IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FIFTH DISTRICT

Case No. 5D14-4520

THE TOWN OF PONCE INLET,

Appellant,

v.

PACETTA, LLC, DOWN THE HATCH, INC., and MAR-TIM, INC.,

Appellees.

On Appeal from the Circuit Court, Seventh Judicial Circuit,
in and for Volusia County, Florida
(Case No. 2010-31696-CICI)

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF APPELLEES

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IDENTITY AND INTEREST OF AMICUS CURIAE

Pacific Legal Foundation (PLF) is the most experienced nonprofit, public interest foundation of its kind in the United States. PLF has offices in Florida, California, Washington, Hawaii, and District of Columbia. For more than 40 years, PLF has directly represented citizens in cases involving property rights in pivotal United States Supreme Court cases including *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586 (2013); *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001); and *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987). PLF's Florida office has participated as amicus curiae in many Florida appellate cases on matters including private property rights, the Bert J. Harris, Jr., Private Property Rights Protection Act (Bert Harris Act), environmental law, and civil justice. Those cases include a prior appeal related to the instant case, *Town of Ponce Inlet v. Pacetta, LLC*, 120 So. 3d 27 (Fla. 5th DCA 2013), *rev. denied*, 139 So. 3d 299 (Fla. 2014). PLF seeks to augment the arguments of Appellees by addressing the manner in which this Court should apply *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978), how the Court should interpret *Pallazolo* and its progeny, and the way in which the Court should evaluate the relevant parcels for purposes of its takings analysis. PLF believes its perspective and its extensive experience with property rights litigation will aid this Court in the consideration of the issues presented in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

From 2004 to 2008, the Town of Ponce Inlet (Town) encouraged Simone and Lyder Johnson (owners of the Appellees, Pacetta, LLC, Down the Hatch, Inc., and Mar-Tim, Inc.) (hereinafter Pacetta) to expand their modest plan to build a retirement home and small residential development into a more ambitious plan for a larger development. R. at 14,767-817. The Government worked closely with Pacetta, negotiating public improvements into the development, passing pro-development ordinances, and issuing permits for the early stages of the development. R. at 14,779-85. But then a newly elected Town council turned against the project, and passed a series of moratoriums and anti-development ordinances. R. at 14,785-86. The Town singled out Pacetta's land and destroyed any economically feasible use of most of their property. R. at 14,785-86. The Town did so in order to purchase the Pacetta properties at an artificially reduced price. R. at 14,805-06.

The Town's actions in this case meet the elements of a *Penn Central* taking. *Penn Central* requires that courts considering whether land use restrictions cause a taking must weigh the economic impact of the regulation, the extent to which it has interfered with distinct investment-backed expectations, and the "character of the governmental action." *Penn Central*, 438 U.S. at 124. The lower court correctly evaluated the economic impact on Pacetta by examining the taken parcels at issue as separate parcels, it correctly did not apply the Government's false "post-enactment

purchaser" rule against Pacetta, and the court recognized that the government's actions here intended to put the costs of benefitting the Town upon the back of Pacetta alone. For these reasons, this Court should affirm the trial court's judgment.

ARGUMENT

I

THE TRIAL COURT PROPERLY ENGAGED IN *PENN CENTRAL*'S THREE-PRONG TAKINGS EVALUATION

Both the federal and state Constitutions contain Takings Clauses that prohibit the government from taking private property unless the owner is paid just compensation.[1] U.S. Const. amend. V; Fla. Const. art. X, § 6(a). The Takings Clauses "bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960). The typical taking "is a direct government appropriation or physical invasion of private property." *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 537 (2005). However, "government regulation of private property may, in some instances, be so onerous that its effect is tantamount to a direct appropriation

[1] The Federal Takings Clause applies to the states through the Fourteenth Amendment. *St. Johns River Water Mgmt. Dist. v. Koontz*, 77 So. 3d 1220, 1226 (Fla. 2011), *rev'd on other grounds*, 133 S. Ct. 2586 (2012). The federal and state Takings Clauses are coextensive. *Id.*

or ouster . . . . [S]uch 'regulatory takings' may be compensable under the Fifth Amendment." *Id.*

In *Lingle*, 544 U.S. at 538, the Supreme Court of the United States summarized its regulatory takings jurisprudence by explaining that for takings cases not involving physical invasions, *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), or total takes, *Lucas v. S.C. Coastal Council*, 505 U.S. 1003 (1992), courts must engage in case-by-case review of the factors set out in *Penn Central*. *Penn Central* requires that courts considering whether land use restrictions cause a taking must weigh the economic impact of the regulation, the extent to which it has interfered with distinct investment-backed expectations, and the "character of the governmental action." *Penn Central*, 438 U.S. at 124; *Lingle*, 544 U.S. at 538-39.[2]

[2] In considering a takings case under the *Penn Central* test, the courts do not consider whether the property owner had a "vested right" to the property. *See Palazzolo*, 533 U.S. at 634 ("nature and extent of permitted development under the regulatory regime . . . may also shape legitimate expectations *without vesting* any kind of development right in the property owner"). That makes a *Penn Central* claim different from a state Bert Harris Act claim, and why this Court's earlier decision in the Bert Harris Act case, *Town of Ponce Inlet v. Pacetta, LLC*, 120 So. 3d 27, *rev. denied*, 139 So. 3d 299, does not control its decision in the instant case.

A. When Evaluating Economic Impact of Regulation on a Property Owner, the Relevant Parcel Determination Must Fairly Account for Circumstances

"When considering *Penn Central*'s economic impact factor, a court must 'compare the value that has been taken from the property with the value that remains in the property.' " *Maritrans Inc. v. United States*, 342 F.3d 1344, 1358 (Fed. Cir. 2003) (quoting *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 497 (1987)).

Here, Pacetta invested in a series of separate property transactions in order to ultimately develop a unified waterfront property in Ponce Inlet. The trial court properly looked at the individual parcels separately when examining the economic impact on Pacetta as to the Town's taking of the property as a whole, because in that the property was assembled from the underlying parcels that Pacetta purchased individually over time. *See* John E. Fee, Comment, *Unearthing the Denominator in Regulatory Takings Claims*, 61 U. of Chi. L. Rev. 1534, 1557 (1994) (A parcel that is legally independent and economically viable should be considered a separate economic unit.).

Professor John Fee has developed one of the best articulations of a defensible relevant parcel theory; he explains that the relevant parcel is "[a]ny identifiable segment of land is a parcel for purposes of regulatory taking analysis if prior to regulation it could have been put to at least one economically viable use, independent

of the surrounding land segments." *Id.*[3]; *accord* Steven J. Eagle, *The Parcel and Then Some: Unity of Ownership and the Parcel as a Whole*, 36 Vt. L. Rev. 549, 563 (2012) (proposing a "commercial unit" test, akin to the similar concept in the Uniform Commercial Code, under which the claimant could choose any unit of property as the relevant parcel, but would have to establish that the selection is a unit used generally in real estate transactions in the area).

Here, the properties the Town took had been put to separate uses before Pacetta combined them into the larger assemblage for purposes of development. R. at 14,779-80. It should make no legal difference what the property owner's expectations, intentions, or hopes are or were for the assemblage of the properties. *See, e.g.*, *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 414 (1922) (relevant property interest was "certain coal" that was commercially valuable apart from surrounding coal prior to regulation); *American Savings & Loan Ass'n v. County of Marin*, 653 F.2d 364, 372 (9th Circ. 1981) (If two independently useful parcels "have been, or would be, treated separately when its development plans are submitted and considered," the regulated parcel must be analyzed as a separate parcel for taking purposes.).

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[3] Professor Fee's article on the proper way to analyze the relevant parcel deserves more weight than the typical law review comment in that the Supreme Court of the United States cited to it in the landmark property rights case, *Palazzolo*, 533 U.S. at 631.

1. Identifying the Relevant Parcels Is Key to This Court's Analysis of the Case

Evaluating a taking claim requires courts to determine the extent to which the challenged regulation interferes with the use and value of property. This determination, in turn, requires courts to specifically identify the relevant property interest subject to the analysis. *Keystone*, 480 U.S. at 497 (Because the "test for regulatory taking requires us to compare the value that has been taken from the property with the value that remains in the property," the Court must determine "the unit of property 'whose value is to furnish the denominator of the fraction.'" (citation omitted)). When real property is at stake, and the owner alleges a taking of a parcel of property contiguous to another commonly owned parcel, the question is framed as the "relevant parcel" problem: Should the restricted parcel be conceptually aggregated with the other parcel, or should it be viewed alone as the appropriate unit for takings analysis? Dwight H. Merriam, *Rules for the Relevant Parcel*, 25 U. Haw. L. Rev. 353, 356 (2003) ("Determining the total property against which the loss [caused by regulation] must be measured is what we call the 'relevant parcel' question.").

The definition of the relevant parcel profoundly influences the outcome of a takings analysis. *See* Thomas J. Koffer, *What to "Take" From* Palazzolo *and* Tahoe-Sierra*: A Temporary Loss for Property Rights*, 21 Va. Envtl. L.J. 503, 525

(2003) ("How the relevant parcel is defined may alone determine whether the government or the property owner prevails in a takings claim."); Richard M. Frank, *Inverse Condemnation Litigation in the 1990's–The Uncertain Legacy of the Supreme Court's* Lucas *and* Yee *Decisions*, 43 Wash. U.J. Urb. & Contemp. L. 85, 104 (1993) ("To a considerable degree the answer to this [relevant parcel] question dictates whether a taking has occurred."). Given this effect, the relevant parcel of land is key to the inquiry into takings liability. *See* John E. Fee, *Of Parcels and Property in Taking Sides on Takings Issues: Public and Private Perspectives* 101 (Thomas E. Roberts, ed. 2002) ("How to define the horizontal boundaries of land . . . is perhaps the most significant unresolved question" in takings law.). If the parcel is defined too broadly, a taking is less likely to be found, and the long-respected right to make economically beneficial use of property suffers.

Despite the importance of the relevant land parcel determination in regulatory takings doctrine, the decisions of the United States Supreme Court do not adequately address the issue. Without elaboration, the Court has observed that regulatory takings analysis should focus on the "parcel as a whole," *Keystone*, 480 U.S. at 497 (quoting *Penn Central*, 438 U.S. at 130-31 ("'[T]his Court focuses . . . on the nature and extent of the interference with rights in the parcel as a whole.'")), but has not explained how to identify the "parcel as a whole." *See* John E. Fee, Comment, *Unearthing the Denominator in Regulatory Taking Claims*, 61 U. Chi. L. Rev. at 1535 ("The Court

has not articulated a method for defining the 'parcel as a whole.' "); Marc R. Lisker, *Regulatory Takings and the Denominator Problem*, 27 Rutgers L.J. 663, 705 (1996) ("The Court has not provided any formula for determining what constitutes the 'parcel as a whole.' "); Daniel R. Mandelker, *New Property Rights Under the Taking Clause*, 81 Marq. L. Rev. 9, 16 (1997) ("The Supreme Court's views on this issue are conflicting, and no principled basis for determining the segmentation of property interests has emerged.").

In this context, the Court should affirm the trial court's logical conclusion: the individual parcels assembled by Pacetta were distinct parcels, and calling them one parcel simply because they ultimately had one owner disserves the facts of this case and the purposes behind the Takings Clause. *See, e.g.*, *Lost Tree Village Corp. v. United States*, 707 F.3d 1286, 1294 (Fed. Cir. 2013) ("relevant parcel" for purposes of takings analysis included only the plat that was the subject of the permit application, and not a neighboring plat or scattered wetlands owned by developer in the area); *Vulcan Materials Co. v. City of Tehuacana*, 369 F.3d 882, 891 (5th Cir. 2004) (limiting relevant parcel for purpose of takings analysis to less than all property owned by property owner); *Merkur Steel Supply, Inc. v. City of Detroit*, 680 N.W.2d 485, 496-97 (Mich. Ct. App. 2004) (approving lower court's decision to treat property owner's property as "segments" rather than one whole); *State ex rel. R.T.G., Inc. v.*

State, 780 N.E.2d 998, 1008-09 (Ohio 2002) (treating coal mining rights separately from other property interests).

2. The Town's Argument Against a Taking Based on Unity of Title Fails to Account for Legal and Economic Realities

The Town contends that the lower court should have aggregated the assemblage of properties that Pacetta put together—at the Town's behest (Initial Brief (IB) at 24-26)—and then concluded that since a few of the properties were income producing, then the property as a whole was sufficiently income producing so as to withstand Pacetta's taking challenge. IB at 26. There are at least two significant problems with the Town's unity-of-ownership argument regarding how to find a denominator in this case.

First, it results in arbitrary and unequal treatment of similarly situated owners. It is axiomatic that individuals have equal rights under the Constitution and under the Takings Clause in particular. *See Palazzolo*, 533 U.S. at 630 ("A regulation or common-law rule cannot be a background principle [restricting the right to just compensation] for some owners but not for others."). Yet, if the Court accepts a unity-of-ownership approach to the relevant parcels, individuals owning functionally and physically identical parcels of property will have dramatically unequal rights depending only on their holdings.

Consider that the owner of a single, isolated developable lot of land undoubtedly has a takings claim if the lot is subject to restrictions preventing all economically beneficial use of the property. *See*, *e.g.*, *Lucas*, 505 U.S. at 1019; *Moroney v. Mayor and Council of the Borough of Old Tappan*, 633 A.2d 1045, 1050 (N.J. Super. Ct. App. Div. 1993) (holding that denial of a variance allowing building on a noncontiguous undersized residential lot amounted to an unconstitutional taking). And yet, if the same person happens to own one more contiguous unregulated lot, the constitutional right disappears under any rule hinging the relevant takings parcel on common ownership. This is contrary to the Takings Clause, which contains no language compelling "a court to find a taking only when the Government divests the total ownership of the property." *Florida Rock Industries, Inc. v. United States*, 18 F.3d 1560, 1568 (Fed. Cir. 1994). Indeed, "the Fifth Amendment prohibits the uncompensated taking of private property *without reference to the owner's remaining property interests*." *Id*. (emphasis added).

To allow categorical takings protection to wax or wane depending on the amount of property one owns is to sanction arbitrary government treatment, for there is no rational or fair connection between the extent of a property owner's holdings and the level of protection to which he is entitled. Such an understanding converts federal takings law into a deep-pocket rule. John E. Fee, *The Takings Clause as a*

Comparative Right, 76 S. Cal. L. Rev. 1003, 1033-34 (2003). Constitutional law cannot support that approach:

> We might as well say that all property owners who earn more than a certain income are not entitled to compensation under the Fifth Amendment so as to make it less expensive for government to regulate. Unless some reason exists why the Takings Clause should be concerned with deterring citizens from owning too much property at once, the quantity of property an owner holds should have nothing to do with whether a regulation of one part of an owner's property is a taking of that part.

Id. at 1032.

In short, principles of equity, justice, and good policy are at war with the notion that parcels can be artificially aggregated based on common ownership so as to defeat a constitutional right to compensation. *Lucas*, 505 U.S. 1016 n.7 (describing the lower court's decision in *Penn Central*, which aggregated all commonly owned property, as an example of "an extreme and . . . unsupportable-view of the relevant [parcel] calculus"); Lisker, *Regulatory Takings and the Denominator Problem*, 27 Rutgers L. J. at 723-24 (courts should avoid unreasonably punishing landowners simply because they have large holdings).

As Professor Fee has noted: "Why should the law declare that a landowner may not own more than one adjacent 'parcel' of land, each independently protected by the Fifth Amendment?" Fee, *Of Parcels and Property*, § 5.4, at 112. There is no good reason. Conversely, treating legally and economically distinct parcels as separately

protected units accords with constitutional justice by affording property owners equal and fair treatment based on the objective characteristics of their property, and protects the public from the economically harmful effects of unnecessary property fragmentation.

Second, defining the relevant parcel by unity of purchase unfairly penalizes people for investing in the most efficient manner. A relevant parcel rule that discourages a property owner from purchasing two separate parcels in close proximity would result in piecemeal, inefficient market transactions. The law should not compel property owners to purchase property in geographic and temporal isolation in order to preserve their constitutional protections against uncompensated takings.

3. The Town Treated These Parcels as Separate Parcels

Another test for identifying the relevant parcel starts by focusing on how the parcel is viewed under the "existing rules or understandings" of the locality. *Lucas*, 505 U.S. at 1030 (quoting *Board of Regents v. Roth*, 408 U.S. 565, 577 (1972)). In particular, the Court should determine whether state and/or local law separately defines the parcel: Does the parcel have its own physical address or assessor's parcel number? *Lucas*, 505 U.S. at 1017 n.7; *Whitney Benefits, Inc. v. United States*, 926 F.2d 1169, 1174 (Fed. Cir. 1991). A relevant parcel should accord with units generally used in real estate transactions in the area. Steven J. Eagle, *Regulatory Takings*, § 7-7(e)(5) (4th ed. 2009).

In this case, the Town treated the properties as separate and distinct properties, R. at 14,779-80. Here, vacant lots 1, 3, 4, and 10 all easily satisfy the criteria for a taking, as explained at length in Pacetta's Answer Brief at 23-28. The parcels were treated separately and the trial court was correct to treat them as separate parcels. *See, e.g.*, *Lost Tree*, 707 F.3d at 1294 ("relevant parcel" for purposes of takings analysis included only the plat that was the subject of the permit application, and not a neighboring plat or scattered wetlands owned by developer in the area); *Twaine Harte Associates, Ltd. v. County of Tuolumne*, 217 Cal. App. 3d 71, 88 (1990) (area subject to challenged zoning decision will be treated separately unless it is not capable of independent economically viable use).

B. In Considering Investment-Backed Expectations, the Court in *Palazzolo* Rejected the Post-Enactment Purchaser Rule

The Town makes much of the fact that the regulations in place when Pacetta purchased the underlying properties did not allow the development that Pacetta sought. IB at 26-27. But that emphasis demonstrates that the Town fails to apprehend *Palazzolo*'s adoption of a rule that a property owner can prevail under either *Lucas* or *Penn Central* even if he did not personally take title to the property until after the regulations severely restricting his property were already in place. *Palazzolo*, 533 U.S. at 616.

1. *Palazzolo* Rejected the Post-Enactment Purchaser Rule

In *Penn Central*, the Court did not precisely define the meaning of "distinct investment-backed expectations," but recognized the legitimacy of Penn Central's expectation to make profitable use of its property. 438 U.S. at 138 n.36 (suggesting a different outcome if the plaintiff could demonstrate the landmark regulations deprived the property of economic viability). Then, in *Ruckelshaus v. Monsanto*, 467 U.S. 986, 1009 (1984), the Supreme Court suggested that the reasonableness of investment-backed expectations depended primarily on whether the owner knew of the challenged restrictions at the time the owner came into possession of the property. *Id*. at 1006.

Then came *Palazzolo*. In that case, the Supreme Court limited its holding in *Monsanto* and reversed the Supreme Court of Rhode Island's decision that a property owner could not prevail under either *Lucas* or *Penn Central*, because he did not personally take title to the property until after the regulations severely restricting his property were already in place. *Palazzolo*, 533 U.S. at 616. The Court rejected this notice rule because it would grant unlimited power to the states to unilaterally define which property interests would receive constitutional protection, thereby eviscerating the institution of private property:

> The State may not put so potent a Hobbesian stick into the Lockean bundle . . . . Were we to accept the State's [notice] rule, the postenactment transfer of title would absolve the State of its obligation

> to defend any action restricting land use, no matter how extreme or unreasonable. A State would be allowed, in effect, to put an expiration date on the Takings Clause. This ought not to be the rule. Future generations, too, have a right to challenge unreasonable limitations on the use and value of land.

Id. at 627.

The "post-enactment purchaser rule" therefore does not foreclose a takings claim. For example, in *Wensmann Realty, Inc. v. City of Eagan*, 734 N.W.2d 623, 640 (Minn. 2007), the property owner purchased a golf course contingent upon the government amending its comprehensive plan so as to allow the property, then zoned as park, to be re-zoned residential. When the city failed to re-zone, the purchaser sued the city for a taking; the city contended that the purchaser's knowledge of the zoning in place at the time of contingent purchase foreclosed any taking claim. *Id.* at 640. The court rejected the government's post-enactment purchaser argument, relying on *Palazzolo*. *Id.* Likewise, in *Machipongo Land & Coal Co. v. Dep't of Envtl. Protection*, 799 A.2d 751 (Penn. 2002) *cert. denied*, 123 S. Ct. 486 (2003), the Pennsylvania Supreme Court held that a post-enactment purchaser could challenge a regulation as an unconstitutional taking, despite having purchased the property with knowledge of the regulation the property owner challenged. *Id.* at 762-63.

2. The Town's Argument in Favor of a Post-Enactment Purchaser Rule Not Only Misrepresents the Law, but Is Unfair

Palazzolo established that there is no categorical bar to recovery for a takings claim simply because the property owner purchased property with knowledge of the regulation that effects the taking at issue. Application of the notice rule would work a particular unfairness on these facts, because the Town lured Pacetta into making the tremendous financial investment in the properties premised on the Town's direction that it wanted Pacetta to develop the properties into a waterfront mixed-use development. R. at 14,805 ("the evidence points to intentional corporate action by the Town").

The Town induced Pacetta into making these land purchases, and these investments, every step of the way. As the trial court said, "the cooperation between developer and the Town was unprecedented." R. at 14,779. That is, until the Town leadership changed hands and the new leadership turned on Pacetta. The Town, not Pacetta, should bear the cost of its economically debilitating decision to pull the rug out from under Pacetta.

C. The Character of the Government Action Alone Supports Finding a Taking

The last prong of *Penn Central* considers how the character of the government action can give rise to a taking. *Penn Central*, 438 U.S. at 124. The "character of the

governmental action" factor weighs in favor of a taking when the government singles out relatively few property owners, or one, to supply a public good. *See, e.g.*, *Eastern Enterprises v. Apfel*, 524 U.S. 498, 537 (1998); *Ward Gulfport Properties, L.P. v. Mississippi State Highway Comm'n*, 2015 WL 6388832, at *8 (Miss. Oct. 22, 2015) (character test supports a taking claim where property owners affected by the challenged regulatory scheme "shoulder a 'disproportionate burden' of [a wetland protection plan] compared to others in the community"). This is what happened here.

The First District Court of Appeal recently looked closely at the character of the government action in *State v. Basford*, 119 So. 3d 478 (Fla. 1st DCA 2013). In *Basford*, the voters of the State of Florida decided to amend the state constitution to ban the confinement of pregnant pigs. *Id*. at 480. Basford, one of only two pig farmers that confined pigs in this manner, sued the State for the loss of the portion of his farm that he had dedicated to pregnant pigs. *Id.* After winning his taking claim in the trial court, the appellate court affirmed the decision. *Id.* The appellate court decision hinges on the fact that the people of the State wanted what they perceived to be a public good—the elimination of the crating of pregnant pigs—and they demanded that Basford pay the price for that good. *Id*. As Justice Holmes stated: "[T]he question at bottom is upon whom the loss of the changes desired should fall." *Mahon*, 260 U.S. at 416. In *Basford*, the cost of the changes fell on farmer Basford,

and the courts recognized that it was the people of Florida who should pay for his loss.

Likewise here, the Town told Pacetta to assemble a multi-million dollar series of properties in order to develop them into a beautiful waterfront development. Then the Town changed its position and told Pacetta it would not let Pacetta reap the benefits of its investment. The Town has the power to make that change, and it's the Town—not Pacetta—upon whom the price of the changes should fall.

CONCLUSION

The Town took Pacetta's property after inducing Pacetta to invest in assembling the properties. The trial court saw the Town's actions for what they were, the jury saw the Town's actions for what they were, and this Court should see the actions for what they were and affirm the judgment.

DATED: November 16, 2015.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the font used in this brief is Times New Roman 14 point and in compliance with Fla. R. App. P. 9.210(a)(2).

DATED: November 16, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF APPELLEES was served on the following via e-mail, the 16th day of November, 2015:

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