

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**

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**SUPPLEMENTAL INDEX TO RECORD ON APPEAL**

1

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**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

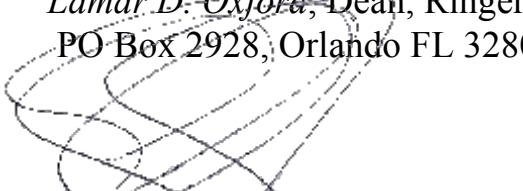
## CERTIFICATE OF SERVICE

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](mailto:williamchip.turner@ocfl.net);

*Derek Angell*, O'Connor & O'Connor LLC,  
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~~*Lamar D. Oxford*~~, Dean, Ringers, Morgan & Lawton PA,  
PO Box 2928, Orlando FL 32802-2928, [loxford@drml-law.com](mailto:loxford@drml-law.com).

  
\_\_\_\_\_  
David W. Foley, Jr.

  
\_\_\_\_\_  
Jennifer T. Foley

Date: May 22, 2017

Plaintiffs

1015 N. Solandra Dr.  
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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

**Nature of Suit:** 3950 Constitutionality of State Statutes

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

**Appeal From:** Middle District of Florida

**Fee Status:** Fee Paid

**Docketed:** 03/04/2014

**Termed:** 01/29/2016

**Case Handler:** Brasselmon, Sandra, EE  
(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 <a href="http://www.ca11.uscourts.gov/opinions">http://www.ca11.uscourts.gov/opinions</a> .
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

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

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/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

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/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

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/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

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/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.

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/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 2<sup>nd</sup>  
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.

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/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,

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/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

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/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.

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/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

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/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.

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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.

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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

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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.

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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.

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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.

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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...

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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

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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.

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/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., 3<sup>rd</sup> 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](mailto: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