APPLICATION FOR NOMINATION TO THE FLORIDA SUPREME COURT

(Please attach additional pages as needed to respond fully to questions.)

DATE: October 5, 2018 Florida Bar No.: 535001

GENERAL: Social Security No.: 119.071(5)(a) F.S.

1. Name Carlos Genaro Muniz E-mail: CGMUNIZ@YAHOO.COM

   Date Admitted to Practice in Florida: December 20, 2001

   Date Admitted to Practice in other States: November 1, 1999, Virginia; June 2, 2000, District of Columbia.

2. State current employer and title, including professional position and any public or judicial office.

   General Counsel, U.S. Department of Education

3. Business address: 400 Maryland Ave. SW

   City Washington County _____ State DC ZIP 20202

   Telephone (202) 765-6561 FAX ( ) -

4. Residential address: 1584 Hickory Ave.

   City Tallahassee County Leon State FL ZIP 32303

   Since 2010 Telephone (850) 570-0178

5. Place of birth: Chicago, IL

   Date of birth: June 25, 1969 Age: 49

6a. Length of residence in State of Florida: Since January 2001

6b. Are you a registered voter? ☒ Yes ☐ No

   If so, in what county are you registered? Leon

7. Marital status: Married

   If married: Spouse's name Kathleen Baur Muniz

   Date of marriage December 1, 2001

   Spouse's occupation Homeschool teacher

   If ever divorced give for each marriage name(s) of spouse(s), current address for each former spouse, date and place of divorce, court and case number for each divorce.

   Not applicable.

8. Children

Name(s)	*Age(s)*	*Occupation(s)*	*Residential address(es)*
Robert	14	Not applicable	Same as parents
William	13	Not applicable	Same as parents
Lydia	11	Not applicable	Same as parents

9. Military Service (including Reserves)

Service	*Branch*	*Highest Rank*	*Dates*
None			

Rank at time of discharge _____ Type of discharge _____

Awards or citations _____

Service	*Branch*	*Highest Rank*	*Dates*

Rank at time of discharge _____ Type of discharge _____

Awards or citations _____

HEALTH:

10. Are you currently addicted to or dependent upon the use of narcotics, drugs, or intoxicating beverages? If yes, state the details, including the date(s).

No.

11a. During the last ten years have you been hospitalized or have you consulted a professional or have you received treatment or a diagnosis from a professional for any of the following: Kleptomania, Pathological or Compulsive Gambling, Pedophilia, Exhibitionism or Voyeurism?

Yes ☐ No ☒

If your answer is yes, please direct each such professional, hospital and other facility to furnish the Chairperson of the Commission any information the Commission may request with respect to any such hospitalization, consultation, treatment or diagnosis. ["Professional" includes a Physician, Psychiatrist, Psychologist, Psychotherapist or Mental Health Counselor.]

Please describe such treatment or diagnosis.

Not applicable.

11b. In the past ten years have any of the following occurred to you which would interfere with your ability to work in a competent and professional manner?

- Experiencing periods of no sleep for 2 or 3 nights
- Experiencing periods of hyperactivity
- Spending money profusely with extremely poor judgment
- Suffered from extreme loss of appetite
- Issuing checks without sufficient funds
- Defaulting on a loan
- Experiencing frequent mood swings
- Uncontrollable tiredness
- Falling asleep without warning in the middle of an activity

Yes ☐ No ☒

If yes, please explain.

12a. Do you currently have a physical or mental impairment which in any way limits your ability or fitness to properly exercise your duties as a member of the Judiciary in a competent and professional manner?

Yes ☐ No ☒

12b. If your answer to the question above is Yes, are the limitations or impairments caused by your physical or mental health impairment reduced or ameliorated because you receive ongoing treatment (with or without medication) or participate in a monitoring or counseling program?

Yes ☐ No ☐

Describe such problem and any treatment or program of monitoring or counseling.

Not applicable.

13. During the last ten years, have you ever been declared legally incompetent or have you or your property been placed under any guardianship, conservatorship or committee? If yes, give full details as to court, date and circumstances.

No.

14. During the last ten years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by Federal or State laws? If your answer is "Yes," explain in detail. (Unlawful use includes the use of one or more drugs and/or the unlawful possession or distribution of drugs. It does not include the use of drugs taken under supervision of a licensed health care professional or other uses authorized by Federal law provisions.)

No.

15. In the past ten years, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned or terminated by an employer as result of your alleged consumption of alcohol, prescription drugs or illegal use of drugs? If so, please state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No.

16. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? If so, please state the date you were requested to submit to such a test, the type of test required, the name of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.

No.

17. In the past ten years, have you suffered memory loss or impaired judgment for any reason? If so, please explain in full.

No.

EDUCATION:

18a. Secondary schools, colleges and law schools attended.

Schools	*Class Standing*	*Dates of Attendance*	*Degree*
Bishop Ireton H.S.	unknown	1983-1987	H.S. diploma
University of Virginia	Not determined	1987-1991	B.A.
Yale Law School	Not determined	1994-1997	J.D.

18b. List and describe academic scholarships earned, honor societies or other awards.

Editor, Yale Law Journal (one of many editors, not "editor in chief")
Graduated with High Honors, University of Virginia
Phi Beta Kappa, University of Virginia
Echols Scholar, University of Virginia
Government Honors Program, University of Virginia

David D. Preston Scholarship, University of Virginia

NON-LEGAL EMPLOYMENT:

19. List all previous full-time non-legal jobs or positions held since 21 in chronological order and briefly describe them.

Date	*Position*	*Employer*	*Address*
1991-1994	Civil Rights Analyst	U.S. Department of Justice	Washington, DC
Dec. 2006-July 2007	Policy Director	Republican Party of Florida	Tallahassee, FL

PROFESSIONAL ADMISSIONS:

20. List all courts (including state bar admissions) and administrative bodies having special admission requirements to which you have ever been admitted to practice, giving the dates of admission, and if applicable, state whether you have been suspended or resigned.

Florida Bar, December 20, 2001

District of Columbia Bar, June 2, 2000

Virginia Bar, November 1, 1999

U.S. District Court, Northern District of Florida, January 8, 2004

LAW PRACTICE: (If you are a sitting judge, answer questions 21 through 26 with reference to the years before you became a judge.)

21. State the names, dates and addresses for all firms with which you have been associated in practice, governmental agencies or private business organizations by which you have been employed, periods you have practiced as a sole practitioner, law clerkships and other prior employment:

Position	*Name of Firm*	*Address*	*Dates*
See addendum on following page.			

22. Describe the general nature of your current practice including any certifications which you possess; additionally, if your practice is substantially different from your prior practice or if you are not now practicing law, give details of prior practice. Describe your typical clients or former clients and the problems for which they sought your services.

QUESTION 21

State the names, dates, and addresses for all firms with which you have been associated in practice, governmental agencies or private business organizations by which you have been employed, periods you have practiced as a sole practitioner, law clerkships and other prior employment.

1. Judicial law clerk, Judge Thomas A. Flannery, U.S. District Court, District of Columbia; July 1997-July 1998.

2. Judicial law clerk, Judge Jose A. Cabranes, U.S. Court of Appeals for the Second Circuit, New Haven, CT; July 1998-July 1999.

3. Summer associate, Latham & Watkins, Washington, DC; Summer 1995.

4. Summer associate, Miller, Cassidy, Larroca & Lewin, Washington, DC; Summer 1996.

5. Summer associate, Zuckerman Spaeder, Washington, DC; Summer 1996.

6. Associate, Hogan & Hartson, Washington, DC; Sept. 1999-Jan. 2001.

7. Deputy General Counsel, Executive Office of the Governor, Tallahassee, FL; Jan. 2001-June 2003.

8. Counsel, GrayRobinson, Tallahassee, FL; June 2003-April 2005.

9. General Counsel, Department of Financial Services, Tallahassee, FL; April 2005-Dec. 2006.

10. Deputy Chief of Staff and Counsel, Office of the Speaker of the House of Representatives, Tallahassee, FL; July 2007-Oct. 2009.

11. Managing Director, Bancroft Associates, Washington, DC; Oct. 2009-April 2010.

12. Shareholder, GrayRobinson, Tallahassee, FL; April 2010-Jan. 2011.

13. Deputy Attorney General and Chief of Staff, Office of the Attorney General, Tallahassee, FL; Jan. 2011-Jan. 2014.

14. Partner/Senior Vice President, McGuireWoods, Tallahassee, FL; Jan. 2014-Jan. 2018.

15. General Counsel, U.S. Dept. of Education, Washington, DC; Feb. 2018-present.

(note: from February 2018 until my Senate confirmation in April 2018, my title at the U.S. Department of Education was Senior Advisor, Office of the Secretary)

I serve as the General Counsel of the U.S. Department of Education, a presidentially-appointed, Senate-confirmed position. In that role, I am the principal legal advisor to the Secretary and to senior Department officials, and I manage a 100-person office. I personally supervise all of the Department's significant litigation, including active cases in state and federal courts throughout the country. I also oversee the legal aspects of the Department's rulemaking activities. On a daily basis, I am called upon to interpret the statutes and regulations administered by the Department and to give related legal advice.

I have spent the bulk of my career in positions of significant responsibility in state government: Deputy Attorney General and Chief of Staff in the Office of the Attorney General; Deputy General Counsel to the Governor; Deputy Chief of Staff and Counsel to the Speaker of the House of Representatives; and General Counsel of the Department of Financial Services. As Deputy Attorney General, I oversaw the office's major litigation and investigations; advised the attorney general on participation in litigation to protect the State's interests, including in multistate and U.S. Supreme Court cases; and advised the attorney general on the determination of any legal opinions to be issued by the office. Similarly, as Deputy General Counsel, I managed high-priority litigation, oversaw executive agency legal departments, and advised the governor in the exercise of his duties. My service to both the governor and the attorney general required me to advise on the administration of the death penalty and to work on related litigation.

In addition to my government service, I have broad experience in private practice. Most recently, my practice focused on defending businesses in government investigations, particularly those involving state attorneys general across the country. Throughout my time in private practice, I have also worked on civil litigation at all levels and in a wide range of areas, including government-related matters, commercial disputes, constitutional and civil rights, and administrative law. As a young associate, I worked on corporate transactions in the business and securities department of an international law firm.

23. What percentage of your appearance in courts in the last five years or last five years of practice (include the dates) was in:

Court		Area of Practice	
Federal Appellate	____ %	Civil	100 %
Federal Trial	33 %	Criminal	____ %
Federal Other	____ %	Family	____ %
State Appellate	33 %	Probate	____ %
State Trial	33 %	Other	____ %
State Administrative	____ %		
State Other	____ %		
	____ %		____
TOTAL	100 %	TOTAL	100 %

24. In your lifetime, how many (number) of the cases you have tried to verdict or judgment were:

Jury? None Non-jury? None

Arbitration? None Administrative Bodies? None

25. Within the last ten years, have you ever been formally reprimanded, sanctioned, demoted, disciplined, placed on probation, suspended or terminated by an employer or tribunal before which you have appeared? If so, please state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No.

26. In the last ten years, have you failed to meet any deadline imposed by court order or received notice that you have not complied with substantive requirements of any business or contractual arrangement? If so, please explain in full.

No.

(Questions 27 through 30 are optional for sitting judges who have served 5 years or more.)

27a. For your last 6 cases, which were tried to verdict before a jury or arbitration panel or tried to judgment before a judge, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases).

As explained above, throughout my career I have participated in and supervised litigation in state and federal court in a broad array of areas, including federal and state constitutional law, civil rights, consumer protection, products liability, commercial disputes, the False Claims Act, and the Administrative Procedure Act. Although my career has not involved trying or arguing cases directly, the following matters from my

two most recent stints in private practice are ones in which I have been substantially involved personally and are illustrative of my work:

1. Kinsman v. Florida State University Board of Trustees, Case No. 4:15CV235-MW. I was one of the two lead attorneys representing Florida State University in this Title IX case, which settled prior to trial. Other attorneys for the University were Melissa Nelson (904-255-3014) and FSU General Counsel Carolyn Egan (850-644-4440). The plaintiff was represented by David King and Taylor Ford (both at 407-422-2472) and John Clune (303-442-6514).

2. In re Advisory Opinion to Atty. Gen. re: Limits or Prevents Barriers to Local Solar Electricity Supply, 177 So.3d 235 (Fla. 2015). This was a ballot title and summary case in which I wrote and filed a brief on behalf of the Florida Council for Safe Communities. Other attorneys who filed briefs in the case include Allen Winsor (850-717-8180); Barry Richard (850-222-6891); Raoul Cantero (305-995-5290); Ken Bell (850-521-1980); and Robert Nabors (850-224-4070).

3. Weidner v. Scott, Case No. 2015 CA 000283, Second Judicial Circuit. In this case, Pete Dunbar (850-999-4100) and I defended Govenor Scott against an alleged Sunshine Law violation stemming from the replacement of an FDLE commissioner. The other defendants were the members of the Florida Cabinet. The case settled prior to trial. Andrea Mogenson (941-955-1066) represented the plaintiff. Dan Nordby (850-717-9310) represented the Cabinet as a collegial body. George Meros (850-425-5622) represented the Attorney General. Chris Lunny (850-425-6654) represented the Chief Financial Officer. David Wells (904-350-7170) represented the Agriculture Commissioner.

4. Multistate Attorneys General Investigation of Career Education Corp. In this matter, I represented a publicly-traded higher education company in a multi-state investigation led by the Iowa and Connecticut attorneys general. The case involved several years of interaction between the parties and remains ongoing. Other counsel for the company include Deborah Solmor (312-488-6004) and my former McGuireWoods colleague Jerry Kilgore (202-463-2529). Iowa's lead counsel was Nathan Blake (515-281-6364). Connecticut's lead counsel was Joseph Chambers (860-808-5270).

5. Kortum v. Sink, 54 So.3d 1012 (Fla. 1st DCA 2010). I was the principal author of the briefs in this First Amendment commercial speech case at the First DCA. Wilbur Brewton (850-222-7718) argued the case and handled the Florida Supreme Court appeal. Michael Davidson (retired) represented the Department of Financial Services.

6. James, Hoyer v. Rodale, 41 So.3d 386 (Fla. 1st DCA 2010). I was the principal author of the briefs in this appeal involving the trade secrets exemption from Florida's public records law. Other counsel for the defendant/appellee were Tim Cerio (850-577-9090) and Pete Antonacci (850-510-7754). The plaintiff/appellant was represented by Jonathan Cohen (813-223-5505).

27b. For your last 6 cases, which were settled in mediation or settled without mediation or trial, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases).

See answer to Questions 27a. and 30.

27c. During the last five years, how frequently have you appeared at administrative hearings?
0 average times per month

27d. During the last five years, how frequently have you appeared in Court?
Very rarely average times per month

27e. During the last five years, if your practice was substantially personal injury, what percentage of your work was in representation of plaintiffs? Not applicable %
Defendants? _____%

28. If during any prior period you have appeared in court with greater frequency than during the last five years, indicate the period during which this was so and give for such prior periods a succinct statement of the part you played in the litigation, numbers of cases and whether jury or non-jury.

Not applicable.

29. For the cases you have tried to award in arbitration, during each of the past five years, indicate whether you were sole, associate or chief counsel. Give citations of any reported cases.

Not applicable.

30. List and describe the six most significant cases which you personally litigated giving case style, number and citation to reported decisions, if any. Identify your client and describe the nature of your participation in the case and the reason you believe it to be significant. Give the name of the court and judge, the date tried and names of other attorneys involved.

1. In re Constitutionality of House Joint Resolution 1987, 817 So.2d 819 (Fla. 2002). This case was about the validity of a legislative reapportionment plan adopted by the Florida Legislature. The then-attorney general had urged the Court to adopt extra-constitutional redistricting standards and to invalidate the plan. I was the principal author of an amicus brief filed by Governor Jeb Bush in support of the Legislature's position, which the Court ultimately upheld.

This case is important because, in the context of redistricting, it affirmed the separation of powers mandated by the Florida Constitution. The people of Florida later chose to add to the state constitution redistricting standards similar to those advocated by the attorney general. This case illustrates the respective roles of the courts and the people, if the people so choose, in amending the constitution.

Among the lawyers representing the Legislature were Barry Richard and Miguel DeGrandy. Counsel for the Attorney General included Paul Hancock and George Waas.

2. Locke v. Davey, 540 U.S. 712 (2004). This case was about the constitutionality of a Washington State scholarship program generally available to any academically qualified college student, unless the student chose to pursue a degree in devotional theology. I was the principal author of an amicus brief filed by Governor Bush arguing that the program unconstitutionally burdened the free exercise of religion. The Court rejected our position and upheld the scholarship program.

This case is important because religious liberty is one of our most cherished rights as Americans. Davey is a significant precedent in the evolving caselaw addressing the application of the Religion Clauses in the context of government benefit programs.

Other attorneys for the Governor were Raquel Rodriguez and Daniel Woodring.

3. Florida House of Representatives v. Crist, 999 So.2d 601 (Fla. 2008). This case was about the authority of the governor to bind the state to an Indian gaming compact absent statutory authority. On behalf of the Speaker of the House, I directed this litigation and contributed to the briefing of the case. The Court upheld the Legislature's position, ruling that the governor's execution of the compact violated the separation of powers.

This is another important separation of powers case, one where the Court upheld the fundamental principle that the power to change or amend state law falls exclusively to the Legislature. The case is also important because the underlying subject matter, the scope of gaming in our state, continues to attract a great deal of attention and debate among voters and policymakers.

Counsel for the Florida House included former Speaker Jon Mills and Tim McClendon.

Chris Kise and Barry Richard represented the Governor and the Seminole Tribe, respectively.

4. Kortum v. Sink, 54 So.3d 1012 (Fla. 1st DCA 2010). This case was about the constitutionality of a state law restricting the commercial speech of public insurance adjusters. I was part of the legal team representing the plaintiff and was the principal author of the briefs in the First District Court of Appeal. In a decision that was later affirmed by the Florida Supreme Court, the First District accepted our client's position and struck down the law.

This case is important because robust protection of the First Amendment freedom of speech is central to our rights as Americans.

Wilbur Brewton argued the case for the plaintiff. The government was represented by Michael Davidson.

5. NFIB v. Sebelius, 567 U.S. 519 (2012). This was the case in which the State of Florida led a multi-state coalition challenging the constitutionality of the Affordable Care Act. Naturally, the case was of great importance to our office, so I played an active role in supervising our office's handling of the case, selecting outside counsel to represent the plaintiff states, and interacting with the other lead states in the litigation.

This is, of course, a landmark case in the history of constitutional law. Though the plaintiff states were not successful in their challenge to the Affordable Care Act's individual mandate, the case did establish important limits on Congress's power under the Commerce and Spending Clauses of the Constitution.

6. Kinsman v. Florida State University Board of Trustees, Case No. 4:15cv235-MW, Northern District of Florida, Judge Mark Walker. This was a Title IX case in which the plaintiff alleged sex discrimination stemming from Florida State University's response to an alleged sexual assault by a high-profile athlete. I was one of the lead attorneys defending the University in the litigation, which settled in January 2016.

This is an important case in the context of the ongoing national debate over campus sexual assault, due process, and Title IX. The case received national attention and involved many of the difficult personal, legal, and policy issues playing out on campuses and beyond.

Other counsel for the University included Melissa Nelson, Carolyn Egan, and Robyn Jackson. Opposing counsel included David King, Taylor Ford, and John Clune.

31. Attach at least one example of legal writing which you personally wrote. If you have not personally written any legal documents recently, you may attach writing for which you had substantial responsibility. Please describe your degree of involvement in preparing the writing you attached.

Attached are two appellate briefs that I personally wrote.

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE:

32a. Have you ever held judicial office or been a candidate for judicial office? If so, state the court(s) involved and the dates of service or dates of candidacy.

No.

32b. List any prior quasi-judicial service:

Dates	*Name of Agency*	*Position Held*

Not applicable.

Types of issues heard:

32c. Have you ever held or been a candidate for any other public office? If so, state the office, location and dates of service or candidacy.

In 2004, I was a member of the Judicial Nominating Commission for the First District Court of Appeal.

From May 2015 through January 2017, I was a member of the Federal Judicial Nomination Commission (Florida Northern District Conference).

32d. If you have had prior judicial or quasi-judicial experience,

(i) List the names, phone numbers and addresses of six attorneys who appeared before you on matters of substance.

Not applicable.

(ii) Describe the approximate number and nature of the cases you have handled during your judicial or quasi-judicial tenure.

Not applicable.

(iii) List citations of any opinions which have been published.

Not applicable.

(iv) List citations or styles and describe the five most significant cases you have tried or heard. Identify the parties, describe the cases and tell why you believe them to be significant. Give dates tried and names of attorneys involved.

Not applicable.

(v) Has a complaint about you ever been made to the Judicial Qualifications Commission? If so, give date, describe complaint, whether or not there was a finding of probable cause, whether or not you have appeared before the Commission, and its resolution.

Not applicable.

(vi) Have you ever held an attorney in contempt? If so, for each instance state name of attorney, approximate date and circumstances.

Not applicable.

(vii) If you are a quasi-judicial officer (ALJ, Magistrate, General Master), have you ever been disciplined or reprimanded by a sitting judge? If so, describe.

Not applicable.

BUSINESS INVOLVEMENT:

33a. If you are now an officer, director or otherwise engaged in the management of any business enterprise, state the name of such enterprise, the nature of the business, the nature of your duties, and whether you intend to resign such position immediately upon your appointment or election to judicial office.

Not applicable.

33b. Since being admitted to the Bar, have you ever been engaged in any occupation, business or profession other than the practice of law? If so, give details, including dates.

No.

33c. State whether during the past five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise, institution, organization, or association of any kind. If so, identify the source of such compensation, the nature of the business enterprise, institution, organization or association involved and the dates such compensation was paid and the amounts.

From January 2014 through February 2018, I was an employee of both McGuireWoods LLP (a law firm) and McGuireWoods Consulting, LLC, a wholly-owned subsidiary of the law firm. Nearly all of my work was in the nature of legal services. My salary was approximately $250,000/year, and I was not paid separately for any non-legal work I performed on behalf of the firms' clients.

POSSIBLE BIAS OR PREJUDICE:

34. The Commission is interested in knowing if there are certain types of cases, groups of entities, or extended relationships or associations which would limit the cases for which you could sit as the presiding judge. Please list all types or classifications of cases or litigants for which you as a general proposition believe it would be difficult for you to sit as the presiding judge. Indicate the reason for each situation as to why you believe you might be in conflict. If you have prior judicial experience, describe the types of cases from which you have recused yourself.

I know of no type or classification of cases or litigants for which it would be difficult for me to sit as a judge. If appointed, I would of course comply with Canon 3E of the Code of Judicial Conduct.

MISCELLANEOUS:

35a. Have you ever been convicted of a felony or a first degree misdemeanor?

Yes _____ No __X__ If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

35b. Have you pled nolo contendere or pled guilty to a crime which is a felony or a first degree misdemeanor?

Yes _____ No __X__ If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

35c. Have you ever had the adjudication of guilt withheld for a crime which is a felony or a first degree misdemeanor?

Yes _____ No __X__ If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

36a. Have you ever been sued by a client? If so, give particulars including name of client, date suit filed, court, case number and disposition.

No.

36b. Has any lawsuit to your knowledge been filed alleging malpractice as a result of action or inaction on your part?

No.

36c. Have you or your professional liability insurance carrier ever settled a claim against you for professional malpractice? If so, give particulars, including the amounts involved.

No.

37a. Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you?

No.

37b. Have you ever owned more than 25% of the issued and outstanding shares or acted as an officer or director of any corporation by which or against which a petition in bankruptcy has been filed? If so, give name of corporation, your relationship to it and date and caption of petition.

No.

38. Have you ever been a party to a lawsuit either as a plaintiff or as a defendant? If so, please supply the jurisdiction/county in which the lawsuit was filed, style, case number, nature of the lawsuit, whether you were Plaintiff or Defendant and its disposition.

No.

39. Has there ever been a finding of probable cause or other citation issued against you or are you presently under investigation for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group. If so, give the particulars.

No.

40. To your knowledge within the last ten years, have any of your current or former co-workers, subordinates, supervisors, customers or clients ever filed a formal complaint or formal accusation of misconduct against you with any regulatory or investigatory agency, or with your employer? If so, please state the date(s) of such formal complaint or formal accusation(s), the specific formal complaint or formal accusation(s) made, and the background and resolution of such action(s). (Any complaint filed with JQC, refer to 32d(v).

No.

41. Are you currently the subject of an investigation which could result in civil, administrative

or criminal action against you? If yes, please state the nature of the investigation, the agency conducting the investigation and the expected completion date of the investigation.

No.

42. In the past ten years, have you been subject to or threatened with eviction proceedings? If yes, please explain.

No.

43a. Have you filed all past tax returns as required by federal, state, local and other government authorities?

Yes ☒ No ☐ If no, please explain. _____

43b. Have you ever paid a tax penalty?

Yes ☐ No ☒ If yes, please explain what and why. _____

43c. Has a tax lien ever been filed against you? If so, by whom, when, where and why?

No.

HONORS AND PUBLICATIONS:

44. If you have published any books or articles, list them, giving citations and dates.

I have written two articles for the James Madison Institute: "Parental Notification of a Minor's Termination of Pregnancy" (published Fall 2004); and "It's Time to Fight Judicial Imperialism" (published August 17, 2005).

45. List any honors, prizes or awards you have received. Give dates.

See response to Question 18(b).

46. List and describe any speeches or lectures you have given.

At the Federalist Society's 2018 Florida Conference, I moderated and gave brief remarks on a panel discussion of Title IX and free speech on college campuses.

47. Do you have a Martindale-Hubbell rating? Yes ☐ If so, what is it?___No ☒

PROFESSIONAL AND OTHER ACTIVITIES:

48a. List all bar associations and professional societies of which you are a member and give the titles and dates of any office which you may have held in such groups and committees to which you belonged.

I am a member of the Florida Bar, the Virginia Bar (currently inactive), and the District of Columbia Bar (currently inactive).

I have been a member of the Federalist Society since law school.

48b. List, in a fully identifiable fashion, all organizations, other than those identified in response to question No. 48(a), of which you have been a member since graduating from law school, including the titles and dates of any offices which you have held in each such organization.

Since 2001, I have been a parishioner of Blessed Sacrament Catholic Church in Tallahassee.

48c. List your hobbies or other vocational interests.

My wife and I focus virtually all of our free time on our childen and their myriad activities. Most of my reading involves religion, current events, and sports, especially anything involving the Washington Redskins or Tiger Woods.

48d. Do you now or have you ever belonged to any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices and whether you intend to continue as a member if you are selected to serve on the bench.

For one semester in college, I was a member of an all-male fraternity.

48e. Describe any pro bono legal work you have done. Give dates.

I have spent most of my career in public service and, while in private practice, have helped family friends with legal matters when they could not afford to hire an attorney. However, I have not done formal pro bono work.

SUPPLEMENTAL INFORMATION:

49a. Have you attended any continuing legal education programs during the past five years? If so, in what substantive areas?

During the past five years, I have earned most of my CLE hours at conferences of state attorneys general, where the topics typically involve constitutional law, federalism, consumer protection, and criminal law enforcement.

49b. Have you taught any courses on law or lectured at bar association conferences, law school forums, or continuing legal education programs? If so, in what substantive areas?

In the mid-2000s, for two semesters I co-taught an undergraduate class on federal constitutional law at Florida State University.

50. Describe any additional education or other experience you have which could assist you in holding judicial office.

Throughout my career, I have been blessed with great role models, many of whom are judges. My first two bosses after law school were U.S. District Judge Thomas Flannery and U.S. Circuit Judge Jose Cabranes. Both set an example of personal and professional excellence that I have tried to live up to ever since. Later I worked with many colleagues who went on to become judges. In them I saw firsthand the qualities that I would hope to emulate: a commitment to the rule of law; humility, integrity, and respect for others; and a passion for justice. The experience of learning from these fine people will be invaluable if I am appointed to judicial office.

51. Explain the particular potential contribution you believe your selection would bring to this position.

My selection would bring to the Court someone with broad and deep experience at the highest levels of state government. Since my arrival in Florida nearly two decades ago, I have been privileged to work on many of the most challenging and significant legal

issues facing our state, including representing the State's interests in state and federal court litigation. I have spent years counseling our state's elected leaders in both the legislative and the executive branch. And through those experiences, I have developed great knowledge of and appreciation for Florida's laws and constitution, particularly as they relate to limited government, separation of powers, and the protection of individual liberty.

My selection would also bring to the Court someone who is--and throughout his career has been--committed to listening in good faith to all sides of an argument. The best way to show respect to litigants and to one's colleagues is to approach every case well prepared and with an open mind. That is how I have approached my work in the past, and it is the disposition I would bring to the Court if appointed.

52. If you have previously submitted a questionnaire or application to this or any other judicial nominating commission, please give the name of the commission and the approximate date of submission.

Not applicable.

53. Give any other information you feel would be helpful to the Commission in evaluating your application.

I have always loved the fact that courts must explain their decisions in writing. As a judge, I would welcome that accountability. I would decide cases based on a faithful, principled interpretation of the text, stucture, and history of the constitutional provision or other law at issue. In doing so I would hope to give the people of Florida confidence in an impartial judiciary and in the rule of law.

REFERENCES:

54. List the names, addresses and telephone numbers of ten persons who are in a position to comment on your qualifications for judicial position and of whom inquiry may be made by the Commission.

1. Chief Justice Charles Canady, Florida Supreme Court, 500 S. Duval St., Tallahassee, FL 32399; 850-410-8092.

2. Attorney General Pam Bondi, The Capitol PL-01, Tallahassee, FL 32399; 850-245-0222.

3. Judge Jose A. Cabranes, U.S. Court of Appeals for the Second Circuit, 40 Centre St., New York, NY 10007; 203-867-8782.

4. Judge Allen Winsor, First Distict Court of Appeal, 2000 Dayton Dr., Tallahassee, FL 32399; 850-717-8180.

5. Judge Brad Thomas, First District Court of Appeal, 2000 Dayton Dr., Tallahassee, FL

32399; 850-717-8205.

6. Melissa Nelson, State Attorney, Fourth Judicial Circuit, 311 W. Monroe St., Jacksonville, FL 32202; 904-255-3014.

7. Pete Antonacci, President & CEO, Enterprise Florida, 101 North Monroe St., Suite 1000, Tallahassee, FL 32301; 850-510-7754.

8. Tim Cerio, GrayRobinson, 301 S. Bronough St., Suite 600, Tallahassee, FL 32301; 850-577-9090.

9. George Meros, Holland & Knight, 315 S. Calhoun St., Suite 600, Tallahassee, FL 32301; 850-425-5622.

10. Gregory Garre (former U.S. Solicitor General), Latham & Watkins, 555 Eleventh St. NW, Suite 1000, Washington, DC 20004; 202-637-2207.

CERTIFICATE

I have read the foregoing questions carefully and have answered them truthfully, fully and completely. I hereby waive notice by and authorize The Florida Bar or any of its committees, educational and other institutions, the Judicial Qualifications Commission, the Florida Board of Bar Examiners or any judicial or professional disciplinary or supervisory body or commission, any references furnished by me, employers, business and professional associates, all governmental agencies and instrumentalities and all consumer and credit reporting agencies to release to the respective Judicial Nominating Commission and Office of the Governor any information, files, records or credit reports requested by the commission in connection with any consideration of me as possible nominee for appointment to judicial office. Information relating to any Florida Bar disciplinary proceedings is to be made available in accordance with Rule 3-7.1(l), Rules Regulating The Florida Bar. I recognize and agree that, pursuant to the Florida Constitution and the Uniform Rules of this commission, the contents of this questionnaire and other information received from or concerning me, and all interviews and proceedings of the commission, except for deliberations by the commission, shall be open to the public.

Further, I stipulate I have read, and understand the requirements of the Florida Code of Judicial Conduct.

Dated this 6th day of October, 2018.

Carlos Muñiz
Printed Name

C. Muñiz
Signature

(Pursuant to Section 119.071(4)(d)(1), F.S.), . . . *The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from the provisions of subsection (1), dealing with public records.*

FINANCIAL HISTORY

1. State the amount of gross income you have earned, or losses you have incurred (before deducting expenses and taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

Current year to date	$131,269		
List Last 3 years	$250,000	$260,511	$257,348

2. State the amount of net income you have earned, or losses you have incurred (after deducting expenses but not taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

Current year to date	$131,269		
List Last 3 years	$250,000	$260,511	$257,348

3. State the gross amount of income or loses incurred (before deducting expenses or taxes) you have earned in the preceding three years on a year by year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

Current year to date	None		
List Last 3 years	None		

4. State the amount of net income you have earned or losses incurred (after deducting expenses) from all sources other than the practice of law for the preceding three-year period on a year by year basis, and generally describe the sources of such income or losses.

Current year to date	None		
List Last 3 years	None		

FORM 6
FULL AND PUBLIC DISCLOSURE OF FINANCIAL INTEREST

PART A – NET WORTH

Please enter the value of your net worth as of December 31 or a more current date. [Note: Net worth is not calculated by subtracting your *reported* liabilities from your *reported* assets, so please see the instructions on page 3.]

My net worth as of October 1, 2018 was $233,680.

PART B - ASSETS

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

Household goods and personal effects may be reported in a lump sum if their aggregate value exceeds $1,000. This category includes any of the following, if not held for investment purposes; jewelry; collections of stamps, guns, and numismatic items; art objects; household equipment and furnishings; clothing; other household items; and vehicles for personal use.

The aggregate value of my household goods and personal effects (described above) is $ 50,000

ASSETS INDIVIDUALLY VALUED AT OVER $1,000:

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
1584 Hickory Avenue, Tallahassee, FL 32303	$475,000
T Rowe Price Retirement Account	$127,000
MassMutual Retirement Account	$3,881
Wells Fargo (cash account)	$10,500
Florida Prepaid College	$12,500
Voya Retiement Account	$3,000

PART C - LIABILITIES

LIABILITIES IN EXCESS OF $1,000 (See instructions on page 4): NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
GMFS LLC, Littleton, CO (mortgage)	$359,632
Prime Meridian Bank, Tallahassee, FL (home equity loan)	$7,800
SoFi, Dallas, TX (personal loan)	$56,233
Chase Auto Finance, Fort Worth, TX (car loan)	$17,356

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE: NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
None	

PART D - INCOME

You may ***EITHER*** (1) file a complete copy of your latest federal income tax return, *including all W2's, schedules, and attachments,* ***OR*** (2) file a sworn statement identifying each separate source and amount of income which exceeds $1,000 including secondary sources of income, by completing the remainder of Part D, below.

☐ I elect to file a copy of my latest federal income tax return and all W2's, schedules, and attachments.
(if you check this box and attach a copy of your latest tax return, you need *not* complete the remainder of Part D.]

PRIMARY SOURCE OF INCOME (See instructions on page 5):

NAME OF SOURCE OF INCOME EXCEEDING $1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
McGuireWoods	Richmond, VA	$28,269
U.S. Department of Education	Washington, DC	$103,000

SECONDARY SOURCES OF INCOME [Major customers, clients, etc., of businesses owned by reporting person—see instructions on page 6]

NAME OF BUSINESS ENTITY	NAME OF MAJOR SOURCES OF BUSIENSS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE
None			

PART E – INTERESTS IN SPECIFIC BUSINESS [Instructions on page 7]

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTTITY	None		
ADDRESS OF BUSINESS ENTITY			
PRINCIPAL BUSINESS ACTIVITY			
POSITION HELD WITH ENTITY			
I OWN MORE THAN A 5% INTEREST IN THE BUSINESS			
NATURE OF MY OWNERSHIP INTEREST			

IF ANY OF PARTS A THROUGH E ARE CONTINUED ON A SEPARATE SHEET, PLEASE CHECK HERE ☐

OATH

I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed on this form and any attachments hereto is true, accurate, and complete.

C. Munir

SIGNATURE

STATE OF FLORIDA

COUNTY OF Leon

Sworn to (or affirmed) and subscribed before me this 8 day of Oct, 2018 by C. Munir

Brittaney A. Johns

(Signature of Notary Public—State of Florida)

Brittaney A. Johns

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known ✓ *OR* Produced Identification ____

Type of Identification Produced ____

BRITTANEY A. JOHNS
Notary Public - State of Florida
Commission # FF 956607
My Comm. Expires Feb 2, 2020
Bonded through National Notary Assn.

INSTRUCTIONS FOR COMPLETING FORM 6:

PUBLIC RECORD: The disclosure form and everything attached to it is a public record. **Your Social Security Number is not required and you should redact it from any documents you file.** If you are an active or former officer or employee listed in Section 119.071(4)(d), F.S., whose home address is exempt from disclosure, the Commission is required to maintain the confidentiality of your home address ***if you submit a written request for confidentiality.***

PART A – NET WORTH

Report your net worth as of December 31 or a more current date, and list that date. This should be the same date used to value your assets and liabilities. In order to determine your net worth, you will need to total the value of all your assets and subtract the amount of all of your liabilities. Simply subtracting the liabilities reported in Part C from the assets reported in Part B will not result in an accurate net worth figure in most cases.

To total the value of your assets, add:

(1) The aggregate value of household goods and personal effects, as reported in Part B of this form;

(2) The value of all assets worth over $1,000, as reported in Part B; and

(3) The total value of any assets worth less than $1,000 that were not reported or included in the category of "household goods and personal effects."

To total the amount of your liabilities, add:

(1) The total amount of each liability you reported in Part C of this form, except for any amounts listed in the "joint and several liabilities not reported above" portion; and,

(2) The total amount of unreported liabilities (including those under $1,000, credit card and retail installment accounts, and taxes owed).

PART B – ASSETS WORTH MORE THAN $1,000

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

The value of your household goods and personal effects may be aggregated and reported as a lump sum, if their aggregate value exceeds $1,000. The types of assets that can be reported in this manner are described on the form.

ASSETS INDIVIDUALLY VALUED AT MORE THAN $1,000:

Provide a description of each asset you had on the reporting date chosen for your net worth (Part A), that was worth more than $1,000 and that is not included as household goods and personal effects, and list its value. Assets include: interests in real property; tangible and intangible personal property, such as cash, stocks, bonds, certificates of deposit, interests in partnerships, beneficial interest in a trust, promissory notes owed to you, accounts received by you, bank accounts, assets held in IRAs, Deferred Retirement Option Accounts, and Florida Prepaid College Plan accounts. You are not required to disclose assets owned solely by your spouse.

How to Identify or Describe the Asset:

— Real property: Identify by providing the street address of the property. If the property has no street address, identify by describing the property's location in a manner sufficient to enable a member of the public to ascertain its location without resorting to any other source of information.

— Intangible property: Identify the type of property and the business entity or person to which or to whom it relates. **Do not list simply "stocks and bonds" or "bank accounts."** For example, list "Stock (Williams Construction Co.)," "Bonds (Southern Water and Gas)," "Bank accounts (First

National Bank)," "Smith family trust," Promissory note and mortgage (owed by John and Jane Doe)."

How to Value Assets:

— Value each asset by its fair market value on the date used in Part A for your net worth.

— Jointly held assets: If you hold real or personal property jointly with another person, your interest equals your legal percentage of ownership in the property. However, assets that are held as tenants by the entirety or jointly with right of survivorship must be reported at 100% of their value.

— Partnerships: You are deemed to own an interest in a partnership which corresponds to your interest in the equity of that partnership.

— Trusts: You are deemed to own an interest in a trust which corresponds to your percentage interest in the trust corpus.

— Real property may be valued at its market value for tax purposes, unless a more accurate appraisal of its fair market value is available.

— Marketable securities which are widely traded and whose prices are generally available should be valued based upon the closing price on the valuation date.

— Accounts, notes, and loans receivable: Value at fair market value, which generally is the amount you reasonably expect to collect.

— Closely-held businesses: Use any method of valuation which in your judgment most closely approximates fair market value, such as book value, reproduction value, liquidation value, capitalized earnings value, capitalized cash flow value, or value established by "buy-out" agreements. It is suggested that the method of valuation chosen be indicated in a footnote on the form.

— Life insurance: Use cash surrender value less loans against the policy, plus accumulated dividends.

PART C—LIABILITIES

LIABILITIES IN EXCESS OF $1,000:

List the name and address of each creditor to whom you were indebted on the reporting date chosen for your net worth (Part A) in an amount that exceeded $1,000 and list the amount of the liability. Liabilities include: accounts payable; notes payable; interest payable; debts or obligations to governmental entities other than taxes (except when the taxes have been reduced to a judgment); and judgments against you. You are not required to disclose liabilities owned *solely* by your spouse.

You do not have to list on the form any of the following: credit card and retail installment accounts, taxes owed unless the taxes have been reduced to a judgment), indebtedness on a life insurance policy owned to the company of issuance, or contingent liabilities. A "contingent liability" is one that will become an actual liability only when one or more future events occur or fail to occur, such as where you are liable only as a partner (without personal liability) for partnership debts, or where you are liable only as a guarantor, surety, or endorser on a promissory note. If you are a "co-maker" on a note and have signed as being jointly liable or jointly and severally liable, then this is not a contingent liability.

How to Determine the Amount of a Liability:

— Generally, the amount of the liability is the face amount of the debt.

— If you are the only person obligated to satisfy a liability, 100% of the liability should be listed.

— If you are jointly and severally liable with another person or entity, which often is the case where more than one person is liable on a promissory note, you should report here only the portion of the liability that corresponds to your percentage of liability. *However*, if you are jointly and severally liable for a debt relating to property you own with one or more others as tenants by the entirely or jointly, with right of survivorship, report 100% of the total amount owed.

— If you are only jointly (not jointly and severally) liable with another person or entity, your share of the liability should be determined in the same way as you determined your share of jointly held assets.

Examples:

— You owe $10,000 to a bank for student loans, $5,000 for credit card debts, and $60,000 with your spouse to a saving and loan for the mortgage on the home you own with your spouse. You must report the name and address of the bank ($10,000 being the amount of that liability) and the name and address of the savings and loan ($60,000 being the amount of this liability). The credit cards debts need not be reported.

— You and your 50% business partner have a $100,000 business loan from a bank and you both are jointly and severally liable. Report the name and address of the bank and $50,000 as the amount of the liability. If your liability for the loan is only as a partner, without personal liability, then the loan would be a contingent liability.

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

List in this part of the form the amount of each debt, for which you were jointly and severally liable, that is not reported in the "Liabilities in Excess of $1,000" part of the form. Example: You and your 50% business partner have a $100,000 business loan from a bank and you both are jointly and severally liable. Report the name and address of the bank and $50,000 as the amount of the liability, as you reported the other 50% of the debt earlier.

PART D – INCOME

As noted on the form, you have the option of either filing a copy of your latest federal income tax return, including all schedules, W2's and attachments, with Form 6, or completing Part D of the form. If you do not attach your tax return, you must complete Part D.

PRIMARY SOURCES OF INCOME:

List the name of each source of income that provided you with more than $1,000 of income during the year, the address of that source, and the amount of income received from that source. The income of your spouse need not be disclosed; however, if there is a joint income to you and your spouse from property you own jointly (such as interest or dividends from a bank account or stocks), you should include all of that income.

"Income" means the same as "gross income" for federal income tax purposes, even if the income is not actually taxable, such as interest on tax-free bonds. Examples of income include: compensation for services, gross income from business, gains from property dealings, interest, rents, dividends, pensions, IRA distributions, distributive share of partnership gross income, and alimony, but not child support. Where income is derived from a business activity you should report that income to you, as calculated for income tax purposes, rather than the income to the business.

Examples:

— If you owned stock in and were employed by a corporation and received more than $1,000 of income (salary, commissions, dividends, etc.) from the company, you should list the name of the company, its address, and the total amount of income received from it.

— If you were a partner in a law firm and your distributive share of partnership gross income exceeded $1,000, you should list the name of the firm, its address, and the amount of your distributive share.

— If you received dividend or interest income from investments in stocks and bonds, list only each individual company from which you received more than $1,000. Do not aggregate income from all of these investments.

— If more than $1,000 of income was gained from the sale of property, then you should list as a source of income the name of the purchaser, the purchaser's address, and the amount of gain from the sale. If the purchaser's identity is unknown, such as where securities listed on an exchange are sold through a brokerage firm, the source of income should be listed simply as "sale of (name of company) stock," for example.

— If more than $1,000 of your income was in the form of interest from one particular financial institution (aggregating interest from all CD's, accounts, etc., at that institution), list the name of the institution, its address, and the amount of income from that institution.

SECONDARY SOURCE OF INCOME:

This part is intended to require the disclosure of major customers, clients, and other sources of income to businesses in which you own an interest. It is not for reporting income from second jobs. That kind of income should be reported as a "Primary Source of Income." You will ***not*** have anything to report ***unless***:

(1) You owned (either directly or indirectly in the form of an equitable or beneficial interest) during the disclosure period, more than 5% of the total assets or capital stock of a business entity (a corporation, partnership, limited partnership, LLC, proprietorship, joint venture, trust, firm, etc., doing business in Florida); and

(2) You received more than $1,000 in gross income from that business entity during the period.

If your ownership and gross income exceeded the two thresholds listed above, then for that business entity you must list every source of income to the business entity which exceeded 10% of the business entity's gross income (computed on the basis of the business entity's more recently completed fiscal year), the source's address, the source's principal business activity, and the name of the business entity in which you owned an interest. You do not have to list the amount of income the business derived from that major source of income.

Examples:

— You are the sole proprietor of a dry cleaning business, from which you received more than $1,000 in gross income last year. If only one customer, a uniform rental company, provided more than 10% of your dry cleaning business, you must list the name of your business, the name of the uniform rental company, its address, and its principal business activity (uniform rentals).

— You are a 20% partner in a partnership that owns a shopping mall and your gross partnership income exceeded $1,000. You should list the name of the partnership, the name of each tenant of the mall that provided more than 10% of the partnership's gross income, the tenant's address and principal business activity.

PART E – INTERESTS IN SPECIFIED BUSINESS

The types of businesses covered in this section include: state and federally chartered banks; state and federal savings and loan associations; cemetery companies; insurance companies; mortgage companies, credit unions; small loan companies; alcoholic beverage licensees; pari-mutuel wagering companies; utility companies; and entities controlled by the Public Service Commission; and entities granted a franchise to operate by either a city or a county government.

You are required to make this disclosure if you own or owned (either directly or indirectly in the form of an equitable or beneficial interest) at any time during the disclosure period, more than 5% of the total assets or capital stock of one of the types of business entities listed above. You also must complete this part of the form for each of these types of business for which you are, or were at any time during the year an officer, director, partner, proprietor, or agent (other than a resident agent solely for service of process).

If you have or held such a position or ownership interest in one of these types of businesses, list: the name of the business, its address and principal business activity, and the position held with the business (if any). Also, if you own(ed) more than a 5% interest in the business, as described above, you must indicate that fact and describe the nature of your interest.

JUDICIAL APPLICATION DATA RECORD

The judicial application shall include a separate page asking applicants to identify their race, ethnicity and gender. Completion of this page shall be optional, and the page shall include an explanation that the information is requested for data collection purposes in order to assess and promote diversity in the judiciary. The chair of the Commission shall forward all such completed pages, along with the names of the nominees to the JNC Coordinator in the Governor's Office (pursuant to JNC Uniform Rule of Procedure).

(Please Type or Print)

Date: October 8, 2018

JNC Submitting To: Supreme Court

Name (please print): Carlos Muniz

Current Occupation: General Counsel, U.S. Department of Education

Telephone Number: 850-570-0178 Attorney No.: 535001

Gender (check one): ☒ Male ☐ Female

Ethnic Origin (check one):
- ☐ White, non Hispanic
- ☐ Hispanic
- ☐ Black
- ☐ American Indian/Alaskan Native
- ☐ Asian/Pacific Islander

County of Residence: Leon

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

The Florida Department of Law Enforcement (FDLE) may obtain one or more consumer reports, including but not limited to credit reports, about you, for employment purposes as defined by the Fair Credit Reporting Act, including for determinations related to initial employment, reassignment, promotion, or other employment-related actions.

CONSUMER'S AUTHORIZATION FOR FDLE
TO OBTAIN CONSUMER REPORT(S)

I have read and understand the above Disclosure. I authorize the Florida Department of Law Enforcement (FDLE) to obtain one or more consumer reports on me, for employment purposes, as described in the above Disclosure.

Printed Name of Applicant: Carlos Muniz

Signature of Applicant: C. Muniz

Date: 10/8/18

Carlos G. Muñiz

Writing Samples

IN THE SUPREME COURT OF FLORIDA

Case No. SC15-780

ADVISORY OPINION TO THE ATTORNEY GENERAL RE: LIMITS OR PREVENTS BARRIERS TO LOCAL SOLAR ELECTRICITY SUPPLY

INITIAL BRIEF OF OPPONENT FLORIDA COUNCIL FOR SAFE COMMUNITIES

MCGUIREWOODS LLP
CARLOS G. MUÑIZ (FBN 535001)
215 SOUTH MONROE ST. SUITE 602
TALLAHASSEE, FL 32301
PH. (850) 222-8900
CMUNIZ@MCGUIREWOODS.COM

COUNSEL FOR OPPONENT FLORIDA COUNCIL FOR SAFE COMMUNITIES

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

CASES

FLORIDA CONSTITUTION

FLORIDA STATUTES

OTHER AUTHORITIES

STATEMENT OF THE CASE AND FACTS

The Attorney General initiated this action by submitting a petition for an advisory opinion on April 24, 2015, pursuant to article IV, section 10, of the Florida Constitution. This Court has jurisdiction pursuant to article V, section 3(b)(10), of the Florida Constitution.

IDENTITY OF THIS OPPONENT

The Florida Council for Safe Communities appears in opposition to the proposed Solar Amendment. The council is a statewide nonprofit advocacy organization founded to promote public safety and consumer protection, including that of seniors and others living on fixed incomes. The council opposes this amendment because its ballot title and summary are inadequate and misleading, because it strips important consumer protections, and because it exposes Florida consumers to potential utility rate increases.

SUMMARY OF THE ARGUMENT

The Solar Amendment's ballot title and summary do not tell the voter what the amendment does, much less give the voter fair notice of the amendment's chief purpose and effects. Using the ambiguous and metaphorical language of politics, the ballot title and summary speak of "limiting or preventing barriers," without informing the voter of the actual terms and consequences of the proposal. No voter

would understand what specific actions the amendment "limits" or "prevents." No voter would know that the amendment's chief purpose is to convert a currently unauthorized business model for the retail sale of solar electricity into one that is not only legal but entirely unregulated as to rates and service, vital aspects of consumer protection. Nor would any voter have notice that the amendment constitutionalizes restrictions on charges that might be necessary to shield non-solar customers from rate increases.

The ballot title and summary suffer from defects that as a matter of course have been fatal in other cases before this Court: failing to communicate the chief purpose and legal effects of the amendment; using terminology that is misleading or, at best, ambiguous; and engaging in "wordsmithing" by using terms that materially deviate from corresponding terms in the amendment text. Moreover, the Solar Amendment itself engages in logrolling and thereby violates the constitution's single subject requirement. For these reasons, this Court must strike the Solar Amendment from the ballot.

ARGUMENT

I. THE BALLOT TITLE AND SUMMARY VIOLATE SECTION 101.161(1), FLORIDA STATUTES.

The ballot title and summary in this case fail the most basic purposes of section 101.161, Florida Statutes: to "give the voter fair notice of the decision he must make" and to "assure that the electorate is advised of the true meaning, and

ramifications, of an amendment." *Askew v. Firestone*, 421 So.2d 151, 155 (Fla. 1982). Going against standards long established in this Court's precedents, the ballot title and summary do not inform the voter of the chief purpose and legal effects of the proposal; are affirmatively misleading or, at best, ambiguous; and engage in impermissible "wordsmithing." Because the ballot title and summary are clearly and conclusively defective in each of these respects, this Court must strike the Solar Amendment from the ballot.

A. The ballot title and summary fail to inform the voter of the Solar Amendment's content and implications.

The most fundamental defect of the ballot title and summary is that they do not adequately inform the voter what the Solar Amendment actually *does*. The operative portion of the Solar Amendment is located in section 29(b) of the proposed amendment's text, and its commands are specific. Instead of clearly conveying those commands, the ballot title and summary only use the vague and uninformative metaphor of "limiting or preventing barriers" to local solar electricity supply, language that deprives the voter of fair notice of the Solar Amendment's actual content and scope. As this Court observed in *Roberts v. Doyle*, 43 So.3d 654, 659 (Fla. 2010): "A proposed amendment must be removed from the ballot when the title and summary do not accurately describe the scope of the text of the amendment, because it has failed in its purpose."

The ballot title is: "Limits or Prevents Barriers to Local Solar Electricity Supply." Similarly, the summary tells the voter that the proposal "limits or prevents government and electric utility imposed barriers to supplying local solar electricity." The summary also says that "[b]arriers include government regulation of local solar electricity suppliers' rates, service, and territory, and unfavorable electric utility rates, charges, or terms of service imposed on local solar electricity customers." The ballot title and summary do not say how, or to what extent, the proposal "limits" or "prevents" such "barriers."

The Solar Amendment's text, if approved, would actually have very specific legal effects, none of which the ballot title and summary disclose to the voter. Section 29(b)(1) of the amendment would exempt a "local solar electricity supplier" from "state or local government regulation with respect to rates, service, or territory." Section 29(b)(2) prohibits any electric utility from imposing on any customer of "local solar electricity suppliers" any "special rate, charge, tariff," etc., unless it is also imposed on customers "that do not consume electricity from a local solar electricity supplier." Section 29(b)(3) mandates that traditional electric utilities must continue to furnish service to customers of "local electricity suppliers." And section 29(b)(4) allows "reasonable health, safety, and welfare regulations," but only to the extent they "do not prohibit or have the effect of

prohibiting the supply of solar-generated electricity by a local solar electricity supplier."

The "chief purpose" of the Solar Amendment is to bring about these legal effects. The ballot title and summary do not even come close to disclosing them in a manner that permits the voter to "cast an intelligent and informed ballot." *Advisory Op. to the Att'y Gen. Re: Use of Marijuana for Certain Medical Conditions*, 132 So.3d 786, 797 (Fla. 2014).

Indeed, a brief comparison with two past ballot proposals illuminates the deficiencies in the ballot title and summary here. The first sentence of the ballot summary approved in *Advisory Op. to the Att'y Gen.—Limited Marine Net Fishing*, 620 So.2d 997 (Fla. 1993), said: "Limits the use of nets for catching saltwater finfish, shellfish, or other marine animals by prohibiting the use of gill and other entangling nets in all Florida waters, and prohibiting the use of other nets larger than 500 square feet in mesh area in nearshore and inshore Florida waters." Similarly, the first sentence of the ballot summary approved in *Advisory Op. to the Att'y Gen.—Limited Political Terms in Certain Elective Offices*, 592 So2d 225, 228 (1991), said: "Limits terms by prohibiting incumbents who have held the same elective office for the preceding eight years from appearing on the ballot for re-election to that office." In these earlier cases, it surely would not have been sufficient for the summaries merely to say "limits the use of nets" and "limits

terms," without explaining how net use was to be restricted and how many terms an incumbent would be permitted to serve. For these summaries to be legally sufficient, the voters had to be told the nature and extent of those limitations. Conversely, the ballot title and summary here are fatally deficient because they do not tell the voter how and to what extent the proposal "limits or prevents government and electric utility imposed barriers to supplying local electricity."

Even more telling is a contrast between the ballot title and summary here and a memorandum submitted by the Solar Amendment's sponsor to the Financial Impact Estimating Conference. *See* Memorandum from Floridians for Solar Choice, Inc. to Financial Impact Estimating Conference (Apr. 8, 2015).[1] Under the heading "Purpose of the Constitutional Amendment," the sponsor introduces three brief and specific points with: "The Solar Amendment is intended to limit or prevent barriers to local solar electricity supply *by accomplishing the following:*..." (emphasis added). *Id.* at 3. The three numbered points after this introduction indicate that the amendment would: "prohibit" regulating small scale solar energy suppliers as an electric utility; "preserve" the electric utility's current service obligations to customers who also choose to use local solar generated electricity; and "prohibit" certain "unique" charges for customers making this choice. *Id.* Immediately after this three-point summary, the sponsor's

[1] Available online at: http://edr.state.fl.us/Content/constitutional-amendments/2016Ballot/SolarAdditionalInformation.cfm

memorandum says: "In short, the Solar Amendment prohibits PSC-type regulation of local solar electricity suppliers." *Id.* at 4. Section 101.161 and this Court's precedents entitle the voter to a ballot title and summary with at least the same level of concise and informative detail.

Because the ballot title and summary do not even disclose the actual legal effects of the Solar Amendment, they necessarily do not inform the voters of the major ways the Solar Amendment would upend the status quo. To begin with, the overriding goal of the Solar Amendment is to authorize a type of business arrangement that currently is not permitted under Florida law. Specifically, the amendment would result in a private company being able to sell electricity directly to Florida consumers without the company being subject to regulation by the Public Service Commission. Under current law, as confirmed by this Court's holding in *PW Ventures, Inc. v. Nichols*, 533 So.2d 281 (Fla. 1988), any private, for-profit, retail seller of electricity—even to a single customer—is statutorily defined as a "utility" and is therefore subject to regulation by the PSC.

The Solar Amendment would take this business model and not only make it legal, but actually put it beyond the scope of critical consumer protection regulation by the Legislature, by the PSC, and by local governments. This is a dramatic departure from Florida consumers' existing legal protections and expectations. Current Florida law limits regulated utilities to charging "just and

reasonable" rates. §366.041, Fla. Stat. (2014). Florida law also now requires regulated utilities to provide service that is "reasonably sufficient, adequate, and efficient." §366.03, Fla. Stat. (2104). Because the Solar Amendment prohibits regulation of "local solar electricity suppliers" as to "rates, service, and territory," the amendment would preclude state and local governments from enacting similar consumer protection guarantees for customers of these newly-authorized retail sellers of electricity.

The Solar Amendment's protection of the local solar industry is so robust that, according to section 29(b)(4) of the amendment, even "reasonable health, safety, and welfare regulations" must give way if they would "prohibit or have the effect of prohibiting" electricity sales by "local solar electricity suppliers." This extraordinary provision—which no voter could possibly infer from the ballot title and summary—means that the Solar Amendment would constitutionalize prioritizing this industry even over public safety.

The Solar Amendment would also constitutionalize restrictions on the Legislature's, regulators', and utilities' ability to protect ratepayers who do not choose to purchase electricity from "local solar electricity suppliers." As this Court explained in *PW Ventures*, when an unregulated provider is allowed to sell electricity at retail, "revenue that otherwise would have gone to the regulated utilities which serve the affected areas would be diverted to unregulated producers.

This revenue would have to be made up by the remaining customers of the regulated utilities since the fixed costs of the regulated systems would not have been reduced." *PW Ventures*, 588 So.2d at 283. By taking off the table "special" charges for local solar electricity customers, the proposal would rule out a significant means of mitigating adverse effects on other ratepayers.

The ballot title and summary do nothing to disclose to the voter these significant legal consequences of the Solar Amendment. To be sure, the ballot title and summary convey that there will in some sense be less regulation of "local solar electricity supply" and that certain charges are restricted. But there is a vast middle ground between comprehensive PSC-style regulation (*i.e.*, the status quo) and the complete lack of regulation of rates and service mandated by this proposal. The unhelpful language of "limiting or preventing barriers" does not inform the voter where the Solar Amendment falls on that spectrum.

This is particularly egregious given the importance of affordable and reliable electricity to consumers' daily lives, given consumers' deeply entrenched expectation that the law will protect their interests in this area, and given that the proposal could lead to rate increases for the vast majority of ratepayers who will never themselves purchase local solar electricity. As this Court has held, "[w]hen the summary of a proposed amendment does not accurately describe the scope of

the text of the amendment, it fails in its purpose and must be stricken." *Advisory Op. to the Att'y Gen. Re: Term Limits Pledge*, 718 So2d 798, 804 (1998).

The sponsor here made a conscious decision not to inform the voter of the operative provisions of the proposal. It chose instead to summarize the proposal at a level of generality that hides from the voter the proposal's true legal effects and consequences. Rather than inform the voter what the proposal authorizes, requires, and prohibits, the sponsor chose to speak in terms of "limiting or preventing barriers"—thought-clouding rhetoric that leads the voter into what Justice Cardozo famously called "the mists of metaphor." *Berkey v. Third Ave. Railway Co.*, 155 N.E. 58 (Ct. App. NY 1926).

To be clear, the defect in the ballot title and summary is not that they fail to explain every possible ramification of the proposal; this Court's precedents have established that a ballot title and summary need not do so. The ballot summary and title are clearly and conclusively defective because of their complete failure to apprise the voter of the major purposes and effects of the proposal at a level that permits an informed decision.

There is ample precedent for invalidating a ballot title and summary that suffer from this defect. This Court's decisions in *Advisory Op. to the Att'y Gen. Re: Fish and Wildlife Conservation Comm'n*, 705 So.2d 1351 (Fla. 1998), and in *In Re Adv. Op. to the Att'y Gen—Restricts Laws Related to Discrimination*, 632

So.2d 1018 (Fla. 1994), struck ballot titles and summaries that did not disclose to the voter significant restrictions on the Legislature's authority. In *In Re Adv. Op. to the Att'y Gen. re Fairness Initiative*, 880 So.2d 630, 636 (Fla. 2004), this Court struck a ballot title and summary for failing to inform the voter of an "important consequence" of the proposal. And in *Advisory Op. to the Att'y Gen. Re: Amendment to Bar Gov't from Treating People Differently Based on Race*, 778 So.2d 888, 898 (Fla. 2000), this Court struck a ballot title and summary for not informing voters of "the potential breadth" of the underlying amendments.

The ballot title and summary here do not give the voter fair notice of the Solar Amendment's content and consequences. Accordingly, this Court must strike the amendment from the ballot.

B. The ballot title and summary are affirmatively misleading or, at best, ambiguous.

The preceding section explained why the ballot title and summary are fatally defective for what they fail to say. The ballot title and summary are also clearly and conclusively defective because of problems with what they *do* tell the voter.

1. "Limits or prevents" is misleading or, at best, ambiguous.

The words at the heart of the ballot title and summary—"limits or prevents"—are themselves misleading. As explained above, for entities the Solar Amendment labels "local solar electricity suppliers," the proposal does not "limit" regulatory "barriers." Rather, it *eliminates* them with regard to the critical elements

of "rates, service, and territory." Nor does the Solar Amendment merely "prevent" such regulatory "barriers," because they already exist.

At a minimum, the ballot title's and summary's use of "limits or prevents" is ambiguous to an extent that prevents an informed decision by the voter. To state the obvious, "limits" has a different meaning from "prevents." Yet the ballot title and summary do not tell the voter what is "limited" and what is "prevented." Moreover, "limits" and "prevents" are inherently ambiguous terms that necessarily raise questions. Limits how? Prevents how? To point this out is not quibbling or nitpicking. This proposal raises serious policy issues on which reasonable voters can disagree, and the voters are entitled to a ballot title and summary that do not obscure the choices they are being asked to make. As this Court held in *In Re Adv. Op. to the Att'y Gen.—Restricts Laws Related to Discrimination*, 632 So.2d 1018, 1021 (Fla. 1994): "We cannot approve an ambiguity that will in all probability confuse the voters who are responsible for deciding whether the amendment should be included in the state constitution."

2. The ballot summary's use of the term "non-utility" is misleading.

As written, the ballot summary gives the impression that the proposal affects entities that *already* can fairly be described as "non-utility." But for the reasons explained above, that is not the case. Under current Florida law, any private, for-profit, retail seller of electricity is by definition a utility and therefore subject to the

vast panoply of regulations in Chapter 366. Indeed, one of the principal legal consequences of—and undoubtedly the driving motivation for—the proposal is to change Florida law so that a "local solar electricity supplier" would not be deemed a utility. The ballot title and summary thus use the term "non-utility" in a manner that masks the policy choice facing the voter.

3. The ballot title's and summary's use of the word "supply" is ambiguous and misleading.

Another, more subtle, ambiguity is that the ballot title and summary refer only to the "supply" of local solar electricity, while the Solar Amendment's text makes it clear that the operative portions of the proposal govern the "purchase and sale" of local solar electricity. This is significant, because existing law already permits Floridians to supply their own solar electricity, through equipment that they own themselves or lease from a third party. What is currently prohibited in Florida is the direct retail sale of electricity by a private entity that is not regulated as a utility under Chapter 366.

By omitting any reference to "purchase and sale," and by instead speaking only in terms of "supply," the ballot title and summary mislead the voter about the nature and extent of any existing "barriers" to solar energy in Florida. The voter might believe the Solar Amendment is necessary to allow consumers in general access to solar electricity, when that is not the case. As the amendment's sponsor wrote in a memorandum to the Financial Impact Estimating Conference: "The

focus of the Amendment is to remove regulatory barriers inhibiting the third-party local solar supplier business model specifically, not to protect the use of distributed solar electricity generally." Memorandum from Floridians for Solar Choice, Inc. to Financial Impact Estimating Conference at 4 (Apr. 22, 2015).[2]

Moreover, by avoiding the term "purchase and sale" as used in the Solar Amendment's text, the ballot title and summary obscure the fact that a major purpose and effect of the proposal is to authorize a business model that Florida law currently prohibits. Once again, the ballot title and summary stand in the way of the voter's ability to appreciate how the Solar Amendment would alter the status quo.

4. The ballot summary deviates from the proposal's text in a way that is material and misleading: "unfavorable" vs. "special."

A ballot summary is defective if there is a discrepancy between it and the proposal's text and the discrepancy is "material and misleading." *Advisory Op. to the Att'y Gen. Re Patients' Right to Know About Adverse Medical Incidents*, 880 So.2d 617, 623 (Fla. 2004). The ballot summary here contains such a discrepancy.

Specifically, the ballot summary says that "barriers" include "*unfavorable* electric utility rates, charges, or terms of service imposed on local solar electricity customers." (emphasis added). By contrast, the text of the Solar Amendment says

[2] Available online at: http://edr.state.fl.us/Content/constitutional-amendments/2016Ballot/SolarAdditionalInformation.cfm

that "barriers" include "imposition by electric utilities of *special* rates, fees, charges, tariffs, or terms and conditions of service on their customers consuming local solar electricity supplied by a third party that are not imposed on their customers of the same type or class who do not consume local solar electricity." (emphasis added).

The words "unfavorable" and "special" are not synonymous. "Unfavorable" clearly has a negative connotation—it suggests opposition, adverseness, unfairness. By contrast, "special" connotes difference, but it does not inherently indicate that the difference is unwarranted. Interestingly, in one of its memoranda to the Financial Impact Estimating Conference, the sponsor used a third word—"unique"—to describe the charges that the Solar Amendment would prohibit. *See* Floridians for Solar Choice April 8, 2015 Memorandum at 3.[3] This reflects the sponsor's implicit acknowledgement that the word "unfavorable"—the word used in the ballot summary—does not adequately convey the meaning of the word actually used in the amendment text.

The discrepancy between the amendment text and the ballot summary is material because it goes directly to one of the key policy issues raised by the Solar Amendment: the question whether to constitutionalize restrictions on charges that may be imposed on customers of "local solar electricity suppliers." As explained

[3] Available online at: http://edr.state.fl.us/Content/constitutional-amendments/2016Ballot/SolarAdditionalInformation.cfm

above, such charges might be an important means of mitigating any possible adverse effects on other ratepayers. A reasonable voter might fairly conclude that "special" charges on local solar electricity customers are appropriate if the alternative is a rate hike for other ratepayers. That same voter would be far less likely to approve of imposing on others something that the ballot summary labels an "unfavorable" charge, no matter the circumstances.

The discrepancy in terminology between the Solar Amendment text and the ballot summary has to have been deliberate, and it can only be explained as a form of "wordsmithing" that this Court has condemned. *See Florida Dept. of State v. Slough*, 992 So.2d 142, 149 (Fla. 2008). The sole reason to use the word "unfavorable" where it appears in the ballot summary is to mislead and to invite an emotional response from the voter, a practice that this Court has ruled impermissible. *See In Re Advisory Op. to the Att'y Gen. Re: Additional Homestead Tax Exemption*, 880 So.2d 646, 653 (Fla. 2004).

Even if this Court were to give the sponsor the benefit of the doubt and to deem the ballot summary's use of the word "unfavorable" an inadvertent error, there nonetheless would be a materially ambiguous term in the ballot summary. As applied in this context, "unfavorable" is the type of word that leaves voters guessing as to its meaning, with each voter supplying her own conception of the term. For example, "unfavorable" could connote that a charge is unfair, or it could

suggest that the charge renders the local solar electricity too expensive—two completely different meanings. This type of ambiguity in a material term justifies striking the proposal from the ballot. *See Advisory Op. to the Att'y Gen. Re: Amendment to Bar Gov't from Treating People Differently Based on Race*, 778 So2d 888, 899 (Fla. 2000).

C. The ballot title and summary fail to inform the voter that the proposal would enact a sweeping statement of the "policy of the state."

This Court has stated: "Florida's state constitution reflects a consensus on the issues and values that the electorate has declared to be of fundamental importance." *In re Advisory Op. to the Att'y Gen.—Restricts Laws Related to Discrimination*, 632 So.2d 1018, 1019 (Fla. 1994). Thus, it is no small thing to enshrine in our state's organic document an explicitly declared "policy of the state." Currently the term "policy of the state" only appears twice in our constitution. Article II, section 7 says that "[i]t shall be the policy of the state to conserve and protect its natural resources and scenic beauty." And Article VI, section 7 says that "[i]t is the policy of this state to provide for state-wide elections in which all qualified candidates may compete effectively."

The Solar Amendment text—which of course does not appear on the ballot—would add a third constitutional "policy of the state." To wit: "It shall be the policy of the state to encourage and promote local small-scale solar-generated

electricity production and to enhance the availability of solar power to customers." This sweeping statement of policy goes far beyond the specific legal mandates of the Solar Amendment, which themselves constitute only one application of the broader "policy of the state" declared in the amendment. Regardless of whether the statement of policy has any independent legal effect, if enacted, partisans will surely invoke it as expressing the will of the people. It will be trotted out in support of every program or initiative that purports to promote solar power.

Florida's voters deserve to know when they are being asked to declare in their constitution a "policy of the state." It is no insult to question whether a reasonable voter would want to accord "enhancing the availability of solar power to customers" such a lofty status. Yet the ballot title and summary here do not even mention this aspect of the proposal. This omission constitutes yet another fatal defect requiring the Court to strike the proposal from the ballot.

II. THE PROPOSAL VIOLATES THE SINGLE SUBJECT REQUIREMENT OF ARTICLE XI, SECTION 3, OF THE CONSTITUTION.

In *Evans v. Firestone*, 457 So.2d 1351, 1354 (Fla. 1984), this Court declared "the prevention of logrolling" to be the "primary and fundamental concern" of the single subject requirement of article XI, section 3. This restriction protects voters from having to make an all-or-nothing decision whether to embrace unwanted elements of a proposal as a condition of supporting others that are more politically

appealing. *See generally Fairness Initiative*, 880 So.2d at 633-34; *In Re Adv. Op. to the Att'y Gen.—Save Our Everglades*, 636 So.2d 1336, 1341 (1994).

The Solar Amendment purports to offer the voters an opportunity to support locally generated solar electricity, an issue that undoubtedly enjoys wide support—at least in the abstract and at least to the extent that the costs of producing such electricity are borne by those who use it. But as explained, the Solar Amendment inextricably links this opportunity to conditions that are likely far less welcome. Specifically, it would create a new class of unregulated private retail sellers of electricity, expose consumers to harmful business practices without any legal protection, and hamstring the Legislature's and the PSC's ability to insulate non-solar-using consumers from potential rate hikes.

Florida's voters should not be forced to accept stripped-down consumer and ratepayer protection as the price of supporting local solar electricity sales. This Court has protected the voters from this type of Hobson's choice before, and it must do so again here. *See, e.g., Advisory Op. to the Att'y Gen. Re: Right of Citizens to Choose Health Care Providers*, 705 So.2d 563 (Fla. 1998).

CONCLUSION

The ballot title and summary violate section 101.161(1), Florida Statutes (2014), and the Solar Amendment violates the constitution's single subject rule.

Accordingly, this Court is respectfully urged to strike the Solar Amendment from the ballot. Respectfully submitted this 10th day of June, 2015.

/s/ Carlos G. Muñiz
Carlos G. Muñiz
McGuireWoods LLP
215 South Monroe St. Suite 602
Tallahassee, FL 32301
Ph. (850) 222-8900
cmuniz@mcguirewoods.com

Counsel For Opponent
Florida Council for Safe Communities

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished to the following counsel by electronic service through the Florida Courts E-filing Portal on June 10, 2015:

Hon. Pamela Jo Bondi
Attorney General
Alfred Lagran Saunders
Assistant Attorney General
Allen C. Winsor
Solicitor General
State of Florida
The Capitol, PL-01
Tallahassee, Florida 32399-1060
oag.civil.eserve@myfloridalegal.com
lagran.saunders@myfloridalegal.com
allen.winsor@myfloridalegal.com

Timothy M. Cerio, Esquire
Executive Office of the Governor
State of Florida
The Capitol
400 S. Monroe Street
Tallahassee, Florida 32399
tim.cerio@eog.myflorida.com

Adam S. Tanenbaum, Esquire
General Counsel
Florida Department of State
R. A. Gray Building
500 S. Bronough Street
Tallahassee, Florida 32399
adam.tanenbaum@dos.myflorida.com

Matthew J. Carson, Esquire
General Counsel
Florida House of Representatives
422 The Capitol
402 S. Monroe Street
Tallahassee, Florida 32399
matthew.carson@myfloridahouse.gov

George T. Levesque, Esquire
General Counsel
The Florida Senate
302 The Capitol
404 S. Monroe Street
Tallahassee, Florida 32399
levesque.george@flsenate.gov

Raoul G. Cantero, Esquire
T. Neal McAliley, Esquire
White & Case, LLP
Southeast Financial Center
200 S. Biscayne Boulevard
Suite 4900
Miami, Florida 33131-2352
raoul.cantero@whitecase.com
ldominguez@whitecase.com
nmcaliley@whitecase.com
fbailey@whitecase.com33

Stephen H. Grimes, Esquire
D. Bruce May, Jr., Esquire
Holland & Knight LLP
P.O. Drawer 810
Tallahassee, Florida 32302
stephen.grimes@hklaw.com
bruce.may@hklaw.com

William G. Willingham, Esquire
Michelle L. Hershel, Esquire
Florida Electric Cooperatives Association, Inc.
2916 Apalachee Parkway
Tallahassee, Florida 32301
fecabill@embarqmail.com
mhershel@feca.com

Linda Loomis Shelley, Esquire
Buchanan, Ingersoll & Rooney, PC
101 North Monroe Street
Suite 1090
Tallahassee, Florida 32301
linda.shelley@bipc.com

Harry Morrison, Jr., Esquire
Florida League of Cities, Inc.
301 South Bronough Street
Suite 300
Tallahassee, Florida 32302-1757
cmorrison@flcities.com

Dan R. Stengle, Esquire
Dan R. Stengle, Attorney, LLC
502 North Adams Street
Tallahassee, Florida 32301
dstengle@comcast.net

Jody Lamar Finklea, Esquire
Amanda L. Swindle, Esquire
2061-2 Delta Way
Tallahassee, Florida 32303
jody.finklea@fmpa.com
amanda.swindle@fmpa.com

Floyd R. Self, Esquire
Berger Singerman LLP
125 South Gadsden Street, Suite 300
Tallahassee, FL 32301
fself@bergersingerman.com
awalker@bergersingerman.com
sfulghum@bergersingerman.com
drt@bergersingerman.com

Javier L. Vazquez, Esquire
Berger Singerman LLP
1450 Brickell Avenue, Suite 1900
Miami, FL 33131
jvazquez@bergersingerman.com
mdavila@bergersingerman.com

Craig E. Leen, Esquire
City Attorney, City of Coral Gables
405 Biltmore Way
Coral Gables, FL 33134-5717
cleen@coralgables.com

M. Stephen Turner, Esquire
Broad and Cassel
215 South Monroe Street, Suite 400
P.O. Drawer 11300
Tallahassee, Florida 32302
sturner@broadandcassel.com
pwilliams@broadandcassel.com
mubieta@broadandcassel.com34

/s/Carlos G. Muñiz
Attorney

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).

/s/Carlos G. Muñiz
Attorney

No. 02-1315

In The
Supreme Court of the United States

GARY LOCKE, GOVERNOR OF THE STATE OF WASHINGTON, et al.,
Petitioners,

v.

JOSHUA DAVEY,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF THE STATE OF FLORIDA, THE HONORABLE JOHN ELLIS "JEB" BUSH, GOVERNOR, AND THE FLORIDA DEPARTMENT OF EDUCATION, AS AMICI CURIAE IN SUPPORT OF RESPONDENT

CHARLES J. CRIST, JR.
Attorney General of Florida
CHRISTOPHER M. KISE
Solicitor General of Florida
Counsel of Record
Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399-1050
(850) 414-3681

RAQUEL A. RODRIGUEZ
General Counsel
Office of the Governor
CARLOS MUÑIZ
Special Counsel to the Governor
DANIEL WOODRING
General Counsel
Florida Department of Education

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

UNITED STATES CONSTITUTION

INTEREST OF THE AMICI

Amici the State of Florida, Florida Governor Jeb Bush and the Florida Department of Education share a strong commitment to protecting religious liberty and to respecting the religious pluralism of the people of the State of Florida. Amici thus have an interest in ensuring that individuals are not excluded from otherwise available government benefit programs solely on the basis of religion.

Amici also have an interest in this case because of pending litigation over Florida's Opportunity Scholarship Program ("OSP"), enacted in 1999 as part of a comprehensive education reform package. The OSP provides scholarships to students in failing schools and allows them to use their scholarships at any eligible public or private school. The OSP's school eligibility criteria make no distinction between secular and religious private schools.

Raising claims under the constitutions of both Florida and the United States, various interest groups and individuals challenged the OSP shortly after it went into effect. The plaintiffs abandoned their federal Establishment Clause claim after this Court issued its decision in *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002).

Nonetheless, a Florida trial court ultimately held that, by allowing students to spend their scholarship funds at religious schools, the OSP violates Article I, section 3 of the Florida Constitution ("Article I, section 3"). *See Holmes v. Bush*, No. CV 99-3370, 2002 WL 1809079 (Fla. Cir. Ct. Aug. 5, 2002). In relevant part, Article I, section 3 provides: "No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian

institution." An appeal of this decision is currently pending before a state district court of appeal.

Amici have argued in the appeal that the trial court failed to apply Florida Supreme Court case law holding that Article I, section 3 is not violated when religious institutions incidentally benefit from a neutral program that is of general applicability and has a secular purpose. *See, e.g., Johnson v. Presbyterian Homes of Synod, Inc.*, 239 So. 2d 256 (Fla. 1970). Rather than follow controlling precedent, the trial court adopted an interpretation of Article I, section 3 that jeopardizes numerous other Florida social programs, including the McKay Scholarship program. That program allows over ten thousand students with disabilities to attend private schools of their parents' choice.

Amici have further argued in the appeal that the trial court's construction of Article I, section 3 unnecessarily creates a conflict between the Florida Constitution and the U.S. Constitution. Specifically, the trial court read the Florida Constitution as requiring the state to violate the U.S. Constitution by discriminating against students who would choose to spend their Opportunity Scholarships in pursuit of a religious education.

Amici thus have a significant interest in this Court's clarification of whether a state scholarship program that funds both public and private education may, consistent with the U.S. Constitution, exclude those students who choose a private religious education.

SUMMARY OF ARGUMENT

The Free Exercise and Establishment Clauses together mandate government neutrality toward religion. Washington's scholarship program violates this neutrality mandate in two ways. First, the program uses a religious classification as a basis for the denial of an otherwise available government benefit by excluding students who choose to major in theology. Second, the program evinces hostility toward religion and stigmatizes students who choose to engage in religious inquiry by funding literally every course of study other than theology. The program's express reliance on a religious classification to deny a government benefit distinguishes this case from those in which this Court has upheld government programs that, for reasons having nothing to do with religion, declined to fund constitutionally protected activities. The program's use of a religious classification also distinguishes this case from those involving the Court's review of neutral laws of general applicability that only incidentally affected religious adherents.

The Promise Scholarship program's exclusion of students who choose to major in theology also violates the viewpoint neutrality requirement imposed by the Free Speech Clause. Applying the limited public forum doctrine, this Court has repeatedly held that government may not deny religious speakers access to otherwise available facilities. Significantly, in *Rosenberger v. Rector and Visitors of the University of Virginia,* 515 U.S. 819 (1995), the Court invoked limited public forum principles to invalidate a state university policy that excluded religious publications from an otherwise available *funding* program. The Promise Scholarship program is constitutionally indistinguishable from the program that the Court in *Rosenberger* found unconstitutional. The First Amendment equally protects freedom of speech and freedom to learn, and the government has no legitimate interest in discriminating on the basis of religious viewpoint in either context. For the same

reasons that government may not deny religious speakers access to otherwise available facilities and funds, it also may not exclude an otherwise eligible student from a state-funded scholarship program solely on the basis of the student's choice to pursue a religious education.

ARGUMENT

I. THE PROMISE SCHOLARSHIP PROGRAM VIOLATES THE NEUTRALITY REQUIREMENT IMPOSED BY THE FREE EXERCISE AND ESTABLISHMENT CLAUSES.

A. The Religion Clauses Jointly Mandate Government Neutrality Toward Religion.

"The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion." *Epperson v. Arkansas*, 393 U.S. 97, 103 (1968). This neutrality requirement is derived from both the Establishment Clause and the Free Exercise Clause. *See Committee for Pub. Educ. and Religious Liberty v. Nyquist*, 413 U.S. 756, 792-93 (1973) ("A proper respect for both the Free Exercise and the Establishment Clauses compels the State to pursue a course of 'neutrality' toward religion."). The neutrality principle so informs this Court's jurisprudence that the Court has invoked it to explain the constitutional requirement that government, in rare cases, may exempt a religious adherent from a law of general applicability. *See Sherbert v. Verner*, 374 U.S. 398, 409 (1963) (constitutionally-required accommodation "reflects nothing more than the governmental obligation of neutrality in the face of religious differences").

The neutrality requirement leads to two subsidiary principles, both of which are offended by Washington's Promise Scholarship program. The first is that, "[b]eyond [the] limited situations in which government may take cognizance of religion for purposes of accommodating our traditions of religious liberty, government may not use religion as a basis of classification for the imposition of duties, penalties, privileges or benefits." *McDaniel v. Paty*, 435 U.S. 618, 639 (1978) (Brennan, J., concurring). Consistent with this principle, a basic tenet of this Court's Free Exercise Clause jurisprudence is that "government may not . . . impose special disabilities on the basis of religious views or religious status." *See also Employment Div. v. Smith*, 494 U.S. 872, 877 (1990). When the government does take action based on a religious classification, its action is subject to strict scrutiny. *See id.* at 886 n.3. And "[a] law that targets religious conduct for distinctive treatment . . . will survive strict scrutiny only in rare cases." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993).

The second principle, which is derived primarily from this Court's Establishment Clause jurisprudence, is that government may not take actions that, in purpose or effect, either endorse or disapprove of religion. *See, e.g., Lynch v. Donnelly*, 465 U.S. 668, 690 (1984) (O'Connor, J., concurring). "Endorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community. Disapproval sends the opposite message." *Id.* at 688 (O'Connor, J., concurring). To be sure, most of this Court's cases interpreting the Establishment Clause have presented the question whether government action has impermissibly favored religion. But this Court's jurisprudence leaves no doubt that the Establishment Clause equally forbids governmental disapproval of or hostility toward religion. *See, e.g., Everson v. Bd. of Educ.*, 330 U.S. 1, 18 (1947) ("State power is no more to be used so as to handicap

religions, than it is to favor them."); *Edwards v. Aguillard*, 482 U.S. 578, 616 (1987) (Scalia, J., dissenting) ("[W]e have consistently described the Establishment Clause as forbidding not only state action motivated by the desire to *advance* religion, but also that intended to 'disapprove,' 'inhibit,' or evince 'hostility' toward religion"); *Wallace v. Jaffree*, 472 U.S. 38, 85 (1985) (Burger, C.J., dissenting) ("For decades our opinions have stated that hostility toward any religion or toward all religions is as much forbidden by the Constitution as is an official establishment of religion.").

B. The Promise Scholarship Program Violates The Neutrality Requirement Imposed By The Religion Clauses.

Washington's Promise Scholarship program violates both of the subsidiary principles of neutrality. First, it denies students access to an otherwise available government benefit solely on the basis of a religious classification. Washington's program expressly defines its beneficiaries in reference to religion. Eligible students may choose literally any course of study other than theology, which for purposes of Washington law means "that category of instruction that resembles worship and manifests a devotion to religion and religious principles in thought, feeling, belief, and conduct." *Calvary Bible Presbyterian Church v. Bd. of Regents*, 436 P.2d 189, 193 (Wash. 1967). Among otherwise eligible students, only those who choose to major in theology are denied a scholarship. Put differently, Washington withholds its subsidy unless and until a student is willing to pursue a secular major. As long as a student remains within a class defined in reference to religion—those students who choose to major in theology—he or she will be denied the scholarship. The neutrality requirement mandated by the Religion Clauses forbids a state from so using a religious classification to deny an otherwise eligible student a government benefit.

Second, by singling out students who major in theology for disfavored treatment, Washington's program conveys a message of governmental hostility toward religion. To an objective observer, a policy that subsidizes *every* course of study other than theology necessarily stigmatizes religious inquiry and those who wish to engage in it. This Court in other contexts has not hesitated to draw the conclusion that religion-based exclusions from otherwise neutral benefit programs signal hostility toward religion. For example, in *Rosenberger*, this Court observed that a state university's discriminatory refusal to fund a religious publication "would risk fostering a pervasive bias or hostility to religion, which could undermine the very neutrality the Establishment Clause requires." 515 U.S. at 845-46. Similarly, a plurality of the Court in *Board of Education v. Mergens*, 496 U.S. 226, 248 (1990), noted that, "if a State refused to let religious groups use facilities open to others, then it would demonstrate not neutrality but hostility toward religion." Using a religious classification as a basis for exclusion from an otherwise available benefit program communicates a message of hostility to religion even if the state's motivation for enacting the discriminatory policy—to accomplish a strict separation of church and state—is benign. *See, e.g., Lynch*, 465 U.S. at 690 (O'Connor, J., concurring) (to determine whether government message endorses or disapproves of religion, Court must consider objective effect of message in the community). A state cannot, consistent with the neutrality requirement, adopt a policy that has the objective effect of stigmatizing students who choose a religious education.

C. The Promise Scholarship Program Fails Strict Scrutiny Review.

Because it employs a religious classification to deny an otherwise available government benefit, the Promise Scholarship program is subject to strict scrutiny. *See Smith*, 494 U.S. at 886 n.3. Tellingly, Washington does not even argue that its policy could pass that test. The reason is that such an argument is precluded by this Court's decision in *Widmar v. Vincent*, 454 U.S. 263 (1981). In that case, the Court found that a state university violated the Free Speech Clause by excluding a religious group from an otherwise open forum. In defense of its discriminatory policy, the state had asserted an interest "in achieving greater separation of church and State than is already ensured under the Establishment Clause of the Federal Constitution." *Id.* at 277. The Court nonetheless concluded that the university's policy failed strict scrutiny review because the state's interest was "limited by the Free Exercise Clause and . . . by the Free Speech Clause as well." *Id.* at 277-78. Similarly, Washington's interest in pursuing its policy of separation of church and state is insufficient to justify the Promise Scholarship's discrimination against students who choose to major in theology.

The religious liberty guaranteed by the First Amendment is entitled to full protection against encroachment by state law. State policies involving religion need not be uniform, but they must at a minimum respect the neutrality and non-discrimination principles mandated by the Religion Clauses of the U.S. Constitution. State laws that discriminate on the basis of religion should fare no better before this Court than laws that discriminate on other grounds that are constitutionally impermissible. *Cf. Board of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 715 (1994) (O'Connor, J., concurring) ("This emphasis on equal treatment is, I think, an eminently sound approach. In my view, the Religion Clauses—the Free

Exercise Clause, the Establishment Clause, the Religious Test Clause, Art VI, cl. 3, and the Equal Protection Clause as applied to religion—all speak with one voice on this point: Absent the most unusual circumstances, one's religion ought not to affect one's legal rights or duties or benefits.").

D. Washington's Defense of Its Program Is Unpersuasive Because the Funding Cases Are Inapposite and the Promise Scholarship Program Is Not a Neutral Law of General Applicability.

Washington offers two principal arguments in defense of its program. First, the state contends that its policy does not violate the Constitution because this Court has previously held that "the legislature's decision not to fund the exercise of a constitutional right does not infringe that right." (Pet'r Br. at 23) (quoting *Rust v. Sullivan*, 500 U.S. 173, 193 (1991)). Second, Washington maintains that its program is a neutral law of general applicability that simply reflects the distinction between secular and religious instruction, a distinction that has been approved in this Court's jurisprudence. Neither of these defenses is persuasive.

The first argument fails because it does not address the asserted constitutional defect in Washington's policy. The problem with the policy is not that it violates a supposed right to a state-subsidized religious education. Neither the Free Exercise Clause, nor any other provision of the Constitution, confers such a right. The policy is unconstitutional because it uses a religious classification as a basis for exclusion from an otherwise generally available government benefit program. The program thus violates the neutrality requirement embodied in the Religion Clauses.

The conclusion that Washington's program unconstitutionally discriminates against students who choose religious instruction is tied closely to the specific structure of the program. It would make a constitutionally significant difference if, for example, Washington had decided only to fund scholarships at public colleges and universities. One of the results of such a decision would be that the state would not subsidize theological instruction (per Washington's definition). But Washington would have achieved that objective through a religion-neutral—and constitutionally permissible—policy that distinguishes between public and private education. A student challenging such a program based on the Religion Clauses would not have a viable claim, because the program would not have used a religious classification as a basis for discriminatory treatment.

The funding cases that Washington cites in support of its argument are irrelevant precisely because none involved the government's use of religion as a basis for granting or denying an otherwise generally-available benefit. In *Maher v. Roe*, 432 U.S. 464 (1977), *Harris v. McRae*, 448 U.S. 297 (1980), and *Rust v. Sullivan*, 500 U.S. 173 (1991), the Court upheld funding programs that favored childbirth over abortion. In *Regan v. Taxation With Representation of Washington*, 461 U.S. 540 (1983), the Court upheld a Congressional tax subsidy that favored non-lobbying activities over lobbying, and that favored veterans' groups over non-profit organizations dedicated to other causes. In *National Endowment for the Arts v. Finley*, 524 U.S. 569 (1998), the Court evaluated Congress' use of "general standards of decency and respect for the diverse beliefs and values of the American public" as criteria for evaluating grant applications. None of these cases sheds any light on the question whether government may use a religious classification as the basis for exclusion from a benefit program.

The abortion cases in particular highlight the weakness of Washington's argument. In *Maher*, for example, the Court noted that the abortion right "implies no limitation on the authority of a State to make a value judgment favoring childbirth over abortion, and to implement that judgment by the allocation of public funds." 432 U.S. at 474. Similarly, the Court in *Rust* observed that "Government can, without violating the Constitution, selectively fund a program to encourage certain activities it believes to be in the public interest, without at the same time funding an alternative program which seeks to deal with the problem in another way." 500 U.S. at 193. The Court made this statement even while acknowledging that, by using its funding power to further its chosen goals, the government "necessarily discourages alternative goals." *Id.* at 194.

This type of analysis is inapplicable in a case that implicates the neutrality requirement mandated by the Religion Clauses. Consider the above-quoted passage from *Maher*, if applied to the classifications at issue in this case: "The First Amendment implies no limitation on the authority of a State to make a value judgment favoring [students who would use a subsidy to pursue a secular major] over [students who would use a subsidy to pursue a religious major], and to implement that judgment by the allocation of public funds." Such a statement could not be reconciled with the Religion Clauses' neutrality mandate. Similarly implausible is the notion that this Court would countenance the government's decision to "discourage" private individuals' pursuit of religious instruction. In any event, the Court in *Maher* itself alluded to the significant difference between the abortion right and religious liberty when it distinguished abortion from "the significantly different context of a constitutionally imposed 'governmental obligation of neutrality' originating in the Establishment and Freedom of Religion Clauses of the First Amendment." *Id.* at 474 n.8.

Washington's second principal defense is that its scholarship regulations are a "neutral law of general applicability." For that reason, Washington contends, the Promise Scholarship program does not violate students' free exercise rights, and the program should not be subject to strict scrutiny.

Washington's characterization of its scholarship program defies both common sense and this Court's jurisprudence. The analytical concept of a "neutral law of general applicability" is most closely associated with this Court's decision in *Smith*, 494 U.S. 872. The Court in that case used the term to describe an Oregon law that generally prohibited drug use. Other cases that the *Smith* majority characterized as involving neutral laws of general applicability include *United States v. Lee*, 455 U.S. 252 (1982) (law requiring payment of Social Security taxes); *Gillette v. United States*, 401 U.S. 437 (1971) (law establishing the military selective service system); and *Braunfield v. Brown*, 366 U.S. 599 (1961) (Sunday closing laws). Each of the laws at issue in these cases incidentally affected religious practices, but none even mentioned religion, and none was passed with an intent to affect religion in any way. By contrast, the Promise Scholarship program facially discriminates on the basis of religion and reflects a conscious effort to enforce a government policy prohibiting the use of public funds for religious instruction. The "neutral law of general applicability" line of cases is thus inapposite.

Similarly unpersuasive is Washington's contention that its policy is neutral because it simply reflects the constitutionally permissible distinction between secular and religious instruction. While this distinction may have relevance when evaluating education or educational materials offered by the government itself, it has no application here. In a program like the Promise Scholarship, there is no possibility that students' educational choices will be attributed to the government. As this Court

explained in *Zelman*: "[W]e have repeatedly recognized that no reasonable observer would think a neutral program of private choice, where state aid reaches religious schools solely as a result of the numerous independent decisions of private individuals, carries with it the *imprimatur* of government endorsement." 536 U.S. at 654-55.

Washington therefore cannot reasonably fear that funding *any* major—including theology—chosen by an eligible student would result in governmental endorsement of religion. To the contrary, a program that otherwise allows students to choose any course of study must include students majoring in theology if the program is to comply with the Constitution's neutrality mandate: "[T]he guarantee of neutrality is respected, not offended, when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse." *Rosenberger*, 515 U.S. at 839. At bottom, Washington's argument ignores the "crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." *Mergens*, 496 U.S. at 250.

II THE PROMISE SCHOLARSHIP PROGRAM VIOLATES THE VIEWPOINT NEUTRALITY REQUIREMENT IMPOSED BY THE FREE SPEECH CLAUSE.

A. The Promise Scholarship Program Should Be Evaluated Under Limited Public Forum Principles.

Washington's Promise Scholarship program is unconstitutional for the further reason that it discriminates against religious expression, in violation of the Free Speech Clause. Specifically, the nature of the program brings it within the limited public forum doctrine, and its exclusion of students who major in theology is a form of viewpoint discrimination.

The limited public forum doctrine holds that the government is subject to First Amendment limitations when it voluntarily provides its resources to facilitate private expression. In most of this Court's limited public forum cases involving religious expression, the resource provided by the government was an actual meeting place. *See Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Widmar,* 454 U.S. 263. But in *Rosenberger*, 515 U.S. 819, the Court applied the limited public forum doctrine to a funding program that subsidized the printing costs of student publications.

Regardless of whether the forum consists of a meeting place or a funding program, the Free Speech Clause imposes two basic limitations on government's ability to restrict access to that forum. A "restriction must not discriminate against speech on the basis of viewpoint." *Good News*, 533 U.S. at 106. And "the restriction must be reasonable in light of the purpose served by the forum." *Id.* at 107 (internal quotation marks and citation

omitted). Washington's Promise Scholarship program fails both of these tests.

The conclusion that the Promise Scholarship program violates the Free Speech Clause is compelled by this Court's analysis in *Rosenberger*. The funding program at issue in that case had been created to subsidize the activities of groups "related to the educational purpose of the University of Virginia." *Rosenberger*, 515 U.S. at 824 (internal quotation marks omitted). Among other things, the program subsidized the printing costs of a variety of student publications. However, the university had a policy that no money from the fund could be used for "religious activity," which the policy defined as "any activity that primarily promotes or manifests a particular belie[f] in or about a deity or an ultimate reality." *Id.* at 825 (internal quotation marks omitted). Based on this policy, the university refused to pay the printing costs of a student publication that addressed issues from a Christian editorial perspective.

The Christian student group sued, and this Court ultimately invalidated the university's funding program. The Court first concluded that the program was a limited public forum, albeit "more in a metaphysical than in a spatial or geographic sense." *Id.* at 830. The Court then held that the university had engaged in impermissible viewpoint discrimination by denying funding on the basis of the publication's religious editorial viewpoint. *See id.* at 836-37.

Limited public forum principles should apply to Washington's Promise Scholarship program for the same reason that the Court applied them to the funding program at issue in *Rosenberger*. Each program was established by the government to facilitate private expression. In *Rosenberger*, the subsidized expression consisted of student publications. Washington's scholarship program subsidizes the pursuit of learning. For purposes of the First Amendment, this is a distinction without a

difference, because the Free Speech Clause protects both types of expression from governmental interference. *See, e.g., Griswold v. Connecticut*, 381 U.S. 479, 482 (1965) ("The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read and freedom of inquiry, freedom of thought, and freedom to teach.") (internal citations omitted). Just as the government has no legitimate interest in regulating student speech on the basis of viewpoint, so too it has no such interest in adopting viewpoint-based regulations that affect students' choice of what to study.

B. The Promise Scholarship Program's Exclusion Of Theology Majors Is Classic Viewpoint Discrimination.

Because the Promise Scholarship program is governed by limited public forum principles, its discrimination against students who choose to major in theology violates the Free Speech Clause. First, under this Court's decisions in *Good News, Rosenberger, Lamb's Chapel,* and *Widmar*, Washington's policy of excluding theology majors from its scholarship program is a classic form of viewpoint discrimination. In fact, Washington candidly acknowledges that its funding restriction does not apply to religion as a subject matter, but only to religion taught from a devotional or faith-based perspective. (Pet'r Br. at 5-6). *Cf. Rosenberger*, 515 U.S. at 831 ("By the very terms of the [funding] prohibition, the University does not exclude religion as a subject matter but selects for disfavored treatment those student journalistic efforts with religious editorial viewpoints.").

Second, and perhaps more fundamentally, it is unreasonable to exclude students who major in theology from a program broadly dedicated to making a college education more affordable for low and middle-income students. *See Good News*,

533 U.S. at 122 (Scalia, J., concurring) ("Lacking *any* legitimate reason for excluding the Club's speech from its forum—'because it's religious' will not do—respondent would seem to fail First Amendment scrutiny regardless of how its action is characterized. Even subject-matter limits must at least be reasonable in light of the purpose served by the forum.") (internal citations and quotation marks omitted). The government has no legitimate interest in encouraging students to choose a secular major over a major in theology.

Washington was not required to establish the Promise Scholarship program. But "[h]aving done so, [it] has assumed an obligation to justify its discriminations and exclusions under applicable constitutional norms." *Widmar*, 454 U.S. at 267. The same First Amendment principles that preclude government from denying religious speakers access to generally available facilities or funds (*see Good News, Lamb's Chapel, Widmar, Rosenberger*) prohibit Washington from excluding otherwise eligible theology majors from its scholarship program.

CONCLUSION

The Court should affirm the judgment of the Court of Appeals.

Respectfully submitted,

CHARLES J. CRIST, JR.
Attorney General of Florida

CHRISTOPHER M. KISE
Solicitor General of Florida
Counsel of Record
Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399-1050
(850) 414-3681

RAQUEL A. RODRIGUEZ
General Counsel
State of Florida, Office of the Governor

CARLOS G. MUÑIZ
Special Counsel to the Governor
State of Florida, Office of the Governor

DANIEL WOODRING
General Counsel
Florida Department of Education