

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: 2016-CA-007634-O
DCA NO: 5D21-233

RECEIVED, 04/15/2021 11:51:54 AM, Clerk, Fifth District Court of Appeal

DAVID W FOLEY, JR
AND JENNIFER T. FOLEY,

-VS-

ORANGE COUNTY, ET AL.,
_____ /

SUPPLEMENTAL
RECORD ON
APPEAL

Certificate of Compliance

This document is in conformity with all font and word count requirements
per F.R.A.P. 9.045

SUPPLEMENTAL INDEX TO RECORD ON APPEAL

1

| <u>DATE</u> | <u>DOCUMENT</u> | <u>PAGES</u> |
|--------------------|--|---------------------|
| 05/22/2017 | Motion plaintiffs' motion for judicial notice | 1513 - 1540 |
| 03/30/2021 | Directions to Clerk TO SUPPLEMENT THE RECORD PER COURT ORDER | 1541 - 1544 |
| 04/14/2021 | CLERK CERTIFICATE | 1545 - 1545 |

**IN THE CIRCUIT COURT OF
THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY,
FLORIDA**

Plaintiffs

DAVID W. FOLEY, JR., and
JENNIFER T. FOLEY

v.

Defendants

ORANGE COUNTY, *a political subdivision of
the State of Florida, and,*

ASIMA AZAM, TIM BOLDIG, FRED
BRUMMER, RICHARD CROTTY, FRANK
DETOMA, MILDRED FERNANDEZ,
MITCH GORDON, TARA GOULD, CAROL
HOSSFELD, TERESA JACOBS,
RODERICK LOVE, ROCCO RELVINI,
SCOTT RICHMAN, JOE ROBERTS,
MARCUS ROBINSON, TIFFANY
RUSSELL, BILL SEGAL, PHIL SMITH, *and*
LINDA STEWART,
*individually and together,
in their personal capacities.*

2016-CA-007634-O

**PLAINTIFFS'
MOTION FOR
JUDICIAL NOTICE**

PLAINTIFFS DAVID AND JENNIFER FOLEY pursuant to §§90.202(6) and 90.203, Fla. Stat., move this court to take judicial notice of a portion of the docket, and a printed transcript from an official audio recording of oral argument, in case 14-10936-EE, *Foley v. Orange Cty. et. al.*, 638 Fed. App'x. 941, 2016 WL 361399, (11th Cir.2016). The Foleys wish to use the transcript to refute arguments made by opposing counsels with respect to the affirmative defenses of limitations and *res judicata*.

BACKGROUND

1. January 26, 2016, the United States Court of Appeals for the Eleventh Circuit heard oral argument in Foley v. Orange Cty., 638 F. App'x 941 (11th Cir. 2016). This is shown in the attached portion of the docket – App. A.
2. The Eleventh Circuit records oral argument electronically and files these recordings with the Clerk of Court. The Clerk makes these recordings available to the public for a fee.
3. February 2 and 4, 2016, the Foleys purchased recordings of the January 26th oral argument in Foley v. Orange Cty. This is shown in the attached portion of the docket – App. A.
4. David Foley transcribed the recording and appended each page of the written transcript with a certificate attesting to the fact that the transcript was of the official audio recording of oral argument in Foley v. Orange Cty.
5. David Foley's printed transcript was included in the Foleys' petition for certiorari to the Supreme Court of the United States, Foley, et ux. v. Orange County, Fl, et al. 137 S. Ct. 378 (2016), certiorari denied. The transcript from the Foleys' petition is attached docket – App. B.
6. Petitions for certiorari to the Supreme Court of the United States, both granted and denied, are available to the public from a variety of sources

including but not limited to the Supreme Court, the Library of Congress, Lexis-Nexus, and WestLaw.

ARGUMENT

7. Fla. R. Jud. Admin. 2.420(b)(1)(A) defines “court records” as follows:

“court records” which are the contents of the court file, including the progress docket and other similar records generated to document activity in a case, transcripts filed with the clerk, documentary exhibits in the custody of the clerk, and electronic records, videotapes, or stenographic tapes of depositions or other proceedings filed with the clerk, and electronic records, videotapes, or stenographic tapes of court proceedings.

8. The attached portion of the Eleventh Circuit docket of *Foleys v. Orange Cty. et. al.*, satisfies this definition as “the progress docket and other similar records generated to document activity in a case.”

9. The Eleventh Circuit recording of *Foleys v. Orange Cty. et. al.*, satisfies this definition as “electronic records.”

10. The Foleys’ petition for certiorari to the Supreme Court of the United States, including the excerpted printed transcript of the Eleventh Circuit recording of *Foleys v. Orange Cty. et. al.*, satisfies this definition as “contents of the court file.”

11. The transcript made by David Foley of oral argument in *Foleys v. Orange Cty. et. al.*, therefore satisfies §90.202(6), Fla. Stat.; it is a “court record” of which the “court may take judicial notice.”

12. The transcript will provide this Court with greater insight into the decision of Judges Tjoflat, Anderson, and Rosenbaum, in *Foleys v. Orange Cty. et. al.*. In particular, statements made by Judge Tjoflat refute arguments of opposing counsels regarding limitations [p. 30a, lines 1-7] and *res judicata* [p. 29, lines 15-25]. Too, the long exchange regarding Art. IV, §9, Fla. Const., between Judge Anderson and County attorney William Turner, which briefly includes Judge Tjoflat, [pp. 19a – 24a] demonstrates the federal court’s concern that the question of the defendants’ regulation of *aviculture* be decided by a Florida court.

CONCLUSION

Pursuant to §§90.202(6) and 90.203, Fla. Stat., the Foleys request the court take judicial notice of the attached the attached portion of the docket of, and the attached written transcript of the official audio recording of oral argument before, the Eleventh Circuit in *Foleys v. Orange Cty. et. al.*

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief

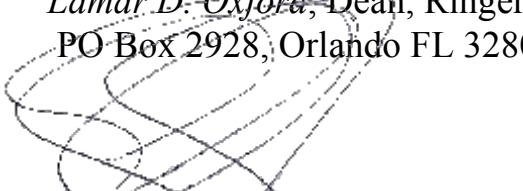
CERTIFICATE OF SERVICE

Plaintiffs certify that on May 22, 2017, the foregoing was electronically filed with the Clerk of the Court using the Florida Courts' eFiling Portal, which will send notice of filing and a service copy of the foregoing to the following:

William C. Turner, Jr., Assistant County Attorney,
P.O. Box 2687, Orlando FL, 32801, williamchip.turner@ocfl.net;

Derek Angell, O'Connor & O'Connor LLC,
840 S. Denning Dr. 200, Winter Park FL, 32789,
dangell@oconlaw.com;

~~*Lamar D. Oxford*~~, Dean, Ringers, Morgan & Lawton PA,
PO Box 2928, Orlando FL 32802-2928, loxford@drml-law.com.



David W. Foley, Jr.



Jennifer T. Foley

Date: May 22, 2017

Plaintiffs

1015 N. Solandra Dr.
Orlando FL 32807-1931

PH: 407 671-6132

e-mail: david@pocketprogram.org

e-mail: jtfoley60@hotmail.co

If you view the you will be charged for 8 Pages \$0.80

General Docket
United States Court of Appeals for the Eleventh Circuit

Court of Appeals Docket #: 14-10936

Docketed: 03/04/2014

Nature of Suit: 3950 Constitutionality of State Statutes

Termed: 01/29/2016

David Foley, Jr., et al v. Orange County

Appeal From: Middle District of Florida

Case Handler: Brasselmon, Sandra, EE

Fee Status: Fee Paid

(404) 335-6181

Case Type Information:

- 1) Private Civil
- 2) Federal Question
- 3) -

Originating Court Information:

District: 113A-6 : [6:12-cv-00269-RBD-KRS](#)

Court Reporter: Amie First

Court Reporter: Diane Peede

Court Reporter: Unknown Reporter

Civil Proceeding: Roy B. Dalton, Junior, U.S. District Judge






Secondary Judge: Karla R. Spaulding, U.S. Magistrate Judge

Date Filed: 02/21/2012

Date NOA Filed:

03/03/2014

App. A

| | |
|------------|--|
| 11/17/2015 | Oral argument scheduled. Argument Date: Tuesday, 01/26/2016 Argument Location: Jacksonville, FL. |
| 01/15/2016 |  Supplemental Authority filed by Appellant-Cross Appellee David W. Foley, Jr.. Service date: 01/12/2016 US mail - Appellants-Cross Appellees Foley, Foley; email - Attorney for Appellees: Angell, O'Connor, Oxford; Attorney for Appellees-Cross Appellants: Prinsell, Turner. |
| 01/26/2016 | Oral argument held. Oral Argument participants were Party David W. Foley, Jr. and Derek J. Angell for Appellees Teresa Jacobs, Fred Brummer, Frank Detoma, Asima M. Azam, Roderick Love, Scott Alan Richman, Joe Roberts, Marcus Robinson, Richard Crotty, Linda Stewart, Bill Segal, Mildred Fernandez and Tiffany Russell, Lamar D. Oxford for Appellees Phil Smith, Carol Hossfield, Mitch Gordon, Rocco Relvini, Tara Gould and Tim Boldig and William Carlton Turner, Jr. for Appellee-Cross Appellant Orange County. |
| 01/29/2016 | Judgment entered as to Appellants-Cross Appellees David W. Foley, Jr. and Jennifer T. Foley. |
| 01/29/2016 |  Opinion issued by court as to Appellants-Cross Appellees David W. Foley, Jr. and Jennifer T. Foley. Decision: Vacated and Remanded. Opinion type: Non-Published. Opinion method: Per Curiam. 14-10937X. The opinion is also available through the Court's Opinions page at this link http://www.ca11.uscourts.gov/opinions . |
| 02/02/2016 |  Oral argument CD requested by David W. Foley, Jr. and Jennifer T. Foley. |
| 02/03/2016 | Oral Argument CD sent to David W. Foley, Jr. and Jennifer T. Foley. |
| 02/04/2016 |  Oral argument CD requested by Jennifer T. Foley. |
| 02/04/2016 | Oral Argument CD sent to David W. Foley, Jr. and Jennifer T. Foley. This was the second CD that was sent. They had provided an overnight envelope from the US mail that I mailed it in. |
| 02/18/2016 |  Petition for Panel Rehearing only filed by Appellant-Cross Appellees David W. Foley, Jr. and Jennifer Foley |

| | | | |
|-----------------------------|------------------|-------------------------|----------|
| PACER Service Center | | | |
| Transaction Receipt | | | |
| 02/24/2016 18:11:06 | | | |
| PACER Login: | df4972:3898245:0 | Client Code: | |
| Description: | Case Summary | Search Criteria: | 14-10936 |
| Billable Pages: | 1 | Cost: | 0.10 |

**TRANSCRIPT OF ORAL ARGUMENT BEFORE
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

CASE NO.: 14-10936-EE

DATE: January 26, 2016

LOCATION: Jacksonville, Florida

PRESIDING:

Hon. Gerald Bard Tjoflat
Hon. R. Lanier Anderson
Hon. Robin S. Rosenbaum

PRESENT:

David W. & Jennifer T. Foley, Plaintiffs-
Appellants, Cross-Appellees
Derek J. Angell for Defendants-Appellees,
Teresa Jacobs, Fred Brummer, Frank
Detoma, Asima M. Azam, Roderick
Love, Scott Alan Richman, Joe Roberts,
Marcus Robinson, Richard Crotty, Linda
Stewart, Bill Segal, Mildred Fernandez
and Tiffany Russell,
Lamar D. Oxford for Defendants-Appellees,
Phil Smith, Carol Hossfield, Mitch
Gordon, Rocco Relvini, Tara Gould and
Tim Boldig
William Carlton Turner, Jr. for Defendants-
Appellee-Cross Appellant Orange
County.

App. B

TRANSCRIPT OF PROCEEDINGS

1 **FOLEY:** May it please the Court. Judge
2 Tjoflat, Judge Anderson, Judge
3 Rosenbaum. I'm David. And uh with me is
4 Jennifer. We're the Foleys. We're the
5 toucan farmers from Orange County. And
6 we're here to ask the court for a rule. And
7 that rule, that four part rule, is this. That
8 the defendants are liable in suit, not
9 simply because they have deprived us of
10 vested property and liberty interests, but
11 because; one – the deprivation was
12 deliberate, it was retrospective, and
13 continuous, two – the deprivation was not
14 commanded by County Code, three – the
15 deprivation was prohibited by clearly
16 established state laws, indeed, the state's
17 fundamental laws, its constitutional
18 separation of powers established in article
19 four, section nine, of Florida's constitution,
20 but, more importantly, the long history of
21 judicial decisions that have construed that
22 decision to mean only FWC, the Florida
23 Fish and Wildlife Conservation
24 Commission, has the legislative authority
25 and the executive authority to regulate the
26 possession and sale of our toucans, and
27 four – the deprivation was effected by a
28 hammer and anvil procedure that for...
29 and there was no pre-deprivation remedy

CERTIFICATE: I, DAVID W. FOLEY, JR., *Petitioner*,
certify that I transcribed the foregoing from an official
audio recording of oral argument in case 14-10936-EE.

/s/ David W. Foley, Jr., Petitioner

1 in the extraordinary writs uh no direct
2 state court review that that prevented us
3 to A – uh challenge the validity of the
4 Defendant’s actions or B – to continue to
5 exercise the rights that we claim. So this is
6 a rule that we think fairly represents the
7 relief that we seek, and the three points
8 that I want to make this morning.

9 First, uh the limitations should be tolled,
10 and immunity should be denied because the
11 defendants were enforcing an aviculture
12 custom of their own making, not an
13 ordinance. Their conversion of the custom
14 into policy was not commanded by the code
15 and violated the state’s separation of
16 powers. Second, they destroyed our bird
17 business and they destroyed our remedy by
18 enforcing that aviculture custom
19 retrospectively using a hammer and anvil
20 procedure that effectively locked the court
21 house door, it denied us extraordinary
22 writs, adequate state court review, and,
23 unless we pierce the shield immunity, we
24 don’t have compensatory relief. And Third,
25 we’re here in federal court because the
26 defendants are flouting the state
27 constitution and their manipulating its
28 fundamental process making what should
29 have been our remedies into a punishment.
30 We say their aviculture custom is void.

CERTIFICATE: I, DAVID W. FOLEY, JR., *Petitioner*,
certify that I transcribed the foregoing from an official
audio recording of oral argument in case 14-10936-EE.

/s/ David W. Foley, Jr., Petitioner

1 They say it's valid. Basically that's our case
2 and controversy and Florida has a perfect
3 remedy for that. It's chapter 162 of the
4 Florida Statutes and it says to defendants –
5 when you found the Foleys in violation of
6 your aviculture custom, February twenty
7 third two thousand and seven, there were
8 three thing you could do. You can choose
9 door number one – prosecute the Foleys
10 directly in State Court. You can choose door
11 number two – you can prosecute the Foleys
12 before your own Code Enforcement Board,
13 and the Foleys can appeal that decision
14 directly to State Court. Or you can choose
15 door number three, and this is the
16 important one – you can prosecute them
17 any way you want, and let the Foleys figure
18 out whether they have a remedy. They
19 chose door number three, they bifurcated
20 prosecution. They prosecuted a building
21 permit violation before their Code
22 Enforcement Board and they prosecuted
23 the aviculture custom in Zoning Division's
24 permit procedure. They created a hammer
25 and an anvil. The Code Enforcement Board
26 ordered us to destroy the accessory
27 structures where we keep our toucans or
28 get a permit for them – that is the hammer.
29 And zoning division refused to grant the
30 permit – the anvil. The hammer came down

CERTIFICATE: I, DAVID W. FOLEY, JR., *Petitioner*,
certify that I transcribed the foregoing from an official
audio recording of oral argument in case 14-10936-EE.

/s/ David W. Foley, Jr., Petitioner

1 on the anvil on June seventeenth two
2 thousand seven and we had to destroy our
3 aviaries. The state court review of the
4 hammer, the code enforcement board order,
5 couldn't reach the aviculture custom
6 because the Defendants didn't prosecute it
7 there and the State Court review of the
8 anvil, permitting... uh the zoning divisions
9 permit refusal that we appealed by
10 Determination to the BZA and the BCC, it
11 couldn't reach the aviculture custom
12 because of the uh state judicial policy that
13 says Defendants are assumed to know the
14 limits of their subject matter jurisdiction
15 and therefore they have a right to draft a
16 facially constitutional policy without
17 judicial interference. So, Defendants didn't
18 simply usurp FWC's jurisdiction, they
19 shielded that decision from direct state
20 court review by using this hammer and
21 anvil procedure to destroy our bird
22 business. Um and there was no pre-
23 enforcement remedy in the extraordinary
24 writs, against the decision to usurp FWC
25 authority or against the hammer and anvil
26 for two reasons. First – they were enforcing
27 a custom and not an ordinance and because
28 state law permits the defendants regulation
29 to indirectly effect the possession and sale
30 of our toucans we didn't, we couldn't

CERTIFICATE: I, DAVID W. FOLEY, JR., *Petitioner*,
certify that I transcribed the foregoing from an official
audio recording of oral argument in case 14-10936-EE.

/s/ David W. Foley, Jr., Petitioner

1 establish an irreparable injury in their
2 trespass of FWC authority before the BCC
3 made its final policy decision. And Second –
4 because uh chapter 162 of Florida’s statutes
5 provides them adequate pre-enforcement
6 remedy we didn’t have a, we couldn’t
7 establish an irreparable due process injury
8 in the hammer and anvil when, per our
9 theory, um defendants forfeit immunity
10 when they usurp FWC authority and our
11 remedy is against them individually. It’s
12 not until the BCC issues its final order that
13 we’re faced with a defendant, it’s not until
14 they convert this custom into policy that
15 we’re faced with a defendant – Orange
16 County – against whom we have no
17 compensatory remedy. So, we say that
18 defendants have done that thing that
19 Bradley v Fisher says has no excuse, has no
20 immunity. They’re acting in absence of
21 authority. They’re flouting the state’s
22 constitution, they’re flouting its
23 fundamental process. They attacked.
24 They’re not simply thumbing their nose at
25 article four section nine of the constitution
26 but they’re thumbing their nose at Florida
27 courts. They attacked our bird business
28 when Florida courts have clearly
29 established they can’t do that and they
30 manipulated uh a judicial policy that

CERTIFICATE: I, DAVID W. FOLEY, JR., *Petitioner*,
certify that I transcribed the foregoing from an official
audio recording of oral argument in case 14-10936-EE.

/s/ David W. Foley, Jr., Petitioner

1 restricts review of BCC orders to devise the
2 procedural protections that could have
3 saved our bird business. So, we say - denied
4 a judge, a court, a judge, a proceeding, that
5 had subject matter over the procession and
6 sale of our toucans we were denied all the
7 right that are fundamental in due process
8 and we do bring a claim in first, fourth, and
9 fourteenth amendment against their so
10 called legislative acts and their so called
11 acceptable acts. So, we pray you will give us
12 the relief that we request in our briefs for
13 the reasons we stated there and here today.
14 Thank you.

15 **TJOFLAT:** You've saved some rebuttal time.
16 Mr. Turner.

17 **TURNER:** Yes your honor. May it please the
18 court my name is William Turner. I
19 represent Orange County. Also here today
20 on behalf of other appellees are Mr. Derek
21 and Mr. Oxford, they represent some of the
22 individual defendants, But I am here on
23 behalf of Orange County only. First of all
24 or... First of all your honors I'd like to
25 address one of these, it sounds like an
26 underlining assertion made by Mr. Foley
27 and his argument, which is that they had
28 no remedy in state court and somehow the
29 court house doors were barred to them.

CERTIFICATE: I, DAVID W. FOLEY, JR., *Petitioner*,
certify that I transcribed the foregoing from an official
audio recording of oral argument in case 14-10936-EE.

/s/ David W. Foley, Jr., Petitioner

1 That is simply not the case. As the Florida
2 court, state court, sitting in an appellate
3 capacity having heard the Foley's petition
4 for writ of certiorari, and having denied
5 that petition for writ of certiorari, the
6 Florida court specifically stated "petitioners
7 assertion that sections of the orange county
8 zoning code are unconstitutional is one
9 which can only be made in a separate legal
10 action, not on certiorari review." And then
11 the court cites to Miami Dade County v.
12 omnipoint Holdings Inc. 863 southern 2nd
13 193 Florida Supreme Court 2003. So your
14 honor under state law there was an open
15 avenue for plaintiffs to pursue to challenge
16 the substantive validity of the Orange
17 County Code as compared to the authority
18 of the Florida Wildlife Commission. It was
19 right there for them and it was never
20 barred by anybody, in fact the Florida
21 government, through its judiciary arm,
22 pointed them to that door and let them
23 know how, you know, what essentially they
24 needed to do to...

25 **ANDERSON:** But you do not contend that
26 they are barred by res judicata.

27 **TURNER:** No your honor I do not contend
28 that.

CERTIFICATE: I, DAVID W. FOLEY, JR., *Petitioner*,
certify that I transcribed the foregoing from an official
audio recording of oral argument in case 14-10936-EE.

/s/ David W. Foley, Jr., Petitioner

1 **ANDERSON:** Alright, I'd like to turn you, if
2 you don't mind, to the validity of the
3 challenged ordinances and, in order to give
4 you your whole time, my tentative thinking
5 is that the district courts should be
6 reversed on that. Number one, I thought
7 his analysis was wrong when he relied
8 upon the Caribbean case, which had the
9 unusual feature that... it was crucial there
10 to determine whether all wildlife was
11 within the jurisdiction of the wildlife
12 agency or whether only some and it turned
13 out, the Supreme Court of Florida held,
14 that the endangered species were not
15 subject to the jurisdiction of the wildlife
16 commission and that's why the analysis
17 there determined whether the challenged
18 statutory... it says the court must first
19 determine whether the Florida constitution
20 provides the wildlife commission with
21 constitutional regulatory authority over all
22 marine life. So that simply doesn't, that
23 analysis, doesn't apply in a case like this
24 and I don't see anything in Carribbean that
25 suggests that the usual preemption
26 analysis should not apply in the usual pre-
27 emption type cases. So that's the first point.
28 And then second, applying the pre-emption
29 analysis it seems to me that there is
30 neither expressed nor implied pre-emption,

CERTIFICATE: I, DAVID W. FOLEY, JR., *Petitioner*,
certify that I transcribed the foregoing from an official
audio recording of oral argument in case 14-10936-EE.

/s/ David W. Foley, Jr., Petitioner

1 even if there was exclusive delegation to
2 the wildlife commission of regulatory
3 authority that did not say that this should
4 not be of the general laws which would
5 incidentally impact on wildlife. And that's
6 exactly what we have here, we don't have
7 an ordinance which prohibits the raising of
8 these toucans or any other wildlife, it
9 simply directs them to an appropriate
10 district and it seems to me the position of
11 the district court here, which must have
12 been your position, would say that the
13 Florida fraud laws would not even apply.
14 Ya know. And that simply doesn't make
15 any sense. So. tell me where I'm wrong.

16 **TURNER:** Well your honor, I agree with your
17 honor that the district court was incorrect
18 in so broadly holding Orange County's
19 ordinances void. Even if one could, and
20 ultimately supposition State court should
21 be unwinding, unraveling the conflict
22 between the Florid Game commission ,
23 Wildlife Commission, and local zoning laws.
24 But even if one... assuming for the sake of
25 argument that even if one where to assume
26 that Orange County's Code, when applied
27 to the Foley's permit from State law, was in
28 conflict. Even if one assumes that that
29 doesn't, that wouldn't justify voiding the
30 ordinance because it could be that next

CERTIFICATE: I, DAVID W. FOLEY, JR., *Petitioner*,
certify that I transcribed the foregoing from an official
audio recording of oral argument in case 14-10936-EE.

/s/ David W. Foley, Jr., Petitioner

1 week the Wildlife commissions could
2 change its regulations to be consistent.

3 **ANDERSON:** Actually I just made a strong
4 argument for you didn't I.

5 **TURNER:** Yes you did your honor.

6 **ANDERSON:** I should have been asking that
7 to the other side but it just doesn't make
8 any sense to me what the district court did.
9 I mean, if what the district court said was
10 true then there wouldn't even be
11 jurisdiction to hold a business responsible
12 for fraudulent activities, for example, or
13 any other general law that might have an
14 incidental impact on wildlife activities.

15 **TURNER:** I would not like to see that state of
16 affairs...

17 **ANDERSON:** Which is exactly would happen
18 if the District court decision stands. Would
19 it not?

20 **TURNER:** To the extent their holding the code
21 provisions voidable yes your honor.

22 **ANDERSON:** So you agree with me I'm sure
23 that the district court was wrong in holding
24 these challenge statues invalid.

25 **TURNER:** Frankly your honor I think the
26 analysis is one that should have been left to
27 the state courts to unwind.

CERTIFICATE: I, DAVID W. FOLEY, JR., *Petitioner*,
certify that I transcribed the foregoing from an official
audio recording of oral argument in case 14-10936-EE.

/s/ David W. Foley, Jr., Petitioner

1 **ANDERSON:** Well you mean that the district
2 courts should have declined to take pendent
3 jurisdiction.

4 **TURNER:** Yes your honor.

5 **TJOFLAT:** It's an old Pullman doctrine issue.
6 I have a problem of whether there is a non-
7 frivolous constitutional claim in this case. I
8 have serious question whether the district
9 court should have, if there is no non-
10 frivolous federal claim the court had no
11 jurisdiction on these other issues.

12 **TURNER:** Yes your honor.

13 **TJOFLAT:** And I can't find one

14 **TURNER:** Yes your honor. That's what....
15 First of all I didn't, I wasn't involved in at
16 trial level. I picked this case up for oral
17 argument...

18 **TJOFLAT:** Well I realize that's not the way it
19 played out but I don't see a non-frivolous
20 federal claim...constitutional claim.

21 **TURNER:** When I looked at the order for the
22 first time I was surprised that the judge
23 jumped right to the state law claim. State
24 law analysis rather than Federal analysis.

25 **TJOFLAT:** Because if there is no non –
26 frivolous federal claim he should have
27 dismissed the case without prejudice. That

CERTIFICATE: I, DAVID W. FOLEY, JR., *Petitioner*,
certify that I transcribed the foregoing from an official
audio recording of oral argument in case 14-10936-EE.

/s/ David W. Foley, Jr., Petitioner

1 would have allowed the Foley's to do the
2 very thing that the Certiorari judge said
3 they ought to do.

4 **TURNER:** Yes your honor.

5 **ANDERSON:** So would the statute of
6 limitations have run now or is it tolled by
7 these proceedings.

8 **TURNER:** Honestly I don't know the answer
9 to that.

10 **TJOFLAT:** Well they could trigger it... they
11 could get the statute of limitations running
12 again by simply say we're going to build.. .
13 a place. An out building. So that start all
14 over again.

15 **TURNER:** Right and the ordinance is still on
16 Orange County's books.

17 **ANDERSON:** So what you'd like us to do is
18 vacate the district courts judgement and
19 hold that he should not have exercised
20 pendent jurisdiction over the state law
21 claims.

22 **TURNER:** Well I don't want to have my cake
23 and eat it too. I'd like your... I'd like the
24 court to just reverse all together but that
25 would be somewhat inconsistent with, I
26 think the true argument.

CERTIFICATE: I, DAVID W. FOLEY, JR., *Petitioner*,
certify that I transcribed the foregoing from an official
audio recording of oral argument in case 14-10936-EE.

/s/ David W. Foley, Jr., Petitioner

1 **TJOFLAT:** Well if it's reversed on the merits
2 then that's the end of the day for the
3 Foley's. If it's not reversed on the merits
4 but on jurisdictional grounds it puts them
5 back where they were in the first place.

6 **TURNER:** Correct. Correct.

7 **TJOFLAT:** But with a remedy.

8 **TURNER:** Correct. Correct. So selfishly on
9 behalf of Orange County we'd like you to
10 absolutely reverse on _____ but that would
11 be disingenuous....

12 **ANDERSON:** So you'd like my first take on
13 the case.

14 **TURNER:** I'd like you first take. Yes, your
15 honor.

16 **TJOFLAT:** When a lawyer likes a first take
17 it's a good time to wrap up the argument.

18 **TURNER:** Well that's what I'm going to do
19 your honor. Thank you.

20 **ANGELL:** May we very quickly your honor.

21 **TURNER:** Ya.

22 **ANGELL:** Good morning my name in Derek
23 Angell. I represent the Orange County
24 officials and seeing that we are out of time
25 for the defense, if there are any questions
26 that the court has about the immunities.

CERTIFICATE: I, DAVID W. FOLEY, JR., *Petitioner*,
certify that I transcribed the foregoing from an official
audio recording of oral argument in case 14-10936-EE.

/s/ David W. Foley, Jr., Petitioner

1 **TJOFLAT:** They are all entitled to qualified
2 immunities. They, in there official capacity,
3 where sued.

4 **ANGELL:** Exactly your honor. Whether it's
5 absolute judicial quasi...

6 **TJOFLAT:** Well they want an injunctive
7 relief. Which would allow them to proceed.

8 **ANGELL:** The Foley's sought injunctive relief
9 from the county but also on any damages
10 from the officials in their personal
11 capacities. I believe there's no question
12 there's immunity for...

13 **ROSENBAUM:** Do you represent Mr. Boldig?

14 **ANGELL:** I do not I represent the... that
15 would be Mr. Oxford's. I'll sit down and let
16 him answer your questions. Thank you.

17 **TJOFLAT:** Mr. Oxford

18 **OXFORD:** May it please this court my name
19 is Lamar Oxford. I represent the six
20 individuals who are collectively known as
21 the County Employees. And there are at
22 least five good reasons why they were
23 properly dismissed from this case.

24 **ROSENBAUM:** Can I ask you about Mr.
25 Boldig in particular. I think you are
26 probably right with respect to the other
27 ones with regard to the statute of

CERTIFICATE: I, DAVID W. FOLEY, JR., *Petitioner*,
certify that I transcribed the foregoing from an official
audio recording of oral argument in case 14-10936-EE.

/s/ David W. Foley, Jr., Petitioner

1 limitations, but with respect to Mr. Boldig
2 the last thing that he did and the thing
3 that is really contested occurred at that
4 hearing in 2008. And so I don't think that
5 there is a statute of limitations problem
6 with regard to him. But the district court
7 did not make an inquiry, or did not make
8 any finding, on either absolute or qualified
9 immunity. Why shouldn't we send it back
10 to the district court to evaluate those
11 defenses in the first instance.

12 **OXFORD:** Because I think there is enough in
13 this record for the court to recognize that
14 Mr. Boldig, while testifying at the Board of
15 County Commissioners hearing, was
16 performing whatever you want to call it, a
17 legislative or a judicial function, for which
18 he is automatically entitled to the
19 immunity. I don't think the court needs to
20 send the case back to the district court for
21 it to point out the obvious fact that he
22 would be entitled to immunity under those
23 circumstances.

24 **ANDERSON:** Actually with respect to the
25 statute of limitations is not the same thing
26 true with Boldig as are not the members of
27 the Board of County Commissioners in the
28 same position.

CERTIFICATE: I, DAVID W. FOLEY, JR., *Petitioner*,
certify that I transcribed the foregoing from an official
audio recording of oral argument in case 14-10936-EE.

/s/ David W. Foley, Jr., Petitioner

1 **OXFORD:** Well I wouldn't want to speak for
2 them, Mr. Angell would, but yes that is
3 possible.

4 **ANDERSON:** And they too would be entitled
5 however to qualified immunity.

6 **OXFORD:** Exactly. Reason after reason for
7 the individuals not to be in this case, and I
8 hesitate to say this especially with our time
9 almost gone, but Mr. Foley, who we have
10 immense respect for, gave a compassionate
11 closing argument type speech here for you.
12 But he didn't talk about the law. And this
13 court, and the district court, all give
14 deference to pro say litigils. They're not
15 trained in the law. But they have to apply
16 their facts to the law.

17 **TJOFLAT:** We understand that.

18 **OXFORD:** Thank you very much.

19 **TJOFLAT:** Mr. Foley

20 **FOLEY:** I do see what your concerns are and
21 where you're headed.

22 **TJOFLAT:** It's not about where we're headed.
23 What I suggested was that if there was not
24 a non-frivolous claim then the district court
25 didn't have any jurisdiction.

26 **FOLEY:** Yes.

CERTIFICATE: I, DAVID W. FOLEY, JR., *Petitioner*,
certify that I transcribed the foregoing from an official
audio recording of oral argument in case 14-10936-EE.

/s/ David W. Foley, Jr., Petitioner

1 **TJOFLAT:** In which event it should not have
2 entered a judgment against you. You
3 understand?

4 **FOLEY:** I believe I do.

5 **TJOFLAT:** Alright. No. In which event then
6 there are no statute of limitations
7 problems. You have a remedy in the state
8 courts. There isn't any doubt in my mind
9 that you do. I speak for myself.

10 **FOLEY:** And when you're talking about
11 remedies you are talking about declaratory
12 relief...

13 **TJOFLAT:** I'm talking about the whole ... The
14 Florida circuit court is a common law court.

15 **Foley:** Okay

16 **TJOFLAT:** They have... They have more
17 power than we do, as a matter of fact, in
18 the sense that they can fashion any kind of
19 remedy which is necessary to cure the
20 problem that they find, if they find an
21 illegality.

22 **FOLEY:** Alright well...

23 **TJOFLAT:** Declaratory relief. Injunctive
24 relief. Whatever.

CERTIFICATE: I, DAVID W. FOLEY, JR., *Petitioner*,
certify that I transcribed the foregoing from an official
audio recording of oral argument in case 14-10936-EE.

/s/ David W. Foley, Jr., Petitioner

1 **FOLEY:** I hear you. I would hate for you to
2 say they were all frivolous claims, I mean,
3 we do...

4 **TJOFLAT:** No. Your claims are not frivolous
5 claims. The federal constitutional claims ...
6 I'm looking to see whether it is a non-
7 frivolous claim.

8 **FOLEY:** Right, right.

9 **TJOFLAT:** You have to dance through a lot of
10 hoops to make out a federal constitutional
11 claim out of these facts. You follow me?

12 **FOLEY:** Well, ah I hear you say that...

13 **TJOFLAT:** Let me put it this way.

14 **FOLEY:** Sure.

15 **TJOFLAT:** Generally, the federal courts in
16 these kinds of things, involving local
17 ordinances and the like, there's an old
18 doctrine in the law which says because of
19 comity our respect for the state
20 governments and local governments the
21 federal court stays its hand and it doesn't
22 act... and gets an answer to the question
23 out of the state courts... You follow me?
24 Then, if they're wrong, we have a
25 constitutional argument in this court.

26 **FOLEY:** Alright, alright...

CERTIFICATE: I, DAVID W. FOLEY, JR., *Petitioner*,
certify that I transcribed the foregoing from an official
audio recording of oral argument in case 14-10936-EE.

/s/ David W. Foley, Jr., Petitioner

1 **TJOFLAT:** I mean a dismissal without
2 prejudice doesn't hurt you at all.

3 **FOLEY:** It doesn't hurt me as badly as other
4 conclusions would hurt us, certainly.

5 **TJOFLAT:** There's no injury at all; you're
6 back at square one with a remedy in the
7 state court is what I'm trying to say.

8 **FOLEY:** Yes, yes. Of course we were in square
9 one when the code enforcement.

10 **TJOFLAT:** Well you were in a different
11 position when you were seeking certiorari
12 review.

13 **FOLEY:** Yes

14 **TJOFLAT:** I'm not talking about that.

15 **FOLEY:** Right, Right. Alright, well we did try
16 to make our Federal Claim out.

17 **TJOFLAT:** I know I realize that. And the
18 judge entertained it.

19 **FOLEY:** And Well I appreciate that. And I did
20 take time to read Tenny v. Shores which
21 was an opinion of yours in which you had
22 laid out that... I think a couple of sheriffs
23 had taken somebody's property and even
24 though they had not followed the State
25 procedures there wasn't a due process
26 remedy because there was some relief on

CERTIFICATE: I, DAVID W. FOLEY, JR., *Petitioner*,
certify that I transcribed the foregoing from an official
audio recording of oral argument in case 14-10936-EE.

/s/ David W. Foley, Jr., Petitioner

1 the other side. And of course that a State
2 relief___ But, um, alright. Again our
3 position is simply they're without authority,
4 they had limited jurisdiction to begin with,
5 they knew, or should have known, and
6 certainly we told them, they didn't have
7 authority to do what they were going to do,
8 they did it anyway. And our reading of the
9 due process clause, our reading of
10 immunity policy, is that we do have a
11 Federal Claim in the fourteenth
12 amendment. Thank you.
13 **TJOFLAT:** Thank you.

CERTIFICATE: I, DAVID W. FOLEY, JR., *Petitioner*,
certify that I transcribed the foregoing from an official
audio recording of oral argument in case 14-10936-EE.

/s/ David W. Foley, Jr., Petitioner

**IN THE CIRCUIT COURT OF
THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY,
FLORIDA**

Appellants/Plaintiffs

DAVID W. FOLEY, JR., and
JENNIFER T. FOLEY

v.

Appellees/Defendants

ORANGE COUNTY, *a political subdivision of
the State of Florida, and,*

ASIMA AZAM, TIM BOLDIG, FRED
BRUMMER, RICHARD CROTTY, FRANK
DETOMA, MILDRED FERNANDEZ,
MITCH GORDON, TARA GOULD, CAROL
HOSSFELD, TERESA JACOBS,
RODERICK LOVE, ROCCO RELVINI,
SCOTT RICHMAN, JOE ROBERTS,
MARCUS ROBINSON, TIFFANY
RUSSELL, BILL SEGAL, PHIL SMITH, *and*
LINDA STEWART,
*individually and together,
in their personal capacities.*

2016-CA-007634-O

**DIRECTIONS
TO CLERK**

to

**SUPPLEMENT
THE RECORD**

per

COURT ORDER

PLAINTIFFS/APPELLANTS David W. Foley, Jr., and Jennifer T. Foley, pursuant to the attached order of the District Court of Appeal of the State of Florida Fifth District, dated March 23, 2021, and Fla.R.App.P. 9.200(f)(2), direct the clerk to supplement the record for appeal in the above cited case on or before April 22, 2021, with Document #56758653, Plaintiff's Motion for Judicial Notice, filed May 22, 2017.

CERTIFICATE OF SERVICE

Plaintiffs certify that on March 30, 2021, the foregoing was electronically filed with the Clerk of the Court using the Florida Courts' eFiling Portal, which will send notice of filing and a service copy of the foregoing to the following:

Linda S. Brehmer Lanosa, Assistant County Attorney,
201 S. Rosalind Av., 3rd Floor, Orlando FL, 32802, linda.lanosa@ocfl.net;

Ronald L. Harrop, O'Connor & O'Connor LLC,
800 N. Magnolia Av. Ste 1350, Orlando FL, 32789, rharrop@oconlaw.com;

Gail C. Bradford, Dean, Ringers, Morgan & Lawton PA,
PO 2928, Orlando FL 32802, gbradford@drml-law.com



David W. Foley, Jr.



Jennifer T. Foley

Date: January 30, 2021

Plaintiffs/Appellants
1015 N. Solandra Dr.
Orlando FL 32807-1931
PH: 407 721-6132
e-mail: david@pocketprogram.org
e-mail: jtfoley60@hotmail.com

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

DAVID W. FOLEY, JR. AND
JENNIFER T. FOLEY,

Appellants,

v.

CASE NO. 5D21-0233

ORANGE COUNTY, A POLITICAL SUBDIVISION
OF THE STATE OF FLORIDA, PHIL SMITH, CAROL
HOSSFELD, MITCH GORDON, ROCCO RELVINI,
TARA GOULD, TIM BOLDIG, FRANK DETOMA,
ASIMA AZAM, ET AL,

Appellees.

_____ /

DATE: March 23, 2021

BY ORDER OF THE COURT:

ORDERED that Appellants' "Motion for Order Directing Compliance with Rule 9.200" and Appendix, filed March 12, 2021, is treated as a motion to supplement the record and granted. Appellants shall, by April 1, 2021, file supplemental directions to the clerk of the lower tribunal that include Plaintiffs' Motion for Judicial Notice, filed May 22, 2017. Appellants shall cause the supplemental record to be transmitted to this Court by April 22, 2021. It is further

ORDERED that all remaining requests in Appellants' "Motion for Order Directing Compliance with Rule 9.200" and Appendix are denied.

*I hereby certify that the foregoing is
(a true copy of) the original Court order.*

Sandra B. Williams



SANDRA B. WILLIAMS, CLERK

Panel: Judges Cohen, Wallis and Edwards

cc:

Gail C. Bradford
Jennifer T. Foley

Linda Brehmer Lanosa
David W. Foley, Jr.

Ronald L. Harrop
Orange Cty Circuit Ct
Clerk
(2016-CA-007634-0)

IN THE CIRCUIT/COUNTY COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

Lower Tribunal Case No.: 2016-CA-007634-O
Higher Court Case No.: 5D21-233

I, Clerk of the Circuit and County Courts in and for Orange County, Florida do hereby certify that the foregoing pages contain a correct transcript of the record.

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the Circuit Court in and for Orange County, Florida, on this 14th day of April, 2021.

Clerk of the Circuit and County Courts
425 N. Orange Ave., Orlando, FL 32801
(407) 836-2000
DIS-eDCA-Appeals@myorangeclerk.com



Laura Keating
Deputy Clerk

Certificate of Compliance

This document is in conformity with all font and word count requirements per F.R.A.P. 9.045