Filing # 36406173 E-Filed 01/11/2016 03:53:14 PM

RECEIVED, 01/11/2016 03:53:41 PM, Clerk, Supreme Court

SC15-725

In the Supreme Court of Florida

DANIEL STAHL,
Petitioner,

v.

HIALEAH HOSPITAL, *et al.*,
Respondents.

ON DISCRETIONARY REVIEW FROM THE
FIRST DISTRICT COURT OF APPEAL
Case No. 1D14-3077

AMICUS BRIEF OF THE STATE OF FLORIDA IN SUPPORT OF RESPONDENTS

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IDENTITY OF AMICUS CURIAE AND INTEREST IN THE CASE

The Attorney General submits this brief on behalf of the State of Florida as amicus curiae in support of Respondents, Hialeah Hospital and Sedgwick Claims Management Services. The Attorney General is authorized by law to appear in any suit in which the State has an interest. § 16.01(4), Fla. Stat. (2015).

Petitioner facially challenges the validity of Florida's workers' compensation system *in toto*. The State's interest in this case is two-fold. First, the State has a significant interest in upholding the constitutionally mandated separation of powers, which is squarely implicated here, as Petitioner—largely without standing—invites judicial intrusion into the Legislature's authority to adjust the statutory limits of a statutory right. Second, the State has a substantial interest in ensuring that its duly enacted laws are upheld. This Court should reject Petitioner's improper attempt to broaden the scope of this case, and it should either affirm the judgment of the First District Court of Appeal or exercise its discretion to discharge jurisdiction.

SUMMARY OF THE ARGUMENT

Petitioner's case is an improper vehicle for launching a broad-scale, facial attack on Florida's workers' compensation system. Notably, Stahl has failed to satisfy his burden to develop a record sufficient to support his broad attack, let alone allow an informed decision by this Court. Rather, through review of a narrow proceeding before a Judge of Compensation Claims (JCC), he seeks to raise issues that can be adequately presented only in a declaratory action. Perhaps more important, Stahl largely lacks standing to press his arguments. He lacks standing to challenge the exclusive-remedy provision because he has not pointed to any record evidence showing that he would have opted out of the workers' compensation system during the period specified in the earlier opt-out regime. Stahl also lacks standing to attack most of the other workers' compensation provisions of which he complains. In view of these deficiencies, this Court should exercise its discretion to discharge jurisdiction.

On the merits, even ignoring his lack of standing to challenge the permanent-impairment framework, Stahl cannot meet his high burden to show that the challenged reforms are unconstitutional in every application. His access-to-courts argument fails for three independent reasons. First, the permanent-impairment framework and post-maximum medical improvement (MMI) copayment requirement do not present any access-to-courts problem because they

have not abolished any cause of action; they merely adjust the limits of a statutory right that has always placed limitations on recovery. Second, even if Stahl had put at issue the exclusive-remedy provision, the permanent-impairment framework and post-MMI copayment requirement do not make workers' compensation an unreasonable alternative to traditional tort remedies. Indeed, Stahl himself received benefits that equaled or exceeded the amounts that he would have recovered under prior versions of the workers' compensation system. Third, the Legislature enacted the permanent-impairment framework and post-MMI copayment requirement in response to an overpowering public necessity—skyrocketing insurance premiums fueled by overuse of health care services and rising costs for disability claims.

Finally, the workers' compensation system does not suffer from any of the other constitutional infirmities that Stahl alleges. This Court should exercise its discretion to discharge jurisdiction, or in the alternative, affirm the judgment of the First District Court of Appeal.

ARGUMENT

I. DUE TO SUBSTANTIAL DEFICIENCIES, THIS CASE IS A POOR VEHICLE FOR ADDRESSING THE FACIAL VALIDITY OF THE WORKERS' COMPENSATION SYSTEM.

Saddled with a deficient record developed in an ill-fitting procedural posture, and riddled with standing problems, this case represents an exceptionally poor vehicle for this Court to address the facial validity of Florida's workers'

compensation system. The State respectfully suggests that this Court exercise its discretion to discharge jurisdiction.[1]

Stahl improperly asks this Court to declare facially unconstitutional the entire workers' compensation system based on an undeveloped record no longer than this brief. *Cf. Key Haven Associated Enters., Inc. v. Bd. of Trustees of Internal Imp. Trust Fund*, 427 So. 2d 153, 159 (Fla. 1982) (allowing adjudication of constitutional issues on direct review of an administrative proceeding "if an adequate record is available"). The sparse record is hardly surprising, given the ill-fitting posture by which the case has arrived in this Court. Rather than file a declaratory or tort action in circuit court, Stahl instead chose to bring this case as a petition for benefits before a JCC.[2] Importantly, by electing this contorted procedure, Stahl has precluded this Court from granting him the relief he seeks.

Although his requested relief is not entirely clear, Stahl appears to challenge, *inter alia*, the exclusive-remedy provision in section 440.11, Florida Statutes. *See, e.g.*, Initial Br. at 19, 22-23, 24, 30, 44. To the extent that Stahl seeks a mandate

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[1] This is the customary disposition for cases in which this Court determines, after an initial grant of review but upon further consideration, that a case does not merit discretionary review. *See, e.g.*, *Powell v. State*, 167 So. 3d 392 (Fla. 2015); *Harris v. State*, 161 So. 3d 395 (Fla. 2015); *Edwards v. Sunrise Ophthalmology ASC*, 160 So. 3d 838 (Fla. 2015).

[2] Before initiating this case, Stahl brought a declaratory action in circuit court, but the Third District Court of Appeal rejected his challenge for lack of standing. *Stahl v. Tenet Health Sys., Inc.*, 54 So. 3d 538, 540 (Fla. 3d DCA 2011). As in his previous attempt, Stahl again has failed to build a record sufficient to support his broad attack on the workers' compensation system. *See infra* at 6-8.

requiring the JCC to permit him to file a tort action, this relief extends well beyond the scope of what this case's procedural posture will allow. In a typical appellate proceeding, the appellate court reviews the judgment of a lower court for error. In his challenge to the exclusive-remedy provision, Stahl appears to argue that he should have been permitted to sue in tort; however, the JCC cannot possibly have erred by failing to allow Stahl to institute a negligence action. The JCC is wholly without jurisdiction to entertain a tort suit, and this Court cannot issue a mandate requiring that the JCC allow the filing of such a suit. *See Farhangi v. Dunkin Donuts*, 728 So. 2d 772, 773 (1st DCA 1999) ("A JCC has no authority or jurisdiction beyond what is specifically conferred by statute."). Stahl could initiate a tort action only by a new, separate proceeding in circuit court. Thus, to the extent that he seeks a blessing to proceed in tort, he has chosen a procedure that prevents this Court from issuing such relief.

It is no answer to say that workers' compensation claimants may raise constitutional issues for the first time on appeal. In cases allowing this posture, the claimants sought entitlement to certain statutory benefits. They did not seek a sweeping mandate invalidating the exclusive-remedy provision and allowing them to sue in tort in an entirely new proceeding filed in a different court. *See, e.g.*, *Sasso v. Ram Prop. Mgmt.*, 452 So. 2d 932 (Fla. 1984); *Acton v. Ft. Lauderdale Hosp.*, 440 So. 2d 1282, 1284 (Fla. 1983).

Even more concerning, the procedural problems in this case have begotten jurisdictional ones. To begin, Stahl lacks standing to attack the exclusive-remedy provision. As Stahl observes, prior to 1970, an employee could opt out of the workers' compensation system by delivering written notice to his employer and filing a duplicate with the Division of Workers' Compensation. *See* § 440.05(2), Fla. Stat. (1969).[3] But workers could not wait to make their opt-out decision until after they sustained an injury and had an opportunity to evaluate the strength of a potential tort action. Such a system would eviscerate the workers' compensation bargain, through which employers obtained more manageable and predictable insurance costs by limitations on recovery, and injured employees received the right to recover benefits in a streamlined proceeding without regard to fault. Instead, to prevent system-gaming, the opt-out notice had to be given either upon employment or at least thirty days *before* an injury. *Id.* § 440.05(3).

Stahl lacks standing to challenge the exclusive-remedy provision because he has pointed to no record evidence showing that he would have chosen to opt out within the prescribed period under the earlier system. Instead, Stahl seeks a remedy that the workers' compensation system has never provided: the post-injury opportunity to choose whether to sue in tort after having time to evaluate the

[3] Employers could also opt out of the system prior to 1970. *See* § 440.05(1), Fla. Stat. (1969). The Legislature eliminated the employer opt-out in the same enactment that eliminated the employee opt-out. *See* Chapter 70-148, Laws of Fla.

strengths of a potential suit. With no record evidence that Stahl thought the workers' compensation system to be inadequate before he suffered his injury, Stahl cannot argue that he would have been entitled to sue in tort under the old opt-out system. Because Stahl has not pointed to any record evidence showing that the Legislature's repeal of the opt-out provision caused him any harm, this Court should find that he lacks standing to challenge it. *See State v. J.P.*, 907 So. 2d 1101, 1113 n.4 (Fla. 2004) (discussing the requirements for standing).

In addition, as Respondents have explained in their jurisdictional and merits briefs, Stahl lacks standing to challenge the permanent-impairment framework because he cannot point to any record evidence establishing that he would have been entitled to supplemental wage-loss benefits under the pre-2003 system. *See* Juris. Answer Br. at 3-4; Answer Br. at 11-13; *see also Stahl v. Tenet Health Sys., Inc.*, 54 So. 3d 538, 540 (Fla. 3d DCA 2011) (noting that Stahl had not produced evidence to establish standing). Stahl and several amici also complain of other changes to the workers' compensation system, such as the apportionment of medical expenses, the removal of safety regulations, adjustments to temporary total disability benefits, and the elimination of a cause of action for bad-faith claims handling. However, Stahl lacks standing to challenge all of these changes as well. Stahl's benefits have not been apportioned, he never received temporary total disability benefits, he never sought recovery for bad-faith claims handling, and he

has never argued that any repealed safety regulation would have prevented his injury. Moreover, amici cannot introduce new issues beyond those raised by the parties. *See Riechmann v. State*, 966 So. 2d 298, 304 n.8 (Fla. 2007).

This Court should not render an advisory opinion on the constitutionality of the workers' compensation system *in toto* by considering matters not at issue in this case. Given Stahl's lack of standing to press most of his arguments, among other deficiencies, this Court should exercise its discretion to discharge jurisdiction.

II. THE LEGISLATURE'S ADDITION OF A POST-MAXIMUM MEDICAL IMPROVEMENT COPAYMENT AND ADOPTION OF A PERMANENT-IMPAIRMENT FRAMEWORK HAVE NOT ABOLISHED ANY CAUSE OF ACTION.

On the merits, even ignoring Stahl's lack of standing to challenge the permanent-impairment framework, his argument fails before it begins. In arguing that the Legislature has violated his right of access to the courts through its copayment and permanent-impairment reforms, Stahl principally relies upon *Kluger v. White*, 281 So. 2d 1 (Fla. 1973). However, *Kluger* applies only if a right has been abolished. *Id.* at 4. The Legislature abolishes a right, within the meaning of *Kluger*, when it eliminates—either in form or in substance—a common-law or statutory cause of action that was available when the 1968 Declaration of Rights was adopted. *Eller v. Shova*, 630 So. 2d 537, 542 (Fla. 1993).

By contrast, this Court has held that where the Legislature merely changes the elements of available recovery and does not eliminate a cause of action, no abolishment occurs and the *Kluger* analysis does not apply. *See White v. Clayton*, 323 So. 2d 573, 575 (Fla. 1975) (declining to apply *Kluger* where "[t]he right of recovery [] has not been abolished; only the elements of damage have been changed"); *accord John v. GDG Servs., Inc.*, 424 So. 2d 114, 116 (Fla. 1st DCA 1982), *approved*, 440 So. 2d 1286 (Fla. 1983) (declining to apply *Kluger* because, "[a]lthough . . . the new wage-loss provisions may result in reduced benefits, the right to recover for industrial injuries has not been so reduced as to be effectively eliminated"); *Mahoney v. Sears, Roebuck & Co.*, 419 So. 2d 754, 755-56 (Fla. 1st DCA 1982), *approved*, 440 So. 2d 1285 (Fla. 1983) (holding that a workers' compensation cap posed no access-to-courts problem even though it "significantly diminished" the appellant's recovery, because "it has not *totally eliminated* the previously recognized cause of action") (emphasis in original).

In other words, the Legislature does not "abolish" an already limited statutory right merely by adjusting the right's preexisting statutory limits. *See White*, 323 So. 2d at 575 (holding that the Legislature did not "abolish" the statutory right to recover for wrongful death by excluding certain persons from

recovering certain damages and eliminating certain damages altogether).[4] That is exactly what has occurred in this case.

Here, any abolishment occurred when the Legislature replaced the tort system with workers' compensation as the means for remedying most workplace injuries. But that change is not at issue in this case. *See supra* at 5-7. The question before this Court is simply whether the Legislature abolished *the workers' compensation right as it existed in 1968* by enacting the post-MMI ten-dollar copayment provision in 1994, or by adopting a permanent-impairment framework that dispensed with supplemental wage-loss benefits in 2003 (putting aside Stahl's

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[4] After *White*, this Court held that statutory damage caps are abolishments, but it did so only when analyzing damage caps on causes of action that had no caps at the time the 1968 Declaration of Rights was adopted. *See Univ. of Miami v. Echarte*, 618 So. 2d 189, 194 (Fla. 1993) (holding that a cap on noneconomic damages in certain medical malpractice suits is an abolishment under *Kluger*); *Smith v. Dep't of Ins.*, 507 So. 2d 1080, 1088 (Fla. 1987) (holding that a cap on noneconomic damages in all tort suits is an abolishment under *Kluger*).

Unlike the traditional tort rights involved in *Echarte* and *Smith*, which historically were rights to recover damages without statutory limitation, recovery under the Workers' Compensation Act has always been limited. *Compare Smith*, 507 So. 2d at 1087 ("It is uncontroverted that there currently exists a right to sue on and recover noneconomic damages of any amount and that this right existed at the time the current Florida Constitution was adopted."), *with White*, 323 So. 2d at 575 ("An action for wrongful death was not authorized at common law, and is a creation of the legislature."); *see Aguilera v. Inservices, Inc.*, 905 So. 2d 84, 90 (Fla. 2005) ("Essentially, the [workers' compensation] system is designed for employers and insurance carriers to assume responsibility for *limited* amounts of medical and wage loss benefits . . . .") (emphasis added). Thus, *Echarte* and *Smith* do not control this case. Instead, under *White*, the challenged reforms are permissible adjustments to a limited statutory right, rather than abolishments of a traditionally unlimited common-law right.

lack of standing to raise this latter issue). A fair analysis of these two reforms reveals that the Legislature has not eliminated, either in form or in substance, the workers' compensation right as it existed in 1968. Rather, the reforms merely adjusted the existing limits associated with the right. This is not an abolishment subject to *Kluger*. *See White*, 323 So. 2d at 575.

Throughout its history, including in 1968, the workers' compensation right has consisted of the right to an efficient and streamlined—albeit *limited*—recovery for workplace injuries. In 1968, as in all other times during its history, the limited nature of the recovery was as essential an aspect of the right as were the protections that injured workers have received under the workers' compensation system. Like insurance regimes generally, the system's viability depends on a careful balance between guaranteeing coverage for workplace injuries and limiting that coverage. Indeed, from its inception, Florida's Workers' Compensation Act has been a collection of limits—limits on the categories of benefits, the duration of benefits, and the amount of benefits. *Cf. Aguilera v. Inservices, Inc.*, 905 So. 2d 84, 90 (Fla. 2005) ("Essentially, the [workers' compensation] system is designed for employers and insurance carriers to assume responsibility for *limited* amounts of medical and wage loss benefits . . . .") (emphasis added).

By adding a post-MMI copayment and adopting the 2003 permanent-impairment framework, the Legislature has merely adjusted the workers'

compensation limits. It has not abolished the workers' compensation right as it existed in 1968. As they could in 1968, injured workers such as Stahl may secure full medical care and limited compensation for workplace injuries "regardless of fault and without the delay and uncertainty of tort litigation." *Martinez v. Scanlan*, 582 So. 2d 1167, 1172 (Fla. 1991); *see also* §§ 440.13(2), 440.15, Fla. Stat. (2015). And they may do so at much higher weekly compensation rates, even when adjusted for inflation.[5] Stahl's myopic focus on the Legislature's adjustments to the categories and duration of available benefits obscures important ways in which the Legislature has also expanded the workers' compensation remedy, such as its increase in the available compensation rate. In any event, under *White*, even the elimination of a category of benefits does not amount to an abolishment of the workers' compensation remedy. *See White*, 323 So. 2d at 575.

Because the exclusive-remedy provision is not at issue and the challenged reforms do not abolish any cause of action, this Court need not inquire whether the

[5] In 1968, compensation for disability was capped at $49.00 per week—the approximate equivalent of $259.08 in 2003 (the year of Stahl's injury) and $334.18 today. *See* Fla. Stat. § 440.12(2) (1967); U.S. Dep't of Labor Statistics, CPI Inflation Calculator, http://www.bls.gov/data/inflation_calculator.htm (last visited Dec. 31, 2015). Stahl, by contrast, received a weekly compensation of $608.00 for his 2003 injury. R. 4. Moreover, under the current system, weekly compensation is capped at 100 percent of the rounded statewide average weekly wage—$863.00 for injuries sustained in 2016. *See* Fla. Stat. § 440.12(2) (2015); *see also* Div. of Workers' Compensation, Minimum/Maximum Compensation Rate Table, http://www.myfloridacfo.com/division/wc/Insurer/bma_rates.htm (last visited Dec. 31, 2015).

Legislature has provided a reasonable alternative remedy or acted in response to an overpowering public necessity. Instead, this Court should uphold the challenged reforms as permissible changes to the statutory limits of the workers' compensation right—changes that do not abolish any cause of action. To do otherwise would invite litigation each time that the Legislature makes a modification to the workers' compensation system, however small, and would intrude on the legislative prerogative to change elements of recovery. *See White*, 323 So. 2d at 575 (declining to apply *Kluger* and noting that "[c]hanges in the elements of damage or the standards by which they are recovered under these circumstances is a legislative prerogative").

III. EVEN IF THE EXCLUSIVE-REMEDY PROVISION WERE AT ISSUE, STRICT SCRUTINY DOES NOT APPLY, AND THE LEGISLATURE'S REFORMS MEET THE *KLUGER* STANDARD.

Stahl contends that his access-to-courts challenge should be evaluated under the rubric of strict scrutiny. This is incorrect. Assuming that this Court finds that Stahl has raised an access-to-courts issue (notwithstanding his lack of standing to challenge the exclusive-remedy provision), *Kluger* provides the governing standard. Under *Kluger*, the Legislature may not abolish a common-law or statutory cause of action that was available when the 1968 Declaration of Rights was adopted unless it either provides a "reasonable alternative" remedy, or "the Legislature can show an overpowering public necessity for the abolishment . . . and

no alternative method of meeting such public necessity can be shown." *Kluger*, 281 So. 2d at 4. The copayment and permanent-impairment reforms satisfy both of these independent tests.

A. The Workers' Compensation System Remains a Reasonable Alternative to Tort Suits.

Throughout various reforms, this Court has consistently upheld the workers' compensation system as a reasonable alternative to tort litigation. *See, e.g.*, *Scanlan*, 582 So. 2d at 1171-72; *Newton v. McCotter Motors, Inc.*, 475 So. 2d 230, 231 (Fla. 1985); *Sasso*, 452 So. 2d at 933-34; *Mahoney*, 440 So. 2d at 1286; *Acton*, 440 So. 2d at 1284. In so doing, this Court has emphasized the importance of a no-fault regime that provides full medical care, and it has repeatedly held that reductions in benefits do not render the system an unreasonable alternative. *See, e.g.*, *Scanlan*, 582 So. 2d at 1171-72; *Mahoney*, 440 So. 2d at 1286; *Acton*, 440 So. 2d at 1284; *cf. Sasso*, 452 So. 2d at 934 (rejecting a challenge to the workers' compensation system because the plaintiff had "received some of the compensation which a tort suit might have provided had he been forced to pay his own expenses and subsequently seek redress in court").

Under this Court's precedent, where the Legislature has provided a reasonable replacement remedy, it retains the authority to continue enacting reforms that are "reasonable attempts . . . to correct . . . practical problems" posed by the replacement remedy, *Chapman v. Dillon*, 415 So. 2d 12, 16 (Fla. 1982), so

long as the reforms do not "fundamentally change" the remedy's "essential characteristics," *State Farm Mut. Auto. Ins. Co. v. Nichols*, 932 So. 2d 1067, 1077 (Fla. 2006). Neither Stahl nor his amici can show that the reforms at issue fundamentally change workers' compensation's essential characteristic. Even with the copayment and permanent-impairment changes, injured workers still enjoy the bargain that the system always has afforded them—full medical care for workplace injuries, and recovery of limited additional compensation without the expense, delay, and uncertainty of tort litigation. *See* §§ 440.13(2), 440.15, Fla. Stat. (2015); *Scanlan*, 582 So. 2d at 1171-72.

In fact, Stahl himself enjoyed—in addition to full medical care—greater benefits than those that he would have received in 1968, and exactly the same amount of benefits that he would have recovered under the 2002 system. Had his injury occurred in 1968, Stahl would have been eligible for "permanent partial disability" (PPD) benefits under the following formula: $49.00 maximum weekly compensation rate x (percentage of disability x 350 weeks). *See* § 440.15(3)(u), Fla. Stat. (1967). This would have yielded a maximum total PPD benefit of $1,029.00.[6] Had his injury occurred in 2002, Stahl would have been eligible for "impairment income benefits" (IIB) under the following formula: 50 % x (66 ⅔ %

[6] This Court has never held that *Kluger* requires the Legislature to keep statutory caps current with inflation. Even assuming otherwise *arguendo*, however, when adjusted for inflation through the year 2003, this amount roughly equates to the amount of benefits that Stahl received.

of the rounded statewide average weekly wage) x (3 weeks per each percentage of impairment). *See* § 440.15(3)(a)3, Fla. Stat. (2002). Because his impairment rating did not equal or exceed 20%, Stahl would have been ineligible for supplemental wage-loss benefits. *See* § 440.15(3)(b)1, Fla. Stat. (2002). This would have yielded a total IIB of $5,472.00—the same amount of benefits that Stahl asserts he actually received for his injury under the 2003 system. *See* Initial Br. at 5.[7]

By narrowly focusing on the Legislature's adoption of the 2003 permanent-impairment framework, elimination of supplemental wage-loss benefits, and adjustments to the number of weeks of available compensation, Stahl misses the forest for the trees. What matters is not what the Legislature calls certain benefits, or how many weeks benefits are payable. Rather, what matters is the *total amount* of compensation. Stahl cannot argue that he received inadequate compensation when the total amount that he received equals or exceeds the amounts that the system historically has afforded to claimants with his level of impairment. He certainly cannot meet the even higher burden of showing that the challenged reforms are unconstitutional beyond a reasonable doubt in every possible application, as is required for a successful facial challenge. *See Crist v. Ervin*, 56 So. 3d 745, 747 (Fla. 2010); *State v. Kinner*, 398 So. 2d 1360, 1363 (Fla. 1981).

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[7] The record does not disclose the total amount of benefits that Stahl received, but the figure can be calculated using the JCC's order. R. 4-5.

B. The Legislature's Reforms Were in Response to an Overpowering Public Necessity.

The copayment and permanent-impairment reforms independently satisfy *Kluger*'s alternative "overpowering public necessity" test. As noted in the Senate Staff Analysis of the bill that created the post-MMI copayment requirement, by 1992, "Florida's [workers' compensation] system rank[ed] as one of the worst in the nation for insurance company losses," and "for every dollar of premium written in the state . . . $1.60 [was] being paid out in expenses and benefits." Fla. S. Comm. on Com., SB12-C (1993) Staff Analysis 1 (Nov. 1, 1993) (on file with state archives, series 18, carton 2073). A major cause of this "crisis situation in Florida's insurance industry" was "overutilization of health care providers." *Id.* at 1, 2. In response, the bill "substantially rewr[ote] the medical provisions of the current law." Fla. H.R. Conf. Comm. Rep. for SB 12-C (1993) Staff Analysis 9 (final Dec. 1, 1993) (available at state archives, storage name: s012cz2.hco). Among these revisions was the addition of a post-MMI $10.00 copayment requirement, a modest reform that would disincentivize overuse of health care services. *Id.* at 10.

Again in 2003, the Legislature faced an economic crisis that demanded reform. As shown in the Senate Staff Analysis of the bill that adopted the 2003 permanent-impairment framework, Florida suffered from some of the highest insurance costs in the country, and premiums only continued to increase:

> In 2000, Florida had the highest premiums in the country, and in 2001, Florida was ranked second only to California. Some workers' compensation carriers have indicated that they are not issuing new policies, renewing policies, or are tightening their underwriting requirements in response to a downturn in the economy and uncertainties in the market place.

Fla. S. Comm. on Banking & Ins., SB 50-A (2003) Staff Analysis 6 (May 23, 2003) (available at http://archive.flsenate.gov/data/session/2003A/Senate/bills/analysis/pdf/2003s0050A.bi.pdf). The Analysis specifically identified as a driver for these rising premiums "[h]igh medical costs for permanent partial disability (PPD) claims—nearly two times higher than the national average." *Id.* at 7. In response, the Legislature adopted a permanent-impairment framework that dispensed with supplemental wage-loss benefits and prioritized those with higher impairment ratings, in many circumstances providing such individuals with more benefits than they would have received under the pre-2003 system. *See id.* at 20, 26-27.

These legislative findings demonstrate that the Legislature enacted the copayment and permanent-impairment reforms as a narrowly tailored response to an overpowering public necessity—skyrocketing insurance costs. Furthermore, "the Legislature's factual and policy findings are presumed correct," and because Stahl has failed to "show[] that the findings in the instant case are clearly erroneous," this Court should "hold that the Legislature has shown that an 'overpowering public necessity' exists," and that Stahl has failed to show any alternative methods by which the Legislature could have met the necessity.

Echarte, 618 So. 2d at 196-97.

IV. FLORIDA'S WORKERS' COMPENSATION SYSTEM DOES NOT SUFFER FROM ANY OF THE OTHER CONSTITUTIONAL INFIRMITIES THAT STAHL ALLEGES.

Stahl's remaining constitutional arguments are also meritless. In asserting a Fourteenth Amendment violation, Stahl relies upon *New York Central Railroad v. White*, 243 U.S. 188 (1917). However, *White*'s sole mention of the "significance" of benefits was in dicta, where the U.S. Supreme Court stated that its holding did not mean that *any* benefit framework, "however insignificant," could pass muster, and the Court expressly acknowledged that the adequacy of benefits was not at issue in the case. 243 U.S. at 205-06. The *White* Court did not purport to create a substantive standard for workers' compensation laws, but even if it had, the Court has long since abandoned the doctrine of economic substantive due process. *See, e.g.*, *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483, 488 (1955).

The challenged reforms also do not abridge the Florida Constitution's protections for trial by jury, reward for industry, and physical disability. Art. I, §§ 2, 22, Fla. Const. This Court has rejected the argument that limitations on recoverable damages violate the right to trial by jury, and the First District has specifically held that the workers' compensation system does not deny the right. *See Echarte*, 618 So. 2d at 191; *Cauley v. City of Jacksonville*, 403 So. 2d 379, 387 (Fla. 1981); *Medina v. Gulf Coast Linen Servs.*, 825 So. 2d 1018, 1021 (1st DCA 2002). Moreover, Stahl fails to explain how the challenged reforms violate the

right to be rewarded for industry. His perfunctory argument is insufficiently presented for review, and therefore waived. *See Kilgore v. State*, 55 So. 3d 487, 511 (Fla. 2010). Finally, this Court has squarely held that workers' compensation laws do not discriminate against a suspect class. *See Acton*, 440 So. 2d at 1284; *see also Winn Dixie v. Resnikoff*, 659 So. 2d 1297, 1299 (Fla. 1st DCA 1995).

CONCLUSION

This Court should either affirm the judgment of the First District Court of Appeal or—in view of the threadbare record, procedural irregularities, and Stahl's lack of standing to challenge most of the reforms of which he complains—exercise its discretion to discharge jurisdiction.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was prepared in Times New Roman, 14-point font, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

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