</b><br>32:19                                                                                               |
| <b>anew</b><br>13:10                                                                | <b>argue</b><br>18:24 19:12,<br>17 20:5 21:4<br>40:23 52:10<br>53:19 62:2 | <b>asserting</b><br>42:4                                                    | <b>authority</b><br>10:24 13:24<br>21:18,22<br>29:15,17                                                                     |
| <b>Anytime</b><br>48:15                                                             | <b>argued</b><br>20:13 21:11<br>23:4                                      | <b>assertion</b><br>18:1,25 20:3<br>21:22 56:18,<br>19 57:8 59:3            | <b>automatically</b><br>46:5                                                                                                |
| <b>apologize</b><br>5:17 21:7<br>63:11,20<br>65:22                                  | <b>argues</b><br>52:15                                                    | <b>assertions</b><br>45:17 47:17                                            | <b>avoid</b><br>64:16                                                                                                       |
| <b>appeal</b><br>11:24 12:21,<br>22,25 13:7<br>30:11                                | <b>arguing</b><br>19:7,14 28:1<br>64:9                                    | <b>assurance</b><br>50:11                                                   | <b>aware</b><br>46:18 62:16                                                                                                 |
|                                                                                     | <b>argument</b><br>7:14 9:5<br>26:10 50:4<br>51:5,9 53:22                 | <b>attach</b><br>19:18                                                      |                                                                                                                             |

|                      |                 |                 |                      |
|----------------------|-----------------|-----------------|----------------------|
| 63:7,13,14,15        | 59:10,19,20     | <b>Bradley</b>  |                      |
|                      | 61:13 64:1      | 23:9            |                      |
| <hr/> <b>B</b> <hr/> | <b>Beaubien</b> | <b>briefly</b>  | <hr/> <b>C</b> <hr/> |
| <b>back</b>          | 39:7            | 7:14 54:7       | <b>call</b>          |
| 12:1 19:3            | <b>began</b>    | 63:10           | 30:18                |
| 36:24                | 5:2             | <b>briefs</b>   | <b>camera</b>        |
| <b>ballot</b>        | <b>begins</b>   | 30:18           | 23:10                |
| 31:9,22 32:16        | 23:15           | <b>bring</b>    | <b>Campaign</b>      |
| 34:14 44:7,8         | <b>behalf</b>   | 8:25 10:20      | 5:19                 |
| 52:4,25 53:20        | 5:17,22,24,25   | 11:3 17:19      | <b>candidate</b>     |
| 55:24                | 6:4,10 7:2      | 18:18 25:6,13   | 16:12,20             |
| <b>based</b>         | 9:10 12:13,16   | 26:13 27:16     | 17:14 36:10,         |
| 7:9 27:13,14         | 22:6,19 24:1    | 30:4 31:19      | 13                   |
| 30:15 33:13          | 54:8            | 33:5 34:21      | <b>case</b>          |
| 48:1,2 49:14         | <b>believes</b> | 44:13,22 45:1   | 6:23 9:3,16,         |
| 56:14 57:21          | 15:9 38:9       | 61:4            | 25 10:1,12           |
| 58:12,25             | <b>Ben</b>      | <b>bringing</b> | 12:4,23 13:6,        |
| 61:2,23 64:23        | 5:19            | 41:4,13 64:1    | 14,21 14:13,         |
| 65:4,9               | <b>bill</b>     | <b>broad</b>    | 21,22 16:10,         |
| <b>basically</b>     | 39:11           | 15:22           | 16,23 17:25          |
| 8:7 10:5             | <b>bit</b>      | <b>broader</b>  | 18:12,20,21          |
| 11:18 12:8           | 12:1 19:4       | 35:22 36:1      | 19:8,11,12,14        |
| 50:2                 | <b>block</b>    | <b>brought</b>  | 20:7,22 26:2,        |
| <b>basis</b>         | 32:11           | 13:18 16:11     | 15,20,23             |
| 16:5,12 18:20        | <b>board</b>    | 20:21 24:6      | 27:1,10,13,          |
| 19:15 24:15          | 29:14           | 26:2 27:3       | 19,23,24             |
| 25:9 35:23           | <b>boards</b>   | 34:10 43:6,7,   | 28:10,14,17          |
| 44:20 48:6           | 29:24           | 18 44:10        | 29:1,12 30:2,        |
| <b>battery</b>       | <b>boil</b>     | 47:10,11        | 20 31:14,23          |
| 20:7,9               | 22:9            | 50:19           | 33:1 36:8,10,        |
| <b>Beach</b>         | <b>bona</b>     | <b>Browning</b> | 18 37:2,11           |
| 9:21 10:5            | 58:19           | 17:25 31:1,3,   | 40:11,25 41:3        |
| 12:7 13:15           | <b>books</b>    | 4,11,23 32:9    | 42:17 43:10,         |
| 19:3 20:1            | 36:21           | 34:16 35:2,5    | 15,17,19             |
| 27:12 43:14,         | <b>bother</b>   | 36:23,25 37:7   | 45:9,19 47:9,        |
| 15 45:16             | 63:23           | <b>burden</b>   | 20 48:7 49:1,        |
| 46:13 47:3,6,        | <b>bottom</b>   | 38:17           | 14,21 51:10          |
| 20 50:21             | 21:20           | <b>business</b> | 52:7 53:23           |
| 56:19 57:2,7         |                 | 10:8 41:9,10    | 54:9,12,17           |

|                                                                                         |                                                                 |                                                                                                    |                                                                                        |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------|----------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 59:15,17,20<br>60:16,24 62:5<br>65:8                                                    | 16:9,14,24<br>17:17 39:10<br>40:22                              | 16:10 19:8,9,<br>15 30:20<br>44:15 53:8                                                            | 27:16 28:3<br>61:24 64:6                                                               |
| <b>cases</b><br>18:2,6 25:23<br>34:21 37:1,8<br>40:5 44:14,15<br>46:4 49:8<br>53:8 57:9 | <b>charge</b><br>5:9,13,18<br>9:10 27:6<br>31:16 60:20<br>61:10 | <b>cites</b><br>32:9 33:11                                                                         | <b>Clay</b><br>36:10                                                                   |
| <b>catchall</b><br>21:2                                                                 | <b>chooses</b><br>14:10                                         | <b>citing</b><br>32:12 55:4                                                                        | <b>clear</b><br>9:23 13:20<br>15:16 40:18<br>42:12 43:2<br>45:4 57:19<br>58:2,10,14,19 |
| <b>category</b><br>29:18                                                                | <b>chose</b><br>11:24                                           | <b>citizen</b><br>14:18,22<br>21:10 25:12<br>26:6 29:4,10,<br>21 49:2,4                            | <b>clients</b><br>26:12 31:16,<br>17                                                   |
| <b>caused</b><br>52:13                                                                  | <b>chosen</b><br>62:1                                           | <b>citizens</b><br>7:25 18:3<br>26:12 39:13                                                        | <b>co-counsel</b><br>6:12                                                              |
| <b>cede</b><br>38:25                                                                    | <b>circuit</b><br>9:21 26:16<br>28:2,16 30:5<br>65:6            | <b>City</b><br>43:15,18,25<br>44:1                                                                 | <b>cocounsel</b><br>38:25                                                              |
| <b>certification</b><br>42:7                                                            | <b>circuits</b><br>19:14                                        | <b>City's</b><br>44:10                                                                             | <b>Code</b><br>16:25 17:4,6                                                            |
| <b>certify</b><br>50:4 52:25                                                            | <b>circulating</b><br>39:24                                     | <b>civil</b><br>8:2,25 15:13<br>17:1,13 35:16<br>41:19                                             | <b>cohost</b><br>23:18                                                                 |
| <b>certifying</b><br>50:3                                                               | <b>circulator</b><br>14:19,23,25<br>35:25                       | <b>claim</b><br>13:11 28:7<br>34:5 43:5<br>47:4 50:20<br>59:3,12,13<br>61:23 64:12                 | <b>collateral</b><br>45:2,5,21<br>46:7,17,18<br>49:5,13                                |
| <b>challenge</b><br>7:25 14:18,23<br>32:11 34:12,<br>24 55:13                           | <b>circulator's</b><br>65:1                                     | <b>claimed</b><br>10:11 41:15                                                                      | <b>collected</b><br>48:1 58:16                                                         |
| <b>challenging</b><br>33:23 34:1<br>54:20 65:1                                          | <b>circulators</b><br>36:3 39:23<br>57:4 58:24                  | <b>claims</b><br>9:16 10:6,14,<br>15,16,21<br>11:21 12:6<br>13:2,5,17<br>19:7,18 20:5,<br>10 22:13 | <b>collection</b><br>51:25 52:23<br>53:10,15                                           |
| <b>change</b><br>18:11 20:10,<br>11 25:9 32:4,<br>6                                     | <b>circumstance</b><br>10:25                                    |                                                                                                    | <b>colorful</b><br>60:1                                                                |
| <b>changed</b><br>23:1 32:3                                                             | <b>circumstances</b><br>42:20                                   |                                                                                                    | <b>combined</b><br>59:22                                                               |
| <b>chapter</b><br>8:18,19 9:3                                                           | <b>cite</b><br>17:24 36:7,<br>20,24 60:3                        |                                                                                                    | <b>comment</b><br>62:19                                                                |
|                                                                                         | <b>cited</b>                                                    |                                                                                                    | <b>comments</b><br>39:9                                                                |

|                                                                                                                                                                                                                   |                                                                    |                                                                                                                                        |                                                                                      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| <b>Commission</b><br>8:15,20,23,25<br>11:6 31:18<br>54:15                                                                                                                                                         | <b>completely</b><br>10:15 13:10<br>19:2,10 51:21<br>52:13,18 61:6 | <b>consideration</b><br>63:19                                                                                                          | <b>contractual</b><br>41:6 44:19<br>47:13                                            |
| <b>commits</b><br>14:7                                                                                                                                                                                            | <b>compliance</b><br>14:12 46:16                                   | <b>considered</b><br>9:20 13:22<br>49:13 61:17                                                                                         | <b>contrary</b><br>56:21 57:12<br>59:7 60:9<br>61:12                                 |
| <b>committed</b><br>15:10                                                                                                                                                                                         | <b>Composite</b><br>60:14                                          | <b>constitute</b><br>41:11 49:9                                                                                                        | <b>control</b><br>36:23                                                              |
| <b>committee</b><br>21:12 40:12<br>43:20 44:2<br>51:23 53:13,<br>15                                                                                                                                               | <b>compulsory</b><br>24:8 42:23<br>43:6 44:17,21<br>47:15 48:16    | <b>Constitution</b><br>25:10,18,20<br>36:17                                                                                            | <b>controlling</b><br>36:7                                                           |
| <b>compare</b><br>59:16                                                                                                                                                                                           | <b>concerns</b><br>18:7                                            | <b>constitutional</b><br>25:16 26:4,18<br>27:17 31:10<br>33:4 34:12,14<br>35:11,13,22<br>37:1 42:8<br>53:11,16<br>54:21 62:14<br>64:14 | <b>controversy</b><br>58:3                                                           |
| <b>compel</b><br>22:14                                                                                                                                                                                            | <b>conclude</b><br>29:12 65:24                                     | <b>construed</b><br>32:17                                                                                                              | <b>core</b><br>61:14                                                                 |
| <b>compensation</b><br>24:19 55:10,<br>12,17 58:1,8,<br>13,21,25                                                                                                                                                  | <b>concluded</b><br>66:5                                           | <b>contest</b><br>16:13                                                                                                                | <b>corners</b><br>45:8,19                                                            |
| <b>complaint</b><br>9:7 11:5,14,<br>17 12:5 16:17<br>17:12 20:14<br>28:25 36:16<br>38:9 44:18<br>45:8,19 46:9,<br>10 51:20,21<br>52:5,9 53:6<br>55:5 56:25<br>57:17 59:4,5,<br>11,18,21<br>60:1,11 62:20<br>64:18 | <b>concludes</b><br>33:7                                           | <b>context</b><br>31:5                                                                                                                 | <b>corporations</b><br>21:24                                                         |
| <b>Complaints</b><br>37:23                                                                                                                                                                                        | <b>conclusion</b><br>44:16                                         | <b>continue</b><br>49:22 53:7                                                                                                          | <b>correct</b><br>13:25 22:19,<br>20 29:23<br>51:9,13 56:16<br>62:3                  |
| <b>complete</b><br>50:8,11                                                                                                                                                                                        | <b>conclusions</b><br>20:12                                        | <b>continues</b><br>52:7                                                                                                               | <b>corruptly</b><br>17:6                                                             |
|                                                                                                                                                                                                                   | <b>confirm</b><br>22:17                                            | <b>contract</b><br>42:5 48:17                                                                                                          | <b>counsel</b><br>31:13                                                              |
|                                                                                                                                                                                                                   | <b>confuse</b><br>26:8                                             | <b>contracts</b><br>18:24 19:1<br>20:16 24:5,9,<br>14,15,17<br>41:11,15<br>42:1,2 48:6,<br>8,24                                        | <b>count</b><br>52:1 57:16,<br>18,19                                                 |
|                                                                                                                                                                                                                   | <b>confusion</b><br>26:9                                           |                                                                                                                                        | <b>counter</b><br>6:7                                                                |
|                                                                                                                                                                                                                   | <b>Congressional</b><br>54:23                                      |                                                                                                                                        | <b>counterclaim</b><br>10:6 11:20<br>12:6 19:19,25<br>22:1 24:6,21,<br>24 25:3 27:10 |
|                                                                                                                                                                                                                   | <b>conjunction</b><br>43:8                                         |                                                                                                                                        |                                                                                      |
|                                                                                                                                                                                                                   | <b>Connection</b><br>5:18                                          |                                                                                                                                        |                                                                                      |
|                                                                                                                                                                                                                   | <b>consequences</b><br>64:3                                        |                                                                                                                                        |                                                                                      |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 37:19,24<br>38:19 39:11<br>42:23,24<br>43:6,7,12,21<br>44:4,13,17,<br>21,23 45:9,<br>12,20 47:16<br>48:16 50:22<br>51:22,24 52:4<br>53:4 59:15,17<br>60:4,12,13<br>64:17<br><b>counterclaims</b><br>12:12 24:8,10<br><b>counterdefendan<br/>t</b><br>57:24<br><b>counterdefendan<br/>ts</b><br>24:11 40:25<br>51:23 57:25<br>58:22,23<br><b>counterplaintif<br/>fs</b><br>9:19<br><b>counties</b><br>27:16<br><b>County</b><br>9:21 10:2,5,9<br>12:7 13:15<br>19:4 20:1<br>27:10,12<br>28:16 36:10<br>38:4 45:16<br>46:13 47:3,7,<br>20 56:19<br>57:2,8 59:10,<br>19,20 60:4<br>61:13 | <b>court</b><br>5:4,5,7,16,23<br>6:2,6,19 7:4<br>9:8,21 11:9<br>12:23 13:18<br>16:15 22:4,<br>14,17 23:6,<br>11,17,24<br>25:1,3,6,14,<br>24 26:2,5,11,<br>14 28:2,16<br>29:2,9,14<br>30:5,19 31:1,<br>4,6,11,21<br>32:8,24 33:5,<br>22 34:11,16<br>35:19 36:12<br>37:4,5,12<br>38:9,20,21,<br>22,23 39:5,6<br>41:4 43:3,12,<br>22,24 44:5,12<br>47:7,21 50:11<br>51:1 54:2,6<br>56:2 62:7,10,<br>17 63:12,22<br>64:5,6,20<br>65:17,23 66:1<br><b>court's</b><br>12:17 30:21,<br>22 40:4,6<br>58:5<br><b>courts</b><br>30:3 34:4<br>40:10 42:11<br><b>Crawford</b><br>26:1,17 29:8<br>30:21 34:15<br>36:20,21<br><b>create</b><br>14:2 | <b>created</b><br>34:7 35:3<br><b>criminal</b><br>8:10 14:5,8,<br>10 15:20,22<br>17:1,9,18,20<br>32:4 48:22<br><b>Crumedy</b><br>38:14 60:3,5,<br>16,23 61:8<br>63:2,15<br><b>cure</b><br>30:15<br><b>cured</b><br>30:9<br><hr/> <b>D</b> <hr/> <b>damages</b><br>41:7 42:18<br>64:16<br><b>Dansler</b><br>18:12 65:8<br><b>David</b><br>6:12 39:6<br><b>Davis</b><br>6:4 22:18,20<br>23:7 51:2,3<br><b>Davis's</b><br>62:16<br><b>day</b><br>12:4,20 24:6<br>64:11<br><b>days</b><br>10:8 11:25<br>12:3,21,25<br><b>DCA</b><br>13:8,9,12,13,<br>16 14:13 | 16:7,17,22<br>17:22 21:5<br>26:15 28:12<br>30:20 37:4<br>38:23 43:15<br>62:1,2,4 64:4<br><b>de</b><br>39:7<br><b>deal</b><br>45:7<br><b>deals</b><br>55:12<br><b>dealt</b><br>45:22<br><b>deceit</b><br>34:10 55:4,14<br><b>December</b><br>10:1,3,14<br>62:13<br><b>decide</b><br>43:14 50:21<br>51:16<br><b>decided</b><br>12:20 21:6<br><b>decision</b><br>33:6 34:22<br>36:20,21<br>63:25 64:4<br><b>declaration</b><br>18:16,25<br>20:13 42:6<br>55:10 58:20<br>59:6<br><b>declaratory</b><br>18:10,14,19,<br>22 20:18,19,<br>24 27:3 30:7<br>34:25 44:3,10<br>58:3 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                                                                                                                                             |                                                                    |                                                                                              |                                                                                          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|----------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|
| <b>deemed</b><br>40:7                                                                                                                                       | 45:4,5 46:7<br>47:15 48:5,8,<br>10,16 64:10                        | <b>determined</b><br>14:4 35:8                                                               | 28:6 34:6<br>37:14 41:21,<br>24 45:7,13                                                  |
| <b>defend</b><br>42:16 52:17<br>53:9                                                                                                                        | <b>defenses</b><br>41:14,19<br>45:3,25 49:6<br>64:9                | <b>determines</b><br>11:10                                                                   | 49:21 50:14,<br>25 51:7 64:2,<br>12,18 65:11                                             |
| <b>defendant</b><br>13:6 42:14,15<br>44:3 47:18<br>51:20 53:13                                                                                              | <b>defensively</b><br>42:4                                         | <b>difference</b><br>20:17 42:3<br>43:2                                                      | <b>dismissal</b><br>13:7,9,17<br>51:12 61:18,<br>21                                      |
| <b>defendant/<br/>counterclaimant</b><br>48:20                                                                                                              | <b>degree</b><br>14:7                                              | <b>difficult</b><br>33:16,23 34:1                                                            | <b>dismissed</b><br>9:7 10:15,16<br>11:16 12:7<br>13:6,11 16:16<br>18:19 22:2<br>53:5,24 |
| <b>defendant/<br/>counterclaimant<br/>s</b><br>49:23                                                                                                        | <b>demonstrably</b><br>61:2                                        | <b>diligently</b><br>26:24                                                                   | <b>dismisses</b><br>20:1                                                                 |
| <b>defendants</b><br>6:7,11 9:17,<br>18,20 10:4<br>11:18 12:18,<br>20 16:21<br>17:18,24<br>18:9,23 19:5<br>20:22,25<br>39:11 41:25<br>44:25 56:9<br>57:1,10 | <b>demonstrate</b><br>30:18                                        | <b>direct</b><br>52:9                                                                        | <b>dispute</b><br>55:22 57:23<br>58:11                                                   |
| <b>defendants'</b><br>9:25                                                                                                                                  | <b>denied</b><br>9:24 10:9<br>11:16,17<br>25:11 28:2<br>50:25 64:2 | <b>direction</b><br>12:17                                                                    | <b>dissent</b><br>33:1                                                                   |
| <b>defendants/<br/>counterclaimant<br/>s</b><br>42:19 47:11                                                                                                 | <b>deny</b><br>25:1 49:21<br>65:10                                 | <b>directly</b><br>25:14 37:9<br>54:24 60:9<br>61:12                                         | <b>dissents</b><br>33:1                                                                  |
| <b>defending</b><br>53:14                                                                                                                                   | <b>depend</b><br>32:15                                             | <b>disagree</b><br>11:18,22<br>62:24                                                         | <b>distinct</b><br>50:18                                                                 |
| <b>defense</b><br>20:16,18,23<br>41:16,17,22<br>42:1,22 43:9                                                                                                | <b>dependent</b><br>51:22                                          | <b>disagreed</b><br>13:1                                                                     | <b>distribution</b><br>53:17                                                             |
|                                                                                                                                                             | <b>Derrell</b><br>60:5                                             | <b>disagreeing</b><br>33:4                                                                   | <b>District</b><br>12:22 30:12<br>43:22                                                  |
|                                                                                                                                                             | <b>designed</b><br>17:12                                           | <b>discussed</b><br>26:11 34:15                                                              | <b>districts</b><br>54:23                                                                |
|                                                                                                                                                             | <b>detailed</b><br>24:22,23                                        | <b>discusses</b><br>42:13                                                                    | <b>do-over</b><br>12:8 22:10                                                             |
|                                                                                                                                                             | <b>determination</b><br>30:23 52:22<br>58:5                        | <b>dismiss</b><br>5:8 9:25 10:9<br>12:12 19:17,<br>22 22:15,18<br>23:2 24:3<br>25:3,11 27:25 | <b>Dockery</b><br>28:17 29:3,<br>12,14,23                                                |

|                              |                                  |                                    |                                  |
|------------------------------|----------------------------------|------------------------------------|----------------------------------|
| <b>doubt</b><br>36:4         | <b>efficient</b><br>33:18        | <b>eliminate</b><br>35:4,18        | 24:12 53:15                      |
| <b>drop</b><br>15:7          | <b>effort</b><br>26:25           | <b>eliminates</b><br>33:21         | <b>enhance</b><br>39:16          |
| <b>due</b><br>24:7           | <b>efforts</b><br>30:17 45:14    | <b>emergency</b><br>10:7,12,13     | <b>enjoin</b><br>8:25 26:3       |
| <b>duplicate</b><br>9:14     | 53:16 55:13                      | 12:10,11 13:2                      | 27:3 34:14                       |
| <b>duties</b><br>7:15 17:3,5 | <b>elected</b><br>27:17          | 41:7                               | 64:13                            |
| 28:9 64:14                   | <b>election</b><br>16:13,25      | <b>employed</b><br>60:7            | <b>enjoined</b><br>28:19 35:9    |
| <b>duty</b><br>7:16 30:22    | 17:4,6 24:12                     | <b>employee</b><br>60:5            | <b>enormous</b><br>20:17         |
|                              | 25:23 30:8,9,                    | <b>employment</b><br>55:11 58:6,8, | <b>enter</b><br>23:14            |
|                              | 16 31:3,17                       | 21                                 | <b>entered</b><br>23:8 61:12     |
| <b>E</b>                     | 36:9,14,18                       | <b>empowers</b><br>25:12           | <b>entertain</b><br>45:17 46:6   |
|                              | 58:24                            | <b>enacted</b><br>40:2             | <b>entire</b><br>10:12           |
| <b>Earley</b><br>5:10,24,25  | <b>Elections</b><br>6:1 8:14,20, | <b>enactment</b><br>35:10,13       | <b>entities</b><br>9:11 10:24    |
| 7:2,7,16 9:6                 | 23,25 11:6                       | <b>ends</b><br>50:3                | 21:18 61:11                      |
| 12:13,15,16                  | 20:21 27:8,9,                    | <b>enforce</b><br>8:2,4,21 9:2     | <b>entitled</b><br>13:14 18:15   |
| 50:10 54:8                   | 12,23 28:7,9                     | 10:24 11:12                        | 20:19 48:18,                     |
| <b>Earley's</b><br>50:1      | 37:24 47:3                       | 14:8,12 16:8,                      | 23 49:1                          |
|                              | 54:14                            | 19 17:20                           | <b>entity</b><br>8:3 11:3 15:9   |
| <b>earlier</b><br>14:5 56:17 | <b>elector</b><br>26:6,22        | 21:18 46:20                        | 39:24                            |
| 59:12 61:20                  | 29:11,22 32:2                    | 48:11 54:10,                       | <b>equality</b><br>44:7          |
| <b>ease</b><br>9:18          | 33:5,21                          | 13                                 | <b>equivalent</b><br>54:17       |
| <b>easier</b><br>33:17       | <b>elector's</b><br>32:6         | <b>enforced</b><br>8:10 46:21      | <b>error</b><br>45:17 46:6       |
| <b>easy</b><br>45:1          | <b>electorate</b><br>53:1        | <b>enforcement</b><br>8:13 11:3    | 49:9,19                          |
| <b>Ed</b><br>5:21            | <b>electors</b><br>25:4 26:12    | 15:12,23 16:3                      | <b>essentially</b><br>10:22 16:2 |
| <b>effect</b><br>40:17       | 30:4 31:24                       | 62:23                              |                                  |
| <b>effectively</b><br>19:20  | 32:18 33:12                      | <b>engaged</b>                     |                                  |
|                              | 34:14,24                         |                                    |                                  |
|                              | 38:24                            |                                    |                                  |
|                              | <b>electors'</b><br>34:6 35:18   |                                    |                                  |

|                                                                                        |                                                                                                      |                                                                                                                                                                      |                                                                                                                  |
|----------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|
| <b>estoppel</b><br>45:2,5,22<br>46:7,17,19<br>49:5,13                                  | 40:4,16                                                                                              | <b>facilitate</b><br>30:22                                                                                                                                           | <b>filed</b><br>10:5,6,7,16<br>12:9,12,15<br>13:6 24:3<br>27:25 28:8<br>45:13 50:13<br>57:1,2 59:15,<br>18 60:21 |
| <b>evaluate</b><br>34:20                                                               | <b>exists</b><br>16:6,8,19<br>40:8 49:18<br>52:23 57:23<br>58:19                                     | <b>fact</b><br>16:7 18:9,19<br>21:8 35:15<br>37:25 39:15,<br>20 40:1,5<br>41:16,22<br>43:10,24<br>44:12 45:16<br>47:8 48:23,24<br>49:14 50:7<br>56:19 57:14<br>61:11 | <b>finding</b><br>19:13                                                                                          |
| <b>event</b><br>40:18                                                                  | <b>Expanded</b><br>26:16 27:1,20<br>28:13 30:5<br>32:10 33:11<br>36:22,25 37:7<br>53:12 54:18,<br>19 | <b>facts</b><br>28:14 49:14                                                                                                                                          | <b>finally</b><br>8:6 12:20<br>21:2 55:1                                                                         |
| <b>evidence</b><br>25:2,6 26:13<br>32:19 33:24<br>38:20,22<br>42:13 45:11<br>46:4 48:1 | <b>expedited</b><br>25:15 30:6<br>46:2                                                               | <b>failed</b><br>16:17 36:14<br>37:15 38:17                                                                                                                          | <b>find</b><br>13:4 29:2<br>48:12 64:23<br>65:6                                                                  |
| <b>evidentiary</b><br>45:14 46:2                                                       | <b>expending</b><br>26:24                                                                            | <b>failing</b><br>43:1                                                                                                                                               | <b>finding</b><br>16:16 65:17                                                                                    |
| <b>exact</b><br>10:5 11:21<br>12:6 35:4<br>61:24                                       | <b>explains</b><br>31:2                                                                              | <b>fairness</b><br>46:25                                                                                                                                             | <b>fine</b><br>31:18                                                                                             |
| <b>excluded</b><br>32:15                                                               | <b>explore</b><br>51:19                                                                              | <b>false</b><br>53:25                                                                                                                                                | <b>fined</b><br>48:14                                                                                            |
| <b>exclusive</b><br>29:18                                                              | <b>express</b><br>40:17                                                                              | <b>fashion</b><br>65:19                                                                                                                                              | <b>firm</b><br>63:7                                                                                              |
| <b>exclusively</b><br>55:12                                                            | <b>expressly</b><br>17:1                                                                             | <b>felony</b><br>17:7                                                                                                                                                | <b>firms</b><br>7:10                                                                                             |
| <b>excuse</b><br>47:18                                                                 | <b>extend</b><br>21:21                                                                               | <b>ferret</b><br>37:12                                                                                                                                               | <b>first-degree</b><br>17:4                                                                                      |
| <b>exhibit</b><br>38:1 60:10,14                                                        | <b>Extended</b><br>17:25                                                                             | <b>fide</b><br>58:19                                                                                                                                                 | <b>fit</b><br>46:15                                                                                              |
| <b>exist</b><br>17:10 19:21<br>40:20 41:19                                             | <b>extraneous</b><br>45:8                                                                            | <b>Fifteenth</b><br>65:5                                                                                                                                             | <b>flat-out</b><br>56:17 57:9                                                                                    |
| <b>existed</b><br>34:6 35:4                                                            | <b>eyes</b><br>37:3                                                                                  | <b>file</b><br>11:20 12:4<br>19:11 22:18<br>24:7                                                                                                                     | <b>flood</b><br>59:22                                                                                            |
| <b>existence</b><br>47:17                                                              | <hr/> <b>F</b> <hr/>                                                                                 |                                                                                                                                                                      | <b>Florida</b><br>5:9,12,18<br>6:12,14 7:12                                                                      |
| <b>existing</b>                                                                        | <b>face</b><br>46:8,9                                                                                |                                                                                                                                                                      |                                                                                                                  |

|                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8:7,11,14,16,<br>20,23,24 9:10<br>10:3,11,20<br>11:12 16:15<br>21:13 22:23<br>24:2 25:12<br>26:21 27:6<br>29:1,5 31:17<br>34:8 38:13<br>41:18 42:12<br>45:3 46:5,19<br>49:8 51:8<br>52:15 53:22<br>54:11,14<br>56:10,13 57:2<br>58:1 59:1<br>60:20 61:9 | 38:2<br><b>forging</b><br>38:12 60:6<br><b>form</b><br>24:15 25:9<br><b>forms</b><br>58:11<br><b>forum</b><br>49:24 62:1<br><b>forward</b><br>28:10<br><b>found</b><br>10:17,19,22<br>11:1 29:19<br><b>foundations</b><br>41:11<br><b>Fourth</b><br>12:22 13:8,9,<br>12,13,16<br>20:13 21:5<br>62:1,2,4 64:4<br><b>framed</b><br>44:9<br><b>frankly</b><br>37:20<br><b>fraud</b><br>24:13,20 25:6<br>26:13 28:24<br>30:9,15 32:5,<br>15,21 34:10<br>37:16,18,19,<br>23 38:2,10<br>50:16 55:4,<br>13,16 57:12,<br>21 59:10,13,<br>23,25 61:6<br>62:18<br><b>fraudulent</b><br>56:11 62:14 | <b>fraudulently</b><br>17:6 33:9,13<br><b>free</b><br>57:11,15<br><b>full</b><br>36:16<br><b>FVC-PAC</b><br>57:24<br><hr/> <b>G</b> <hr/> <b>Gambling</b><br>17:25 26:17<br>27:1,21 28:13<br>30:5 32:10<br>33:11 36:22,<br>25 37:7 53:12<br>54:18,20<br><b>gathered</b><br>7:18 24:16<br>25:8 54:25<br>59:1<br><b>gatherers</b><br>8:1<br><b>gathering</b><br>7:10 8:9<br>25:14 38:3<br><b>gave</b><br>26:7<br><b>general</b><br>8:1 11:2<br>15:11,13,23<br>16:4 18:3<br>21:17 34:8,<br>19,23 35:16,<br>23 50:17<br>62:23<br><b>GES</b><br>58:22 | <b>Gilchrist</b><br>26:1,5,15<br>29:8,19<br><b>Gillman</b><br>9:21 10:13<br>12:3,6 13:7,<br>16,23 14:14<br>17:22 19:9<br>20:1,12 21:3,<br>9 61:13,17,25<br>65:5<br><b>Gillman's</b><br>11:9,19,22<br>12:19 13:14<br>19:6,19,24<br>21:11,15<br>56:23<br><b>gist</b><br>47:23<br><b>give</b><br>38:21 62:10<br><b>goal</b><br>30:8<br><b>good</b><br>5:21 6:8 66:1<br><b>government</b><br>38:14 48:22<br><b>Governor</b><br>26:1,5 29:8,<br>9,20<br><b>grant</b><br>22:15 65:11<br><b>granted</b><br>8:14<br><b>Grassfire</b><br>5:22 12:14<br>22:7 60:4<br><b>great</b><br>5:13 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                                               |                                                                                                                                                                                             |                                                                                                              |                                                         |
|---------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|
| <b>greater</b><br>16:20 62:24                                 | <b>held</b><br>16:7,18                                                                                                                                                                      | 48:4,25<br>49:12,20,21<br>50:13,24 51:3<br>54:1,4,7<br>55:25 56:4<br>60:18 62:6<br>63:10,13<br>65:21,25 66:4 | 48:9 52:1,24<br>58:6                                    |
| <b>Grossman</b><br>5:20                                       | <b>helpful</b><br>64:22                                                                                                                                                                     |                                                                                                              | <b>illegally</b><br>27:4 28:19,22<br>57:4 58:12         |
| <b>ground</b><br>16:2                                         | <b>Henry</b><br>6:10                                                                                                                                                                        |                                                                                                              | <b>impact</b><br>53:19                                  |
| <b>grounds</b><br>25:4                                        | <b>Herron</b><br>5:25 7:1,5<br>9:12 11:1,5<br>12:15 14:4<br>54:5,7,8 56:7<br>57:18 61:15                                                                                                    | <b>Hood</b><br>28:18                                                                                         | <b>implemented</b><br>57:24                             |
| <b>group</b><br>44:15                                         |                                                                                                                                                                                             | <b>host</b><br>31:13 62:15                                                                                   | <b>implication</b><br>40:19                             |
| <b>guess</b><br>5:11                                          | <b>Herron's</b><br>62:18                                                                                                                                                                    | <b>Human</b><br>5:18                                                                                         | <b>important</b><br>26:8 32:10,25<br>36:19 56:8<br>60:2 |
| <b>guilty</b><br>17:4,6                                       | <b>Highlands</b><br>38:4                                                                                                                                                                    | <b>hundred</b><br>25:25 34:17                                                                                | <b>importantly</b><br>10:22 16:22<br>56:25              |
| <b>guys</b><br>66:1                                           | <b>highly</b><br>61:1                                                                                                                                                                       | <hr/> <b>I</b> <hr/>                                                                                         | <b>imposed</b><br>17:13                                 |
| <hr/> <b>H</b> <hr/>                                          | <b>hold</b><br>30:6                                                                                                                                                                         | <b>idea</b><br>13:2                                                                                          | <b>improper</b><br>56:14 61:1<br>64:5                   |
| <b>handle</b><br>30:13                                        | <b>holding</b><br>30:21                                                                                                                                                                     | <b>identical</b><br>59:19,20                                                                                 | <b>improperly</b><br>33:14                              |
| <b>happen</b><br>13:21                                        | <b>holdings</b><br>11:9                                                                                                                                                                     | <b>identity</b><br>46:22,24<br>49:16,18                                                                      | <b>impropriety</b><br>34:12                             |
| <b>happened</b><br>9:24 37:8<br>43:17 45:10,<br>15 60:22 63:4 | <b>home</b><br>27:14                                                                                                                                                                        | <b>ignore</b><br>61:5,7                                                                                      | <b>inappropriate</b><br>49:6                            |
| <b>happy</b><br>63:16                                         | <b>Honor</b><br>5:6,21 6:8,16<br>7:1,5 8:6<br>9:4,9,24 12:1<br>13:19 15:16<br>21:25 22:20<br>23:7 40:23<br>41:3,13<br>42:11,20<br>43:16 44:14,<br>24 45:10,12<br>46:11,13,18<br>47:12,19,20 | <b>illegal</b><br>20:16 24:8,<br>15,19 25:7<br>28:24 51:25<br>52:24 53:15<br>55:17 57:3,6<br>58:16,17,24     | <b>inclined</b><br>61:16,19<br>62:17                    |
| <b>head</b><br>30:1                                           |                                                                                                                                                                                             | <b>illegality</b><br>25:13 30:17,<br>19,23 32:11<br>36:14,17 37:9<br>41:20 43:9                              | <b>include</b><br>8:12                                  |
| <b>hear</b><br>5:15                                           |                                                                                                                                                                                             |                                                                                                              | <b>included</b><br>15:6 50:5,8                          |
| <b>heard</b><br>63:21                                         |                                                                                                                                                                                             |                                                                                                              | <b>includes</b><br>11:20 17:17                          |
| <b>hearing</b><br>22:21 30:6<br>46:1 63:3                     |                                                                                                                                                                                             |                                                                                                              |                                                         |

|                      |                     |                       |               |
|----------------------|---------------------|-----------------------|---------------|
| 55:2                 | <b>initio</b>       | 64:16                 | <b>issues</b> |
| <b>including</b>     | 58:17               | <b>interpretation</b> | 13:22 27:15   |
| 38:13                | <b>injunction</b>   | 40:4,6 47:22          | 29:4,24 31:9  |
| <b>incorporate</b>   | 10:8 11:15          | <b>interpreted</b>    | 33:5 39:1     |
| 21:16                | 12:10 14:24         | 40:3,11,18            | 45:2 47:8     |
| <b>incorrect</b>     | 20:3,24 41:8        | <b>intertwined</b>    | 54:19 61:17,  |
| 53:23                | 42:7,18 46:1        | 43:8 44:9             | 20            |
| <b>increase</b>      | <b>injunctive</b>   | <b>introduce</b>      | <hr/>         |
| 39:16                | 34:25               | 45:11                 | <b>J</b>      |
| <b>independent</b>   | <b>instance</b>     | <b>invalid</b>        | <hr/>         |
| 34:19                | 13:17 14:16         | 42:6 48:3,24          | <b>jail</b>   |
| <b>independently</b> | 15:4,5              | <b>invalidate</b>     | 48:12         |
| 27:17                | <b>instances</b>    | 25:8 55:18            | <b>Jeff</b>   |
| <b>individual</b>    | 15:25 37:15         | 56:9,11,12            | 6:9           |
| 21:10 26:22          | 42:15               | 64:13                 | <b>Jim</b>    |
| 31:5,6,20,23         | <b>institute</b>    | <b>invalidated</b>    | 5:17          |
| 32:1,6 33:21         | 8:2 15:13           | 56:14                 | <b>job</b>    |
| 34:23 35:23          | 35:16               | <b>investigate</b>    | 50:4          |
| <b>individuals</b>   | <b>instructive</b>  | 8:17 62:21            | <b>join</b>   |
| 10:23 21:18,         | 33:2,3 37:11        | <b>investing</b>      | 22:7 51:12,18 |
| 23 39:19,24          | <b>integrity</b>    | 34:22                 | <b>joined</b> |
| <b>indulging</b>     | 31:3,9 39:16        | <b>involves</b>       | 12:14         |
| 51:4 53:21           | <b>intend</b>       | 27:11,19              | <b>judge</b>  |
| <b>inextricably</b>  | 30:18               | <b>irregularities</b> | 9:21 10:13    |
| 43:8 44:9            | <b>intended</b>     | 17:11                 | 11:8,19,22    |
| <b>infected</b>      | 35:8 40:21          | <b>irrelevant</b>     | 12:2,6,19     |
| 52:1                 | <b>intent</b>       | 19:10 60:24           | 13:6,13,15,22 |
| <b>information</b>   | 30:8 40:19          | <b>issue</b>          | 14:14 17:21   |
| 50:16 62:22          | <b>interest</b>     | 16:21 18:17,          | 18:12 19:6,9, |
| <b>inherent</b>      | 16:21 29:18         | 23 20:16 23:5         | 13,18,24,25   |
| 31:24 32:2,6,        | <b>interfere</b>    | 26:11 28:7            | 20:12,24      |
| 17 34:13             | 42:5                | 29:2 36:24            | 21:3,9,11,15  |
| <b>initiative</b>    | <b>interfered</b>   | 44:1,2 46:12          | 22:5,16       |
| 25:13,20             | 24:4 41:15          | 48:16 49:4,5          | 23:13,22,23   |
| 26:19 32:14          | <b>interference</b> | 56:18 59:5            | 24:2,13,20,25 |
| 42:8 47:25           | 41:6,9 42:2         | <b>issued</b>         | 25:11,16      |
| 60:8,19 62:14        | 43:4 44:18          | 12:21                 | 26:16 27:13,  |
|                      | 47:13 48:7          |                       | 24 29:7,16    |
|                      |                     |                       | 30:3,25 32:1, |
|                      |                     |                       | 22 33:24      |

|                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 35:21 36:6,16<br>37:5,14,25<br>38:16 39:4<br>56:23 61:13,<br>17,24 62:8,11<br>63:9,23 64:19<br>65:5,15 66:3<br><b>judgment</b><br>18:10,14,15,<br>19,23 20:18,<br>19 27:3 30:7<br>34:25 44:10<br>46:3 58:3<br><b>judicial</b><br>31:24,25<br>32:13<br><b>jurisdiction</b><br>8:17,21 11:7<br>29:17 51:16<br>64:6<br><b>Justice</b><br>33:6,15 | 51:10 52:11,<br>19 53:5<br><b>lacked</b><br>28:1<br><b>landing</b><br>61:5<br><b>language</b><br>8:16 14:1<br>26:17 31:22<br>39:21,22<br><b>law</b><br>6:23 8:8<br>14:13 19:8,<br>12,14,23<br>25:12 27:13<br>32:4 34:17<br>36:8 40:4,5,<br>7,11,15 42:4<br>45:3 54:12<br>58:1,24 62:23<br><b>laws</b><br>40:15,16<br><b>lawsuit</b><br>16:11,12<br>43:18 44:20<br>47:9,24 48:7<br>50:19<br><b>lawyers</b><br>5:12 6:20<br><b>layering</b><br>40:10<br><b>lays</b><br>35:6<br><b>lead</b><br>59:23<br><b>lease</b><br>44:11<br><b>leave</b><br>62:21 65:15 | <b>legal</b><br>19:15 20:11<br>29:3,6<br><b>legality</b><br>44:6,11<br><b>legislation</b><br>39:16 40:2<br><b>legislative</b><br>35:9,12<br><b>legislators</b><br>40:1<br><b>legislature</b><br>14:10 15:3,<br>17,21 16:2<br>21:16 33:16,<br>20 34:3,7<br>40:7,9,16<br><b>Leon</b><br>10:1,9 27:9<br>28:1,16 30:5<br>60:3<br><b>letter</b><br>37:21 62:11<br>63:17<br><b>Lewis</b><br>18:12<br><b>light</b><br>40:9 60:17<br><b>likewise</b><br>14:15 21:24<br>36:22<br><b>limit</b><br>39:18<br><b>limited</b><br>10:25 15:4,5<br>21:12 35:20<br>45:18 47:21<br>64:25 | <b>list</b><br>23:18 31:13<br>41:18,20<br><b>listed</b><br>48:9<br><b>literally</b><br>40:10 43:11<br>46:14<br><b>litigate</b><br>29:3 62:5<br><b>litigation</b><br>33:9,12 41:5<br>49:7<br><b>live</b><br>64:2<br><b>Lombard</b><br>5:21,22 12:13<br>22:3,4,5<br>63:20,22,23<br><b>Long</b><br>18:12,20 65:7<br><b>looked</b><br>25:25 28:16<br><b>loose</b><br>61:5<br><b>losing</b><br>16:11,20<br>36:10<br><b>lost</b><br>36:11 42:24<br>43:7 47:16 |
| <hr/> <b>K</b> <hr/>                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>key</b><br>10:23<br><b>kind</b><br>22:9 45:17,21<br>46:6 47:17<br>48:22<br><b>Knight</b><br>39:7<br><b>knowledge</b><br>52:16,18                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <hr/> <b>L</b> <hr/>                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>lack</b><br>41:1 50:20                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <hr/> <b>M</b> <hr/>                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <b>made</b><br>9:13 37:21<br>39:10 42:12<br>44:21 45:18<br>51:6 54:17                                                                                                                                                                                                                                                                                                                                                                                   |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 56:7,17 61:1,<br>15 62:3 63:25<br>65:4<br><b>main</b><br>23:19 47:23<br><b>make</b><br>7:13 9:23<br>21:7 23:4,17<br>24:16 37:15<br>43:1 44:20<br>45:13 58:14<br>59:9,25<br><b>makes</b><br>13:2 25:22<br>51:8 58:2,10<br><b>making</b><br>41:1<br><b>Management</b><br>5:19<br><b>Mantzaris</b><br>39:8<br><b>Mark</b><br>5:25 7:1,2<br>54:8<br><b>materials</b><br>7:6<br><b>matter</b><br>15:11 30:13<br>38:3 39:20<br>40:5 43:10,24<br>47:8 50:17<br>51:17<br><b>matters</b><br>45:7 55:24<br>63:5<br><b>Mckee</b><br>5:14,17 9:9<br>22:7 54:3,4<br>56:3,4 63:10, | 13 65:21,25<br>66:4<br><b>Mckee's</b><br>63:7<br><b>Mcvay</b><br>23:9<br><b>meaningful</b><br>42:3<br><b>means</b><br>8:18 35:6<br><b>mechanism</b><br>15:23 32:14<br><b>mechanisms</b><br>31:2,12<br><b>meet</b><br>38:17 54:21<br><b>member</b><br>29:23 60:6<br><b>mention</b><br>17:8 18:9<br>19:25<br><b>mentioned</b><br>9:14 11:2,6<br>14:4 20:6<br>57:18 59:12<br><b>mentioning</b><br>23:11<br><b>mentions</b><br>18:8<br><b>method</b><br>7:17 32:10<br>51:25 52:23<br><b>methods</b><br>53:10<br><b>Miami</b><br>43:14,15<br>50:21 | <b>mid-2021</b><br>60:22<br><b>middle</b><br>16:2<br><b>minimum</b><br>13:23 32:13<br><b>minute</b><br>62:9,10<br><b>minutes</b><br>22:3 23:3<br>51:4<br><b>misconduct</b><br>36:1<br><b>misdemeanor</b><br>14:7 17:4<br><b>misplaced</b><br>36:7<br><b>misreading</b><br>38:8<br><b>missed</b><br>6:20<br><b>misstated</b><br>30:1<br><b>money</b><br>59:22<br><b>months</b><br>27:14<br><b>Moreno</b><br>6:10<br><b>motion</b><br>9:15,25 10:7,<br>9,12 11:14,17<br>12:10,12,14,<br>18 20:2<br>22:15,18 23:2<br>27:25 28:2<br>34:5 37:14<br>41:21,24 | 45:6,12 49:21<br>50:13,25<br>51:7,18 64:2,<br>9,12<br><b>motions</b><br>5:7 6:21<br>19:21 24:2<br>25:11 46:3<br>51:13 65:4,<br>11,22<br><b>movants</b><br>6:24 23:3<br>34:5 38:17<br>51:9,13 53:23<br>65:12<br><b>move</b><br>11:23 51:12,<br>18 52:2<br><b>moving</b><br>12:2<br><b>mute</b><br>5:14<br><b>mutuality</b><br>46:19<br><hr/> <b>N</b> <hr/> <b>naming</b><br>44:2<br><b>nature</b><br>24:9<br><b>Neal</b><br>39:8<br><b>neglects</b><br>17:3<br><b>night</b><br>12:20 37:20<br><b>note</b><br>18:16,22 60:2 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                                             |                                                                                                                                                                                               |                                                                                                                                         |                                                                         |
|-------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| <b>noted</b><br>12:18                                       | <b>one-count</b><br>57:16                                                                                                                                                                     | <b>outset</b><br>24:17                                                                                                                  | <b>paragraphs</b><br>24:22 58:14<br>59:11 62:20                         |
| <b>notes</b><br>21:20                                       | <b>one-half</b><br>54:22                                                                                                                                                                      | <b>overruled</b><br>37:6                                                                                                                | <b>parcel</b><br>44:4                                                   |
| <b>number</b><br>12:23 53:16<br>54:16 55:1<br>59:1 64:7,8   | <b>operating</b><br>6:15 7:10                                                                                                                                                                 | <b>overwhelming</b><br>40:15                                                                                                            | <b>part</b><br>10:6 44:4                                                |
| <b>numbers</b><br>7:20 53:12                                | <b>opinion</b><br>32:16                                                                                                                                                                       | <hr/> <b>P</b> <hr/>                                                                                                                    | <b>participant</b><br>23:18                                             |
| <b>numerous</b><br>16:13                                    | <b>opponent</b><br>28:2 53:13                                                                                                                                                                 | <b>p.m.</b><br>5:2 66:6                                                                                                                 | <b>participate</b><br>22:22                                             |
| <hr/> <b>O</b> <hr/>                                        | <b>opponents</b><br>27:24,25<br>33:25                                                                                                                                                         | <b>PAC</b><br>25:5 26:18,21<br>27:5,21 28:1,<br>3,4,10 29:22,<br>25 30:1 31:4,<br>6                                                     | <b>parties</b><br>18:23 21:22<br>46:20,22,24<br>49:16,19<br>52:22 55:22 |
| <b>obligations</b><br>34:20                                 | <b>opportunity</b><br>32:23 38:22<br>55:25                                                                                                                                                    | <b>paid-per-<br/>signature</b><br>8:8                                                                                                   | <b>party</b><br>9:2 20:7<br>29:11 43:13<br>50:5,7 51:15,<br>24 52:14,18 |
| <b>obtain</b><br>60:21                                      | <b>opposed</b><br>26:22                                                                                                                                                                       | <b>Palm</b><br>9:21 10:5<br>12:7 13:15<br>19:3 20:1<br>27:12 45:15<br>46:13 47:3,6,<br>20 56:19<br>57:2,7 59:10,<br>18,20 61:13<br>64:1 | <b>passed</b><br>40:15                                                  |
| <b>obtained</b><br>27:4 28:19,<br>22,23,24<br>33:8,14 58:12 | <b>opposing</b><br>26:18 28:4                                                                                                                                                                 | <b>paperwork</b><br>8:13                                                                                                                | <b>passing</b><br>21:8                                                  |
| <b>obtaining</b><br>14:25 55:14                             | <b>order</b><br>9:22 10:15<br>11:9,19,22,<br>23,24 12:19,<br>21,25 13:14,<br>17,23,24<br>19:4,6,19,24<br>20:2,4 21:11,<br>15,23 26:10<br>37:25 56:20,<br>23,24 60:14,<br>15 61:12<br>65:5,6,7 | <b>paragraph</b><br>24:23 38:12<br>55:4,5,6,7,8<br>57:22 58:2,5,<br>10,15,18,19<br>59:14,16,17,<br>18 60:3<br>62:19,25                  | <b>past</b><br>63:5                                                     |
| <b>occurred</b><br>30:10 46:13<br>50:16                     | <b>orders</b><br>65:13,22                                                                                                                                                                     |                                                                                                                                         | <b>pay</b><br>56:15                                                     |
| <b>occurring</b><br>30:23                                   | <b>original</b><br>6:6,11 12:5                                                                                                                                                                |                                                                                                                                         | <b>paying</b><br>57:4                                                   |
| <b>odd</b><br>13:4                                          | <b>originally</b><br>24:3                                                                                                                                                                     |                                                                                                                                         | <b>payment</b><br>7:11 25:7<br>28:23 48:3<br>57:6,23 58:16              |
| <b>office</b><br>23:9 38:4<br>62:16                         |                                                                                                                                                                                               |                                                                                                                                         | <b>penalties</b><br>17:1,9,18<br>32:4 48:22                             |
| <b>officers</b><br>27:18 64:14                              |                                                                                                                                                                                               |                                                                                                                                         |                                                                         |
| <b>official</b><br>17:3,5                                   |                                                                                                                                                                                               |                                                                                                                                         |                                                                         |

|                                                                                                                             |                                                                                                                                               |                                                                                                                                                        |                                                                  |
|-----------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|
| <b>penalty</b><br>14:10 15:20,<br>22                                                                                        | <b>petitions</b><br>7:8,19,20<br>24:16 25:8<br>27:4 28:20,<br>22,23 38:3,13<br>39:25 47:25<br>54:22 58:15<br>62:14                            | 49:17                                                                                                                                                  | <b>portion</b><br>11:8 25:19<br>36:5                             |
| <b>pending</b><br>12:22                                                                                                     | <b>pick</b><br>39:9                                                                                                                           | <b>play</b><br>44:11                                                                                                                                   | <b>portions</b><br>25:19                                         |
| <b>people</b><br>25:21 35:14                                                                                                | <b>picked</b><br>16:2                                                                                                                         | <b>plead</b><br>34:18 62:24                                                                                                                            | <b>position</b><br>41:25                                         |
| <b>per-petition</b><br>48:3                                                                                                 | <b>place</b><br>31:12                                                                                                                         | <b>pleadings</b><br>9:22 61:3                                                                                                                          | <b>possibly</b><br>52:3                                          |
| <b>perform</b><br>17:3                                                                                                      | <b>placement</b><br>34:15 52:25                                                                                                               | <b>pleads</b><br>37:19                                                                                                                                 | <b>posting</b><br>26:3                                           |
| <b>performed</b><br>28:10                                                                                                   | <b>plain</b><br>14:1                                                                                                                          | <b>pled</b><br>20:15 22:23<br>24:20,21 36:2<br>38:7,8,10<br>53:2                                                                                       | <b>posture</b><br>13:5 27:2,20<br>28:15,17<br>31:10              |
| <b>performs</b><br>17:5                                                                                                     | <b>plaintiff</b><br>5:22 22:6,24<br>30:2 42:17<br>52:15                                                                                       | <b>plurality</b><br>33:7                                                                                                                               | <b>postures</b><br>27:18                                         |
| <b>permit</b><br>23:14 49:21                                                                                                | <b>plaintiff/<br/>counterdefendan<br/>ts</b><br>43:1                                                                                          | <b>point</b><br>7:22 8:19<br>10:23 14:13<br>18:6 19:20<br>21:7 44:24<br>46:11 47:6,19<br>49:7,10,11<br>50:22 55:16<br>56:7 59:9<br>61:15 62:11<br>64:7 | <b>power</b><br>25:18 34:23,<br>24 35:13                         |
| <b>person</b><br>5:23 8:3 14:6<br>15:9 18:15<br>20:8                                                                        | <b>plaintiffs</b><br>5:8 6:7<br>24:12,25<br>26:23 27:2<br>31:13 41:2,3<br>42:9 43:19<br>46:14 47:10,<br>18 50:19 52:8<br>53:2,3 55:8<br>60:25 | <b>Powerpoint</b><br>6:15                                                                                                                              | <b>Powerpoint</b><br>6:15                                        |
| <b>persuasive</b><br>13:23 65:6,8                                                                                           | <b>plaintiffs/<br/>counterdefendan<br/>ts</b><br>43:1                                                                                         | <b>pointed</b><br>36:9 49:2                                                                                                                            | <b>powers</b><br>35:16                                           |
| <b>pertain</b><br>56:20                                                                                                     | <b>plaintiffs/<br/>counterdefendan<br/>ts</b><br>43:1                                                                                         | <b>points</b><br>7:13 9:12<br>22:9,14 33:15<br>35:5 54:9<br>56:5,6 63:24                                                                               | <b>practices</b><br>9:1                                          |
| <b>petition</b><br>8:1 14:19,23,<br>25 25:14 31:7<br>35:25 36:17<br>39:23 52:4,25<br>53:10,20 57:4<br>58:23 60:18,<br>19,20 | <b>plaintiffs/<br/>counterdefendan<br/>ts</b><br>43:1                                                                                         | <b>political</b><br>40:12 43:20<br>44:2                                                                                                                | <b>preclude</b><br>7:7                                           |
| <b>petition-<br/>gathering</b><br>28:14 30:10,<br>14,24 31:8<br>37:10 39:17                                                 | <b>plaintiffs/<br/>counterdefendan<br/>ts</b><br>43:1                                                                                         | <b>Polston</b><br>33:6,15                                                                                                                              | <b>prejudice</b><br>9:7 10:17<br>16:16 22:2<br>61:18,21<br>65:20 |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>present</b><br/>6:6,16 11:1<br/>32:23 33:24<br/>38:22 58:20<br/>65:19</p> <p><b>presentations</b><br/>64:21</p> <p><b>presented</b><br/>49:24 65:10</p> <p><b>president</b><br/>29:25 40:13</p> <p><b>press</b><br/>38:5</p> <p><b>presumed</b><br/>40:7</p> <p><b>pretend</b><br/>19:20</p> <p><b>pretty</b><br/>35:20</p> <p><b>prevent</b><br/>15:14</p> <p><b>preventing</b><br/>14:24</p> <p><b>prison</b><br/>48:12</p> <p><b>private</b><br/>7:25 8:4 9:1<br/>10:17,19,23<br/>11:11 14:3,8,<br/>11,15,17<br/>15:4,6,17,24<br/>16:6,7,18<br/>17:19 18:18<br/>21:13,17,22<br/>22:12 51:10,<br/>14 53:5<br/>54:10,12<br/>64:24 65:18</p> | <p><b>privity</b><br/>47:5</p> <p><b>probation</b><br/>37:25 60:15</p> <p><b>procedural</b><br/>13:5</p> <p><b>Procedure</b><br/>41:19</p> <p><b>proceed</b><br/>28:4 30:8<br/>39:4 51:11<br/>53:24</p> <p><b>proceeded</b><br/>53:8</p> <p><b>proceeding</b><br/>10:4 18:10<br/>46:12</p> <p><b>proceedings</b><br/>5:2 13:15<br/>23:10 66:5</p> <p><b>process</b><br/>25:13,16,22<br/>30:10,14,24<br/>31:8 33:16,<br/>17,20 34:13<br/>36:15 37:10</p> <p><b>processes</b><br/>39:17</p> <p><b>procured</b><br/>32:20</p> <p><b>product</b><br/>59:7</p> <p><b>prohibit</b><br/>28:21</p> <p><b>prohibited</b><br/>9:1 57:25</p> <p><b>proper</b><br/>12:9 13:12</p> | <p>29:11 30:3,13<br/>32:10 50:5,7</p> <p><b>properly</b><br/>13:18 32:19<br/>45:1 49:2,24</p> <p><b>proposals</b><br/>32:14</p> <p><b>propose</b><br/>25:18</p> <p><b>proposition</b><br/>19:16</p> <p><b>prosecute</b><br/>11:14</p> <p><b>prosecutor</b><br/>31:19</p> <p><b>protect</b><br/>31:2 35:11</p> <p><b>protected</b><br/>35:9</p> <p><b>prove</b><br/>63:3,5</p> <p><b>proven</b><br/>48:2 53:18</p> <p><b>provide</b><br/>11:10 14:17<br/>15:12,17<br/>18:17 32:18<br/>64:24</p> <p><b>provided</b><br/>15:19,22 16:3<br/>17:1,9 59:7<br/>62:22</p> <p><b>providing</b><br/>52:3</p> <p><b>provision</b><br/>16:8 17:16,17<br/>21:17 35:6<br/>46:21</p> | <p><b>provisions</b><br/>9:2 11:13<br/>14:6 15:19,20<br/>16:1,14,25<br/>40:22 46:16</p> <p><b>public</b><br/>37:22 62:12</p> <p><b>purported</b><br/>32:20</p> <p><b>purpose</b><br/>35:7 39:15<br/>49:15</p> <p><b>purposes</b><br/>19:21 60:8</p> <p><b>pursuant</b><br/>8:15 12:16<br/>16:4 18:10<br/>40:4 58:16</p> <p><b>pursue</b><br/>39:13 49:22</p> <p><b>pursuing</b><br/>48:22</p> <p><b>put</b><br/>5:11 26:23<br/>48:12,19<br/>55:24</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <hr/> <p><b>question</b><br/>18:13 30:17<br/>33:3 43:25<br/>44:7,8,11<br/>52:2</p> <p><b>questions</b><br/>44:8</p> <p><b>quick</b><br/>54:9 55:5<br/>63:24</p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                            |                                      |                                    |                                 |
|----------------------------|--------------------------------------|------------------------------------|---------------------------------|
| <b>quicker</b><br>33:18    | 11:8 16:23                           | <b>referencing</b><br>63:18        | 58:22                           |
| <b>quickly</b><br>10:13    | <b>reads</b><br>47:19                | <b>referred</b><br>59:14           | <b>release</b><br>38:5          |
| <b>quiet</b><br>22:10      | <b>real</b><br>42:12 64:25           | <b>referring</b><br>9:19 35:24     | <b>relevance</b><br>20:9,22     |
| <b>quote</b><br>8:16       | <b>reason</b><br>11:16 37:10         | 58:11                              | <b>relevant</b><br>9:3 20:14,25 |
|                            | 50:9                                 | <b>refiled</b><br>12:5             | 58:9 62:19                      |
|                            | <b>reasonable</b><br>23:6            | <b>regard</b><br>43:25             | <b>reliance</b><br>36:6,8       |
| <hr/> <b>R</b> <hr/>       | <b>reasons</b><br>17:21,22           | <b>register</b><br>39:25           | <b>relied</b><br>26:15 47:7     |
| <b>race</b><br>36:11       | 21:25 38:16                          | <b>registered</b><br>14:20,24 15:1 | <b>relief</b><br>13:12 22:25    |
| <b>rail</b><br>29:15       | 61:20                                | <b>registration</b><br>7:25 32:4   | 34:25 41:8                      |
| <b>raise</b><br>42:21,23   | <b>receive</b><br>7:19               | 65:2                               | 50:6,8,11                       |
| 43:14 45:24                | <b>recent</b><br>27:13               | <b>rejected</b><br>9:20 43:23      | 52:3,21 55:7,                   |
| 47:14 48:19,               | <b>recognized</b><br>14:14 18:13     | 61:25                              | 11 56:8                         |
| 23 49:3                    | 26:6                                 | <b>relate</b><br>63:6              | <b>relies</b><br>47:9,24        |
| <b>raised</b><br>9:16 11:4 | <b>reconsider</b><br>13:10           | <b>related</b><br>9:10 35:25       | <b>rely</b><br>24:8 39:11       |
| 19:5 23:5                  | <b>reconsideration</b><br>11:23 12:2 | 37:6 38:2                          | 47:2,23 65:12                   |
| 41:23 42:24                | <b>record</b><br>5:12 23:9           | 39:2                               | <b>remedies</b><br>15:22        |
| 45:6,22 49:7               | <b>redress</b><br>31:25 32:7         | <b>relates</b><br>27:10 39:22      | <b>remedy</b><br>61:19,22       |
| <b>raises</b><br>48:4      | <b>refer</b><br>9:17 15:11           | 63:2                               | <b>remote</b><br>5:2            |
| <b>raising</b><br>48:15    | <b>reference</b><br>9:18 19:24       | <b>relating</b><br>39:21 45:21     | <b>removed</b><br>32:2 53:20    |
| <b>ran</b><br>10:4         | 20:23 21:8                           | <b>relationship</b><br>58:6,8      | <b>removing</b><br>52:3         |
| <b>rare</b><br>42:14       | 55:1,13                              | <b>relationships</b><br>41:6,10    | <b>repeal</b><br>40:16          |
| <b>reach</b><br>53:11      | <b>references</b><br>56:24 61:7      | 44:19,20                           | <b>repeat</b><br>37:17          |
| <b>reached</b><br>20:12    |                                      | 47:13 55:11                        |                                 |
| <b>read</b><br>6:21,22 7:6 |                                      |                                    |                                 |

|                                             |                                                                                |                                                                                             |                                                                                                                              |
|---------------------------------------------|--------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| <b>replete</b><br>40:5 46:4                 | 8:6 9:5 11:4<br>18:3,22 21:21<br>40:21 47:22<br>49:4 50:1,12,<br>15,18 55:3,10 | <b>reversible</b><br>45:17 46:6<br>49:9                                                     | 27:15 35:7<br>41:18 46:24<br>47:6 48:10<br>61:12,16                                                                          |
| <b>reply</b><br>54:3,5                      |                                                                                | <b>review</b><br>25:15 31:21,<br>25 55:5 61:19<br>65:7                                      | <b>rules</b><br>19:13 41:18                                                                                                  |
| <b>reporter</b><br>5:5                      | <b>respectfully</b><br>19:6 22:1                                               |                                                                                             | <b>ruling</b><br>47:21                                                                                                       |
| <b>represent</b><br>6:11                    | <b>respective</b><br>16:25                                                     | <b>reviewed</b><br>6:23 9:22<br>10:14                                                       | <b>run</b><br>65:13                                                                                                          |
| <b>representative</b><br>25:5               | <b>respond</b><br>24:2 56:1<br>63:11                                           | <b>reviewing</b><br>7:8 44:7                                                                | <hr/> <b>s</b> <hr/>                                                                                                         |
| <b>representer</b><br>25:5                  | <b>response</b><br>23:2,4 24:25<br>51:7 63:8                                   | <b>revision</b><br>25:19                                                                    | <b>sanctions</b><br>17:10,12                                                                                                 |
| <b>representing</b><br>39:8                 | <b>responses</b><br>6:22 23:4                                                  | <b>revisit</b><br>13:22                                                                     | <b>Schacknow</b><br>6:9,15 23:14<br>39:3                                                                                     |
| <b>request</b><br>22:1                      | <b>responsibilitie<br/>s</b><br>34:20 48:21                                    | <b>revocation</b><br>31:7 33:8,13,<br>17                                                    | <b>scheme</b><br>7:11 8:9<br>24:15,19<br>55:10,12,17<br>56:15 57:7<br>58:1,8,13,16,<br>21                                    |
| <b>requested</b><br>30:7                    | <b>responsibility</b><br>7:17,18                                               | <b>revokes</b><br>34:3                                                                      | <b>school</b><br>36:11                                                                                                       |
| <b>required</b><br>24:7                     | <b>rest</b><br>38:25 57:25                                                     | <b>Rick</b><br>6:12 26:21                                                                   | <b>screen</b><br>23:15,16,19,<br>20 39:4                                                                                     |
| <b>requirement</b><br>39:23 46:16           | <b>result</b><br>9:5 18:11<br>47:16                                            | <b>ridiculous</b><br>19:22                                                                  | <b>seconds</b><br>63:11                                                                                                      |
| <b>requirements</b><br>52:24 53:17<br>54:21 | <b>results</b><br>16:13                                                        | <b>rights</b><br>18:16,25 19:1<br>32:3 34:6,14<br>35:18 39:12,<br>18 40:3,20<br>49:22 55:23 | <b>Secretary</b><br>6:2,5 7:21<br>9:6 15:8,10<br>20:20 22:19<br>26:3 27:7,11,<br>22 28:3,5,11,<br>18,21 37:21<br>50:12,13,15 |
| <b>requires</b><br>46:19                    | <b>retain</b><br>62:4                                                          | <b>rightly</b><br>36:9                                                                      |                                                                                                                              |
| <b>requisite</b><br>29:6                    | <b>retard</b><br>30:22                                                         | <b>role</b><br>34:18,19                                                                     |                                                                                                                              |
| <b>reserved</b><br>25:20                    | <b>reversal</b><br>62:4                                                        | <b>room</b><br>6:17 23:14,16                                                                |                                                                                                                              |
| <b>resolution</b><br>30:16                  | <b>reverse</b><br>13:9,13                                                      | <b>rule</b>                                                                                 |                                                                                                                              |
| <b>resources</b><br>26:24 34:21             |                                                                                |                                                                                             |                                                                                                                              |
| <b>respect</b><br>7:14,15,22,23             |                                                                                |                                                                                             |                                                                                                                              |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 51:11,17,19<br>52:2,3,7,10,<br>16,20 53:7,9,<br>13,17,25<br>62:12,22<br><b>section</b><br>7:11,12,23<br>8:15,24 10:25<br>11:10 14:4,<br>15,17 15:7,<br>10,14,15<br>16:1,4,23<br>17:2 18:7<br>21:19,21<br>25:17 35:5,17<br>39:22 40:21<br>47:22,24<br>54:11 56:18,<br>24 57:6 59:14<br><b>Sections</b><br>14:1 64:24<br><b>seek</b><br>11:12 14:24<br>18:14,24<br>20:25 26:2<br>31:24,25 32:7<br>33:13 62:20<br><b>seeking</b><br>12:8 13:11<br>16:12 18:15<br>28:21 34:25<br>42:6 56:10,12<br>58:3 60:20<br>64:12,13<br><b>seeks</b><br>7:7<br><b>self-executing</b><br>35:6<br><b>sense</b><br>13:3 47:12 | 48:13<br><b>sentence</b><br>38:15 63:4<br><b>sentenced</b><br>38:2 60:5<br><b>separate</b><br>37:14 50:17<br><b>series</b><br>24:20,22<br><b>Services</b><br>5:19<br><b>set</b><br>7:24 22:21,23<br>25:17 33:9<br>57:14 65:15<br><b>setting</b><br>25:23 26:19<br><b>share</b><br>12:23 23:14,<br>20 63:17<br><b>sharing</b><br>23:15 39:3<br><b>Shepherd</b><br>6:8,9 23:12,<br>13,22,25 24:1<br>29:16 35:21<br>39:10 49:2<br>60:7,10 62:8,<br>11 63:14,16<br>65:15 66:3<br><b>sheriff</b><br>31:16<br><b>sheriff's</b><br>38:4<br><b>shield</b><br>64:15<br><b>shoes</b><br>47:2 | <b>short</b><br>59:22<br><b>shortly</b><br>19:3<br><b>shown</b><br>41:17<br><b>side</b><br>65:14<br><b>signature</b><br>37:16 60:6<br><b>signatures</b><br>7:8,10,18,20<br>8:9 15:1<br>32:20 33:8,14<br>38:12,13 42:7<br>54:20,24<br>55:14,18,20<br>56:9,12,13<br>59:1 60:21<br>64:13<br><b>signed</b><br>55:19<br><b>signing</b><br>55:19<br><b>similar</b><br>18:20 27:20<br>28:15,17<br>57:18<br><b>Simmons</b><br>6:13 39:5,6,7<br>51:5<br><b>Simmons'</b><br>64:8<br><b>simple</b><br>39:15 45:16<br><b>simply</b><br>14:2 16:5<br>18:5 22:12<br>40:14,20 | 41:13 48:25<br>49:19 50:10<br><b>single</b><br>60:4<br><b>situation</b><br>44:25<br><b>small</b><br>36:5<br><b>smear</b><br>60:25<br><b>Smith</b><br>16:10,23<br>17:15,23<br>36:6,8,19,24<br>37:2,6,11<br><b>So.3d</b><br>43:16<br><b>sole</b><br>7:18<br><b>solely</b><br>53:24<br><b>solution</b><br>45:1<br><b>sort</b><br>30:11 32:3<br>53:15<br><b>sought</b><br>28:18 35:1<br>45:11 55:8,11<br>56:8<br><b>sounds</b><br>23:6<br><b>speaking</b><br>6:13,14 9:9<br><b>special</b><br>50:6<br><b>specific</b><br>7:24 11:8 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                     |                   |                        |                     |
|---------------------|-------------------|------------------------|---------------------|
| 15:3 24:20          | 45:2,4,22         | <b>statute</b>         | 13:24 50:14         |
| <b>specifically</b> | 46:7 49:5         | 7:24 8:5,7,            | <b>subpart</b>      |
| 8:14,21 15:8        | 50:20 51:6,8      | 10,13,17               | 16:1                |
| 16:18 19:24         | 52:11,14,19       | 14:5,6,9               | <b>subsection</b>   |
| 24:23 32:9          | 53:22 57:1        | 17:8,21 18:10          | 35:19               |
| 43:23 48:9          | <b>stands</b>     | 22:13 31:7             | <b>substitute</b>   |
| 49:8 50:22          | 53:2              | 33:8 36:13             | 43:19               |
| 54:24 55:9          | <b>start</b>      | 39:20 48:11            | <b>subtracted</b>   |
| 56:24 57:3          | 5:13              | 59:1                   | 32:5                |
| 58:15 59:5,         | <b>state</b>      | <b>statutes</b>        | <b>succeed</b>      |
| 10,21 63:6          | 6:3,5 7:21        | 7:12,16 8:16           | 53:3                |
| <b>specificity</b>  | 8:10,11,22        | 10:18 16:5,            | <b>succeeds</b>     |
| 62:24               | 15:8 16:17        | 15,19 18:17            | 51:24               |
| <b>speedy</b>       | 20:20 22:19       | 54:11                  | <b>sue</b>          |
| 30:16               | 24:13 26:3        | <b>statutory</b>       | 17:19 18:3          |
| <b>sponsor</b>      | 27:7,11,22        | 16:25                  | 27:15 34:12         |
| 7:9 27:5,21         | 28:3,5,11,18,     | <b>STENOGRAPHER</b>    | 36:12               |
| 51:22 53:11,        | 22 29:1,5         | 5:6                    | <b>sued</b>         |
| 14                  | 31:16,20 36:4     | <b>stepped</b>         | 24:3 27:5,6,        |
| <b>staff</b>        | 37:21,24          | 23:9                   | 7,9,11,21,23        |
| 38:14 60:6          | 42:11 46:5,19     | <b>stop</b>            | 36:12 41:4,12       |
| <b>stance</b>       | 50:12,13,15       | 39:3 42:7              | 43:4,13,20          |
| 23:1                | 51:11 52:9,20     | <b>story</b>           | 48:5,18 57:7        |
| <b>stand</b>        | 54:14 62:13,      | 60:16                  | <b>SUF</b>          |
| 47:2                | 22                | <b>straightforward</b> | 11:11,13            |
| <b>standing</b>     | <b>stated</b>     | 9:15                   | <b>sufficiency</b>  |
| 6:11,14 10:3,       | 17:22 30:8        | <b>strategic</b>       | 38:7                |
| 11,20 11:12,        | 40:14 41:13       | 63:25 64:3             | <b>sufficient</b>   |
| 13 18:1,2,3,8       | 48:25 49:8        | <b>strategy</b>        | 31:12 35:7          |
| 21:13 22:23         | 60:7 61:20        | 27:19                  | 53:11 54:22         |
| 24:1 25:4,6         | <b>statement</b>  | <b>strike</b>          | 55:3                |
| 26:7,8,20           | 40:6,17           | 64:9                   | <b>sufficiently</b> |
| 28:1,7 29:2,        | <b>statements</b> | <b>structure</b>       | 62:18               |
| 3,6,13,19,22        | 56:16 61:1        | 24:9 28:24             | <b>suggest</b>      |
| 38:18 39:19         | <b>states</b>     | 57:23                  | 46:23,25            |
| 40:11 41:1          | 14:5 40:14        | <b>structures</b>      | 49:17 52:6          |
| 42:10,14,15,        | 58:10             | 25:7                   | <b>suggestion</b>   |
| 21,22 43:5,         | <b>statewide</b>  | <b>submit</b>          | 50:1                |
| 13,22,25            | 31:19             |                        |                     |
| 44:1,13,22          |                   |                        |                     |

|                                                                                |                                                      |                                                                                                  |                                                                     |
|--------------------------------------------------------------------------------|------------------------------------------------------|--------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| <b>suing</b><br>57:14,20,21                                                    | <b>talked</b><br>15:21 18:4                          | 50:4 61:8<br>62:15 63:4<br>65:9                                                                  | 32:16 60:19<br>63:19 64:11,<br>22 65:24                             |
| <b>suit</b><br>28:8,18                                                         | <b>talking</b><br>34:16 48:20<br>58:7 60:9           | <b>thinking</b><br>33:2                                                                          | <b>tool</b><br>33:12 34:4<br>35:3                                   |
| <b>suits</b><br>30:4                                                           | <b>talks</b><br>55:9                                 | <b>thinks</b><br>63:14                                                                           | <b>tools</b><br>34:2                                                |
| <b>summarize</b><br>17:10                                                      | <b>taught</b><br>57:13                               | <b>third-degree</b><br>17:7                                                                      | <b>top</b><br>40:10                                                 |
| <b>summary</b><br>9:4 46:3                                                     | <b>taxpayer</b><br>26:6 29:5,10,<br>21               | <b>third-party</b><br>6:7 20:21<br>22:24 51:20,<br>21 52:5,8,15<br>53:3,6 55:8<br>64:17          | <b>tortious</b><br>41:6,9 42:2<br>43:4 44:18<br>47:12 48:7<br>64:16 |
| <b>superintendent</b><br>36:11                                                 | <b>taxpayers</b><br>26:12                            | <b>thought</b><br>65:8                                                                           | <b>tortiously</b><br>24:4 41:15<br>42:5                             |
| <b>Supervisor</b><br>5:9 6:1 7:7,<br>15 9:6 20:20<br>27:9,12,22<br>28:6,9 47:3 | <b>temporary</b><br>10:7 11:14<br>12:10 20:2<br>46:1 | <b>throw</b><br>55:20                                                                            | <b>torture</b><br>46:14                                             |
| <b>supervisors</b><br>27:8,15 37:23                                            | <b>ten</b><br>63:11                                  | <b>throw-away</b><br>55:6                                                                        | <b>tortured</b><br>46:14                                            |
| <b>support</b><br>45:20                                                        | <b>term</b><br>57:11,15                              | <b>throwing</b><br>57:11 59:25                                                                   | <b>touch</b><br>9:13                                                |
| <b>Supreme</b><br>25:24 26:5<br>29:9 30:20<br>31:1,4,6,21<br>37:3 38:23        | <b>terms</b><br>8:9 25:23                            | <b>tied</b><br>38:5                                                                              | <b>touches</b><br>51:5                                              |
| <b>sword</b><br>64:17                                                          | <b>Terry</b><br>18:12                                | <b>time</b><br>6:16 13:8<br>19:12 22:22<br>26:24 34:9<br>38:21,25 48:4<br>49:7,10 59:22<br>65:15 | <b>transmit</b><br>7:20                                             |
| <b>sworn</b><br>24:11                                                          | <b>test</b><br>47:15                                 | <b>timing</b><br>9:23                                                                            | <b>Trawick's</b><br>42:13                                           |
| <hr/> <b>T</b> <hr/>                                                           | <b>testimony</b><br>24:11 32:18                      | <b>title</b><br>30:1 62:13                                                                       | <b>trial</b><br>16:15 30:3,21<br>32:23 46:2                         |
| <b>tactical</b><br>63:25 64:3                                                  | <b>theoretically</b><br>18:1                         | <b>today</b><br>26:11 27:19                                                                      | <b>true</b><br>17:15 18:5<br>20:11 21:14<br>61:2                    |
| <b>tainted</b><br>52:24 53:16                                                  | <b>theory</b><br>62:4                                |                                                                                                  | <b>Tuesday</b>                                                      |
| <b>taking</b><br>40:3                                                          | <b>thing</b><br>49:11 60:2                           |                                                                                                  |                                                                     |
|                                                                                | <b>things</b><br>31:15 45:8,15                       |                                                                                                  |                                                                     |

|                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 12:16,19<br><b>turn</b><br>37:20 54:9<br>58:23 60:12<br><b>turning</b><br>50:15<br><b>TV</b><br>37:20<br><b>two-sentence</b><br>51:8<br><b>Tynes</b><br>16:10 17:15,<br>23 36:6,9<br>37:2<br><b>type</b><br>17:11 30:13<br>37:1                                        | <b>unregistered</b><br>35:25 36:3<br><b>unrelated</b><br>37:2 61:9<br><b>unsubstantiated</b><br>61:7<br><b>unsuccessful</b><br>17:14<br><b>unsure</b><br>19:1<br><b>untimely</b><br>28:8<br><b>untrue</b><br>19:2                                                                     | <b>violate</b><br>8:4<br><b>violated</b><br>17:17<br><b>violates</b><br>14:6<br><b>violation</b><br>7:11 8:2<br>15:10,14<br>35:17 57:5,<br>21,22<br><b>violations</b><br>8:18 16:14,24<br>17:2<br><b>virtually</b><br>59:20<br><b>void</b><br>24:16 48:3<br>55:20 58:17<br><b>voluminous</b><br>7:6<br><b>voter</b><br>31:5,6 32:4<br>55:14<br><b>voters</b><br>5:9,12,18<br>9:10 27:6<br>55:18,23<br>56:10,13<br>60:20 61:9 | 50:20<br><b>wanted</b><br>13:21 14:22<br><b>wanting</b><br>40:23<br><b>weekend</b><br>66:2<br><b>whatsoever</b><br>49:16<br><b>wholly</b><br>49:6<br><b>wide-scale</b><br>24:12 30:19<br>59:23<br><b>widespread</b><br>37:19<br><b>William</b><br>6:9 24:1<br><b>win</b><br>53:23<br><b>window</b><br>59:22<br><b>witnesses</b><br>30:18<br><b>words</b><br>44:3 46:22<br><b>working</b><br>26:24<br><b>works</b><br>22:11<br><b>wrap</b><br>19:3<br><b>writing</b><br>56:22<br><b>written</b><br>59:7<br><b>wrong</b> |
| <hr/> <b>U</b> <hr/>                                                                                                                                                                                                                                                   | <hr/> <b>v</b> <hr/>                                                                                                                                                                                                                                                                  | <hr/> <b>W</b> <hr/>                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>ultimately</b><br>30:6 31:21<br><b>unable</b><br>36:12<br><b>underlie</b><br>24:14<br><b>underlying</b><br>20:14<br><b>understood</b><br>55:18<br><b>undisputed</b><br>29:4<br><b>unenforceable</b><br>24:18<br><b>unique</b><br>25:22,23<br><b>United</b><br>40:14 | <b>valid</b><br>56:9,13<br><b>validating</b><br>7:8<br><b>validity</b><br>42:1 48:17<br>54:20<br><b>valuable</b><br>62:25<br><b>venue</b><br>30:3<br><b>verified</b><br>7:21<br><b>verify</b><br>7:19<br><b>vested</b><br>8:19<br><b>vesting</b><br>21:17<br><b>view</b><br>34:9 44:6 | <b>virtually</b><br>59:20<br><b>void</b><br>24:16 48:3<br>55:20 58:17<br><b>voluminous</b><br>7:6<br><b>voter</b><br>31:5,6 32:4<br>55:14<br><b>voters</b><br>5:9,12,18<br>9:10 27:6<br>55:18,23<br>56:10,13<br>60:20 61:9                                                                                                                                                                                                   | 50:20<br><b>wanted</b><br>13:21 14:22<br><b>wanting</b><br>40:23<br><b>weekend</b><br>66:2<br><b>whatsoever</b><br>49:16<br><b>wholly</b><br>49:6<br><b>wide-scale</b><br>24:12 30:19<br>59:23<br><b>widespread</b><br>37:19<br><b>William</b><br>6:9 24:1<br><b>win</b><br>53:23<br><b>window</b><br>59:22<br><b>witnesses</b><br>30:18<br><b>words</b><br>44:3 46:22<br><b>working</b><br>26:24<br><b>works</b><br>22:11<br><b>wrap</b><br>19:3<br><b>writing</b><br>56:22<br><b>written</b><br>59:7<br><b>wrong</b> |

21:3,4 52:6

56:17

**wrongdoing**

52:12

---

**Y**

---

**years**

25:25 30:25

34:17 37:8

**yesterday**

37:22

---

**Z**

---

**Zoom**

6:17