

**IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA**

WILLIAM F. HORD, JONATHAN BUSH & JOHN  
LEE,

Petitioners,

v.

Case No. \_\_\_\_\_

LARRY ASHLEY, individually and in his  
Official capacity as SHERIFF OF  
OKALOOSA COUNTY & WESTERN SURETY  
COMPANY, as surety of Larry Ashley,  
in his official capacity as SHERIFF OF  
OKALOOSA COUNTY,

L.T. Case No.: 2018-CA-003509 F

Respondents.

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**PETITION FOR WRIT OF CERTIORARI**

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## PETITION FOR WRIT OF CERTIORARI

Petitioners seek a writ of certiorari quashing the order rendered by the Okaloosa County Circuit Court (the “circuit court” or “trial court”), Honorable William F. Stone. As explained in more detail below, the circuit court applied the incorrect law by upholding the 2018 findings from the Personnel Standards and Review Board for the Okaloosa County Sheriff’s Department (“the Board”) because the legislature *repealed* the Special Act creating the Board in 2011, and the circuit court lacked the authority to recreate the defunct Board, as it attempted to do here.<sup>1</sup>

### I. **BASIS FOR INVOKING THE JURISDICTION OF THE COURT**

The Florida Constitution provides that district courts have jurisdiction to issue writs of certiorari. *See* Article V, § 3(b)(3), Fla. Const. This includes writs of certiorari directed to final orders of circuit courts acting in their review capacity. *See* Fla. R. App. P. 9.030(b)(2)(B).

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<sup>1</sup> As discussed below, this Court denied a petition for writ of mandamus or prohibition prior to the Board’s proceedings review that sought to preclude the proceedings in advance. *App. 51*. But the Court denied the petition without opinion or elaboration, so the Court did not decide the issues on the merits. *See Topps v. State*, 865 So. 2d 1253, 1258 (Fla. 2004) (“unelaborated orders denying relief in connection with all extraordinary writ petitions issued by Florida courts shall *not* be deemed to be decisions on the merits which would later bar the litigant from presenting the issue under the doctrines of res judicata or collateral estoppel unless there is a citation to authority or other statement that clearly shows that the issue was considered by the court on the merits and relief was denied”) (emphasis in original).

## **II. FACTS ON WHICH THE PETITIONERS RELY**

### **A. The Special Act**

The legislature enacted a Special Act for the Okaloosa County Sheriff's Department in 1981. *See* Ch. 81-441, Laws of Fla. ("the Special Act"); *App.* 192-196. The purpose of the Special Act was to "apply principles of fairness and equity to the employees of the Okaloosa County Sheriff's Department in matters of employee dismissal." *Id.* at §1(1).

The Special Act included three items relevant to the issues raised in this petition. First, the Special Act provided that employees of the department could only be terminated "for cause." *See id.* at § 12(1)(d) (stating that "no person holding a position covered under this act shall be discharged, except for cause, upon written charges, and after an opportunity to be heard in his or her own defense"). Second, the Special Act created the Board to oversee the Sheriff's employment decisions. As enacted, the Board was to consist of five individuals, two selected by the Sheriff, two elected by employees of the department, and the fifth elected by the other four. Members were to be elected to four-year staggered terms. *See id.* at § 1(2).

Third, the Special Act provided a mechanism for the Board to oversee decisions by the Sheriff to suspend or dismiss non-probationary employees. *See*

*id.* at § 12. According to these procedures, the Sheriff could suspend or dismiss an employee only “upon filing with the board written reasons for such action and upon giving the person whose removal is sought both reasonable notice of the dismissal and of the charges preferred against him or her and an opportunity to answer such charges in writing and to file with the board affidavits in support of such answer.” *Id.* If the employee requested review, the Board was required to conduct that review within 30 days. *Id.* The Special Act permitted a Sheriff to suspend the employee without pay during this 30-day period so long as the employee received the mandated opportunity to be heard during that time. *Id.*

**B. The Petitioners, Sheriff Ashley, and the repeal of the Special Act**

Respondent Larry Ashley ran for Sheriff of Okaloosa County in 2010. At that time, Petitioners Hord, Bush and Lee were long-time employees of the Okaloosa County Sheriff’s Department. Hord also ran for Sheriff in 2010 and opposed Ashley in the Republican primary, while Bush and Lee supported candidates other than Ashley during the election. *App. 40.* Ashley was eventually elected Sheriff on November 2, 2010, and was sworn into office on November 8, 2010. *App. 40.*

On November 9, 2010, Ashley’s first full day in his new position, Hord, Bush and Lee were advised that they were being terminated from their positions. *App. 40.* Ashley never advised Petitioners that they were being terminated for

cause, and he did not file written reasons for the dismissals with the Board, as required by the Special Act for the dismissals to become effective. *App. 40-41.*

Ashley later conceded that the dismissals were not for cause:

Q Let me repeat the question. Did you bring charges against these individuals with regard to the defaults or other malfeasance or something they did that was cause for them not to be retained?

A No. It was a no-cause dismissal. It was not a for cause or—it was a no-cause dismissal. I didn't have confidence in their ability to represent me as a sheriff, so I did not retain them.

*App. 40-41.* Notwithstanding Ashley's failure to provide them notice of the cause for the dismissals, Petitioners sent a written request for review on November 19, 2010, but that request was not honored. *App. 41.* As a result, the Board never conducted a review of the dismissals. *App. 41.*

Shortly after terminating the Petitioners, Ashley began to lobby the legislature to repeal the Special Act. *App. 41.* Eventually the governor signed legislation repealing the Special Act on June 21, 2011—seven months after Petitioners were terminated. *See Ch. 2011-267, Law of Fla.*

### C. **The lawsuit**

Petitioners filed suit against Ashley, individually and in his official capacity as Sheriff of Okaloosa County, on May 17, 2011—five weeks before the repeal of the Special Act. *App. 41.* Count II of the complaint sought declaratory relief for

violation of Petitioners' due process rights as a result of the Sheriff's failure to follow the requirements of the Special Act. *App. 41*. In February of 2015, the trial court entered an order granting Petitioners partial summary judgment on Count II of the amended complaint. *App. 41*. The trial court concluded that the Special Act, before its repeal, created a property interest in each of the Petitioners. *App. 41*. The trial court further found, based upon the undisputed evidence, that Ashley (a) did not hold elections or appoint members for the Board, (b) failed to provide the Board with written notice of the dismissals or the reasons for the dismissals, and (c) failed to provide the Petitioners review of their dismissals by the Board, as the Petitioners requested. *App. 42*. Thus, the trial court concluded that Ashley denied Petitioners their procedural due process rights. *App. 43*. The trial court otherwise denied Petitioners' motion and held that all other claims "shall be determined at trial." *App. 43*.

Ashley then moved for entry of judgment on Count II, arguing that, if Ashley denied Petitioners their procedural due process rights, "the Plaintiffs are entitled only to a hearing before [the Board] to determine if there was just cause for the dismissals." *App. 43*. Petitioners opposed the motion, arguing that they were entitled to have a jury determine their damages for the violation of their due process rights. *App. 43*. The trial court eventually entered a "Declaratory Judgment" finding "that the Plaintiffs' remedy for the Defendant's procedural due

process violations is a hearing before the Personnel Standards and Review Board.” *App. 43*. The trial court ordered Ashley to “convene a Personnel Standards and Review Board, which will act according to the procedures set forth in the Special Act, *prior to its repeal*.” *App. 43*. (emphasis added). The order indicated that the trial court “shall approve a plan for these elections to be conducted.” *App. 43*.

Petitioners moved for reconsideration, arguing that the trial court lacked jurisdiction to order the recreation of the Board once the legislature repealed the Special Act creating it. *App. 17-25*. Petitioners based their argument, in part, on this Court’s decision in *Fla. Beverage Corp. v. Div. of Alcoholic Beverages & Tobacco*, 503 So. 2d 396, 399 (Fla. 1st DCA 1987), in which this Court held that, once a statute has been repealed, the “substantive rights” created by the statute continue but “the administrative mechanism for the resolution of the parties’ rights is no longer available.” *App. 18*. It is important to note as referenced in the motion to the trial court for rehearing that in 2015, when the Review Board was ordered jury trials were already scheduled on the other claims in the case, and were continued because of the Review Board proceeding at the Sheriff’s motion. *App. 23*. Those trials still have not been held.

The trial court denied the motion without comment. *App. 26*. Petitioners then filed a motion to quash the review board, arguing that the trial court’s decision to refer the issue of “cause” to the reconstituted Board was akin to referring

disputes to special or general masters without consent. *App.* 27-33. The trial court denied this motion as well. *App.* 34.

Petitioners filed a petition for writ of mandamus or prohibition seeking to preclude the trial court from reconstituting the Board and from permitting the Board from making any determination as to whether just cause existed for Petitioner's dismissal. *App.* 35-54. This Court denied the petition without opinion or elaboration. *App.* 55.

**D. The Board's decision and the first-tier certiorari review**

The newly reconstituted Board eventually conducted a hearing and entered orders finding that just cause existed for the dismissals. Respectively, as to Bush, *App.* 56-71; as to Lee, 72-83; and as to Hord, 84-96. Petitioners filed a timely petition for writ of certiorari from the Board's decisions with the circuit court. *App.* 149-160. Initially Petitioners filed the petition within the existing lawsuit but, at the circuit court's direction, refiled it under a new case number though it was assigned to the same circuit judge for resolution. *App.* 150-151. The petition argued, in general, that the Board lacked any authority to make its findings after repeal of the Special Act. *App.* 154-155. The circuit court entered a show cause order, and the Sheriff filed its response with an appendix. *App.* 161.

The circuit court eventually entered the order at issue here. *App.* 6-10. The circuit court held that it possessed jurisdiction to consider the Board's findings,

that the Petitioners failed to show that the findings were not supported by competent substantial evidence, and that the Petitioners had been provided with due process. *App.* 9-10. The circuit court rejected without elaboration the argument that the Board lacked jurisdiction or authority to act in the first place.

### **III. NATURE OF THE RELIEF SOUGHT**

Petitioners seek a writ of certiorari quashing the circuit court’s order and holding that the Board lacked authority to act—and that the trial court lacked authority to reconstitute the Board for the purpose of taking any actions—once the legislature repealed the Special Act that created it.

### **IV. ARGUMENT IN SUPPORT OF THE PETITION**

#### **A. This Court reviews a circuit court’s decision denying certiorari relief to determine if the circuit court applied the correct law**

This Court’s standard of review on a petition for second-tier certiorari review is well established. As the Florida Supreme Court has observed repeatedly, “when a district court considers a petition for second-tier certiorari review, the ‘inquiry is limited to whether the circuit court provided procedural due process and whether the circuit court applied the correct law,’ or, as otherwise stated, departed from the essential requirements of law.” *Custer Med. Ctr. v. United Auto. Ins. Co.*, 62 So. 3d 1086, 1092 (Fla. 2010) (quoting *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995)). Petitioners agree that certiorari cannot be used to correct “simple legal error” but only an error that violates “a clearly established

principle of law resulting in a miscarriage of justice.” *Custer*, 62 So. 3d at 1092. As explained below, however, by deferring to the findings of a long-abolished Board, the circuit court’s order constitutes a miscarriage of justice.

**B. The circuit court applied the incorrect law by recreating and deferring to a Board that the legislature previously abolished**

Under established Florida law, the repeal of a statute abolishes the administrative procedures created by the statute. *See Fla. Beverage Corp.*, 503 So. 2d at 399 (“We agree with appellee Division that, with the repeal of the statute, this administrative mechanism for the resolution of the parties’ rights is no longer available”); *Blanchard v. City of Pensacola*, 433 So. 2d 610, 611 (Fla. 1st DCA 1983) (“[T]he circuit court was correct, in the judgment now here for review, in holding that Blanchard’s right of review did not survive the repeal of the special act creating that remedy”); *see generally* 1A Norman Singer & Shambie Singer, *Sutherland Statutory Constr.* § 23:34 (7th ed. 2015) (“Repeal of a statute having neither a saving clause nor a general saving statute to prescribe the governing rule for the effect of the repeal, destroys the effectiveness of the repealed act in futuro and divests the right to proceed under the statute. Except as to proceedings past and closed, the statute is considered as if it never existed”).

In contrast, vested rights created under a statute survive the statute’s repeal even if the remedy to enforce the right does not. *See Div. of Workers’ Comp., Bureau of Crimes Comp. v. Brevda*, 420 So. 2d 887, 891 (Fla. 1st DCA 1982) (“If,

however, a right has somehow vested under a statute, repeal of the statute does not divest the holder of the right”).

This Court’s decision in *Florida Beverage* is especially instructive on this distinction. There, a statute prohibited a manufacturer or supplier from withdrawing sales of a brand of wine from a Florida distributor without good cause and created a procedural mechanism for the Division of Alcoholic Beverages to determine if good cause existed. The legislature repealed the statute and, shortly thereafter, a supplier unilaterally withdrew a brand of wine from a Florida distributor. *Fla. Beverage Corp.*, 503 So. 2d at 397. The distributor first attempted to pursue administrative remedies with the Division, which held that it lacked jurisdiction in light of the statutory repeal. The distributor then sued for a declaratory judgment in circuit court. The circuit court dismissed the complaint, concluding that the repeal of the statute precluded any relief. *Id.* at 397-98.

This Court reversed. In doing so, the Court noted a distinction between the substantive right created by the statute—the right not to have brands withdrawn without good cause—and the administrative remedy created to enforce the right. *Id.* at 398-99. This Court agreed with the trial court that “with the repeal of the statute, the administrative mechanism for the resolution of the parties’ rights is no longer available.” *Id.* at 399. The Court, however, concluded that “the single substantive right contained in that Law, the right to have a brand continued unless

good cause exists for discontinuing it, is separable from the remainder of the statute, which merely defines the former remedies available to the parties.” *Id.* Critically, even without the administrative remedy available, this Court held that “[i]n a case such as this, the courts are available, as in other types of contract disputes, to adjudicate the rights and obligations of the parties including, where appropriate, reliance upon declaratory, injunctive and/or other remedial action.” *Id.*

This case is no different. The Special Act created substantive rights for employees to be dismissed only for cause, and those rights vested in Petitioners when Ashley terminated their employment prior to the repeal of the Special Act. *See generally Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 576-78 (1972) (discussing property rights created by public employment and noting that these rights “stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits”). The Special Act also created an administrative process, overseen by the Board, to resolve disputes over whether cause existed. But, unlike the vested *substantive* right not to be fired without cause, the *procedural* mechanism did not survive the Special Act’s repeal.

As in *Florida Beverage*, therefore, the circuit court remains the *sole* forum “to adjudicate the rights and obligations of the parties.” *Id.* But the circuit court

declined to apply Florida Beverage or the other cases cited below by Petitioners demonstrating that it could not recreate or defer its fact-finding to the Board. Thus, by first judicially recreating the since-abolished Board, and then upholding the Board's factual findings made after its abolition, the circuit court applied the incorrect law, resulting in a miscarriage of justice, which warrants certiorari relief.

### **CONCLUSION**

For the foregoing reasons, the Court should grant the petition and issue a writ of certiorari quashing the circuit court's order and holding that the circuit court erred by recreating the Board and deferring to the Board's findings of fact.

Respectfully submitted:

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**CERTIFICATE OF COMPLYING WITH FONT REQUIREMENTS**

**I HEREBY CERTIFY** that the foregoing has been prepared in Times New Roman 14-point font as required by the Florida Rules of Appellate Procedure.

*/s/ Charles F. Beall, Jr.*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY a copy of the foregoing Appendix was furnished by electronic delivery on this 14<sup>th</sup> day of February, 2019, to:

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