**IN THE SUPREME COURT OF FLORIDA**

ZENAIDA "SANDY" MARTINEZ,

Petitioner,

vs.

CITY OF LANTANA, FLORIDA,

Respondent.

**CASE NO. SC2025-0726**
L.T. Nos.: 4D24-1187;
50-2021 CA 002564

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ON PETITION FOR DISCRETIONARY REVIEW OF A DECISION OF THE FOURTH DISTRICT COURT OF APPEAL

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# PETITIONER'S BRIEF ON JURISDICTION

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## STATEMENT OF THE ISSUES

This Court has not interpreted the Florida Constitution's Excessive Fines Clause for over a century. Floridians cannot afford for this Court to wait any longer.

Municipal code enforcement is a cash cow in Florida. Some locales, like Lantana, even generate millions annually from code-enforcement fines. And yet according to the Fourth DCA below, the constitutionality of those fines—here, $165,000 for trivial violations—is generally unchallengeable. But Florida's Excessive Fines Clause is an expressly enumerated, deeply rooted constitutional right. Accordingly, the issues are:

(1) What is the appropriate framework—in light of the constitution's text and original public meaning—for applying the Florida Constitution's Excessive Fines Clause?; and

(2) Does Florida law compel a property owner to challenge her fines in an appeal from the magistrate's finding on *liability*—i.e., before total fines even accrue?

## STATEMENT OF THE CASE AND FACTS

Petitioner Zenaida ("Sandy") Martinez is a working single mother and grandmother. And like many Americans, she struggles financially. Even with a steady full-time job, her monthly income does not meet her expenses—which she divides amongst her multi-generational household. Were her day-to-day financial stress not enough, Sandy also owes Respondent, the City of Lantana, over $165,000 in code-enforcement fines. She does not have, now or ever, the capacity to pay those fines; $165,000 is a devastating sum for virtually anyone.[1]

The fines stem from three separate code-enforcement violations: a downed fence, a cracked driveway, and, most severely, the unlawful orientation of her cars—on her own driveway[2]:

[1] In an abundance of caution, Petitioner's counsel advises that Petitioner (through separate counsel) recently filed for Chapter 13 bankruptcy. *In re Martinez*, Case No. 9:25-bk-14310 (Bankr. S.D. Fla. Apr. 18, 2025). Petitioner's counsel's understanding is that the bankruptcy does not prohibit Petitioner from seeking this Court's review. *See* 11 U.S.C. § 362; *In re Roberts*, 556 B.R. 266, 277 (Bankr. S.D. Miss. 2016).

[2] Because the citations arose under the same (quite broad) provision, Lantana fined Sandy as a "repeat violator" for the latter two. All told, Sandy was fined $16,125 for the driveway cracks ($75 x 215 days); $47,375 for the fence ($125 x 379 days); and $101,750 for the parking ($250 x 407 days).

As the photo shows,[3] Sandy would sometimes park a car partially along her grass. For that violation alone, she owes over $100,000—fines Lantana imposed daily, without her knowledge, and (it admitted) without confirming the violation existed.[4]

It was undisputed that Sandy long-ago corrected these violations. She filled in the driveway cracks once she saved the money. She rebuilt the fence with insurance proceeds. And she promptly rearranged the cars (and eventually widened the driveway). As for the parking violation, after rearranging the cars,

[3] This is a photo from Lantana's case files. It was undisputed that, out of practical necessity, Sandy *had* to park this way. Pet. App. Br. 10-11.

[4] As the record established, Lantana checks for non-compliance near-daily when building the case for fines. Once the case is decided and the fines begin, the inspections stop (while the fines continue). *Id.* at 12-13, 19-21.

Sandy called Lantana for a reinspection. That inspection never came. So the fines kept accruing, all without her knowledge.

When Sandy learned how much she owed, she sued, alleging that $165,000 in fines for trivial code violations is unconstitutionally excessive, facially and as applied, because the fines are grossly disproportionate. Indeed, Lantana *admitted* Sandy's violations were harmless. Pet. App. Br. 18-19. But the trial court ruled for Lantana. The Fourth DCA affirmed, concluding that Sandy should have challenged her fines in an appeal from the code-enforcement magistrate's ruling. In other words, Sandy should have challenged her fines *before* they even accrued. And in any case, the Court held, the fines were not excessive because only the *daily* fine matters—not the amount actually owed. A.4.

## ARGUMENT

### I. This Court has jurisdiction because the Fourth DCA expressly construed a provision of the state constitution.

This Court should exercise discretionary jurisdiction because the Fourth DCA "expressly construe[d] a provision of the state or federal constitution." Fla. Const. art. V, § 3(b)(3); Fla. R. App. P. 9.030(a)(2)(A)(ii). That is, in rejecting the excessive-fines claim

below, the Fourth DCA construed Article I, Section 17 of the Florida Constitution and, relying on other cases also interpreting that provision, concluded that Lantana's fines were not "unreasonably harsh or oppressive," did not "shock the conscience," and were not "grossly disproportionate to the gravity of the offense"—all in light of the "substantial deference" it felt it must afford. A.5-6 (citing cases). Moreover, the Fourth DCA concluded, *total* fines were irrelevant; rather, it held, "the focus is on the fines' per diem amount." *Id.* at 6.

**A.** The Fourth DCA's construal of the Excessive Fines Clause—brief as it was—reflected an antiquated (and improperly deferential) understanding. It is in tension with holdings from the U.S. Supreme Court, the federal courts, and other state high courts construing analogous excessive-fines protections. And it defies any textual or historical understanding of the Constitution's *expressly enumerated* protections against excessive fines.

*First*, the Fourth DCA did not apply (though to be fair, this Court has not yet articulated) an excessive-fines framework reflecting the law's modern developments. As the court acknowledged, yes, historically there are three factors to consider: (1) the class of persons the statute principally targets; (2) other

penalties authorized; and (3) the harm caused. *United States v. Bajakajian*, 524 U.S. 321, 339 n.14 (1998). What the Fourth DCA applied, however, was an amalgam of *Bajakajian* and several DCA rulings applying a "shocks the conscience" standard—one rooted in this Court's century-old decision in *Amos v. Gunn*, 94 So. 615, 641 (Fla. 1922). A.5 (citations omitted).

But the decision below does not just reflect an inelegant reconciliation of *Amos* and *Bajakajian*. It also ignores the unifying (and still-relevant) concepts of those decisions. Rather than compelling a mechanical three-part test like the one applied below, those cases instruct that there are "no . . . fixed rules" for weighing excessiveness and each fine "must be adjudged on its merits." *Amos*, 94 So. at 641; *see also United States v. One Parcel Prop. Located at 427 & 429 Hall St.*, 74 F.3d 1165, 1172 (11th Cir. 1996) ("relevant factors *will necessarily vary from case to case*" (emphasis added)). Thus, courts have further acknowledged they must weigh, among other inexhaustive factors, the punishment's harshness; the offense's severity; and the claimant's culpability. *State v. Timbs*, 134 N.E.3d 12, 35-38 (Ind. 2019) (on remand from the Supreme Court).

In other words, courts must consider "the totality of the circumstances." *State v. Timbs*, 169 N.E.3d 361, 366 (Ind. 2021).

At a minimum, this Court's review is critical for steering lower courts away from a construction like the Fourth DCA's, which reduced proportionality—a necessarily fact-bound question—to a single sentence, with no analysis of facts or circumstances whatsoever. A.6. But this Court should do more. Like the Indiana Supreme Court on remand in *Timbs*, it should articulate a modern governing standard—one rooted in textualist and originalist principles and which makes clear that the Excessive Fines Clause, like other expressly enumerated rights, is a meaningful bulwark against government abuse.

*Second*, the Fourth DCA's view—that it must "grant substantial deference" to Lantana's power to both devise and impose fines—is widely viewed as incorrect. Indeed, "giv[ing] great deference . . . about the excessiveness of a fine" reflects a "hyper-deferential posture" that "[s]eems a bit like letting the driver set the speed limit." *Yates v. Pinellas Hematology & Oncology, P.A.*, 21 F.4th 1288, 1318 (11th Cir. 2021) (two-judge concurrence). Correctly understood, *Bajakajian* "never required lower courts to apply

deference anew." *Robson 200, LLC v. City of Lakeland*, 593 F. Supp. 3d 1110, 1120-22 (M.D. Fla. 2022). Rather, courts must "exercise . . . *independent judgment*" to protect against "the legislature's 'pretensions' to power." *Id.* (emphasis in original) (citing, in part, *The Federalist Papers*).

*Finally*, Anglo-American history supports robust protections from excessive fines. Those protections emanate, after all, from Magna Carta. *Timbs v. Indiana*, 586 U.S. 146, 151 (2019). So, consistent with that historical protection, a person could not be fined—as Sandy was here—far beyond their means. *Id.* at 160 (Thomas, J., concurring). As Magna Carta required, "'amercements . . . should be proportioned to the offense[,] . . . they should not deprive a wrongdoer of his livelihood[,]'" and "no man shall be amerced even to the full extent of his means." *Id.* at 161-62 (citations omitted).[5]

**B.** The other aspect of the Fourth DCA's excessive-fines construction—that only *daily* fines matter—leaves good-faith homeowners with no judicial recourse. Reviewing total fines *is*

[5] If this Court grants review, Petitioner intends to provide extensive discussion of the Florida Constitution's Excessive Fines Clause's text, history, and original public meaning.

appropriate in some instances—if, for example, it is weighed alongside other helpful factors, like the homeowner's "knowledge of the violation, when knowledge of same was obtained, and the actor's response to that knowledge." *Duisberg v. City of Austin*, 2020 WL 6122951, at *3 (Tex. App. Oct. 16, 2020) (distinguishing *Moustakis v. City of Ft. Lauderdale*, 338 F. App'x 820 (11th Cir. 2009)); *see also Robson*, 593 F. Supp. 3d at 1123 (collecting cases where "plaintiffs did not receive notice that the fine . . . was increasing by the day"). Under this more evidence-driven standard, homeowners like Sandy can win, while scofflaws and other bad actors will still lose.

Not that the Fourth DCA's view on daily fines is even the consensus. Some courts, including another DCA now in apparent conflict with the Fourth, *do* consider aggregate sums. *Riopelle v. Dep't of Fin. Servs.*, 907 So. 2d 1220, 1222-23 (Fla. 1st DCA 2005) (analyzing penalties in the aggregate); *see also, e.g.*, *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 124 P.3d 408, 420-23 (Cal. 2005) (analyzing "fine of $14,826,200" imposed in smaller amounts); *Brown v. Transurban USA, Inc.*, 144 F. Supp. 3d 809,

836-39 (E.D. Va. 2015) (analyzing daily toll violations as a $3,413.75 cumulative fine).

## II. The Fourth DCA's ruling—that a party must challenge fines before they exist—conflicts with the decisions of both this Court and at least one other DCA.

The Fourth DCA also concluded that Sandy's as-applied claims were barred because they "must first be raised in an appeal to the circuit court pursuant to section 162.11." A.4 (citation omitted). Except Chapter 162.11 does not say that. It says that an aggrieved party "*may*," not "must," bring a claim this way.

**A.** This understanding is consistent with this Court's most recent (but still decades-old) holding describing how a party may seek judicial review from executive conduct. *Key Haven Associated Enters., Inc. v. Bd. of Trs. of Internal Improvement Tr. Fund*, 427 So. 2d 153 (Fla. 1982). *Key Haven* explains, as a separation-of-powers matter, that "[a] party may . . . seek circuit court relief for [constitutional violations] arising from an agency decision which the party accepts as intrinsically correct" as a statutory matter. *Id.* at 158. That is what Sandy did. The executive process having ended, Sandy accepted, and has never challenged, the ordinances'

legitimacy and the magistrate's findings. What she challenged is the constitutionality of the fines that accrued after.

*Key Haven* says that was permissible. In fact, *Key Haven* establishes the very roadmap Sandy followed to take the matter "out of the administrative process and into a circuit court." *Id.* at 157. In other words, just as *Key Haven* allowed, Sandy went "through all review procedures available in the executive branch"—at which point she could "choose either to contest the validity of the agency action by petitioning for review in [appellate] court, or, by accepting the agency action as completely correct, to seek a circuit court determination of whether that correct agency action" "nevertheless resulted" in a violation of her constitutionally protected rights. *Id.* at 156, 158.

Sandy, permissibly, did the latter. Assuming *Key Haven* means what it says (that aggrieved property owners can bring as-applied claims *without* appealing executive action), it is in express and direct conflict with the Fourth DCA's ruling (that they categorically *cannot*).

**B.** The Fourth DCA's ruling requires homeowners to appeal their fines *before* they accrue or else lose the ability to challenge

them forever.[6] That simply cannot be the law. *See Whitaker v. Parsons*, 86 So. 247, 251 (Fla. 1920) ("If rights of individuals are violated . . . a remedy is available.").

And indeed it is not. The Fifth DCA, for example, would allow an excessive-fines claim where a plaintiff did not appeal the code-enforcement ruling. *Wilson v. County of Orange*, 881 So. 2d 625, 628-30, 632 n.4 (Fla. 5th DCA 2004); *see also Seminole Ent., Inc. v. City of Casselberry*, 866 So. 2d 1242, 1245 (Fla. 5th DCA 2004) (barring only claims that were "raise[d] and actually . . . pursue[d] in [the] appeal."); Complaint at ¶ 9, *Casselberry*, No. 01-CA-248-16-P, 2001 WL 36202438 (Fla. Cir. Ct. Feb. 1, 2001) (describing claims "as both facial and as applied").[7] Thus, if *these* arguments, on *these* facts, had arisen in *that* DCA, Sandy's excessive fines claims would have survived. This Court has jurisdiction to resolve such conflicts. *Kartsonis v. State*, 319 So. 3d 622, 623 (Fla. 2021).

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[6] At least one court, acknowledging these practicalities, refused to bar a claim challenging accrued fines. *Marfut v. City of North Port*, 2009 WL 790111, at *6 (M.D. Fla. Mar. 25, 2009).

[7] The Fourth DCA cites other DCA cases suggesting this is a minority view. A.4. But those cases, if even correct, turn on a hodgepodge of procedural defenses—exhaustion, res judicata, waiver, procedural jurisdiction—that are unmoored from any fixed jurisprudential principles. This underscores the lower-court confusion and reinforces the need for this Court's intervention.

## III. This case is important.

Abusive code enforcement is a problem in our state. The news is rife with examples of undeserving Florida homeowners facing massive accrued fines.[8] Indeed, mere weeks after the ruling below, Lauderdale Lakes (in the Fourth DCA) made news for levying devastating fines on an unsuspecting elderly couple.[9]

In the century since this Court last addressed this core issue, code enforcement has emerged as a powerful engine for municipal revenue. But under the now-prevailing rationale, the most severe municipal fines are virtually unchallengeable. Even where they *are*

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[8] *A Florida woman was fined $100,000 for a dirty pool and overgrown grass. When do fines become excessive?* (https://tinyurl.com/3ppk9un7) (collecting examples); *Dunedin homeowner fighting $81,000 fine for code violations* (https://tinyurl.com/2ha9rp9m); *She's at risk of losing her Florida home over a violation she didn't know existed* (https://tinyurl.com/yrxzushn); *How Wellington family racked up nearly $250,000 in code fines* (https://tinyurl.com/36dkec8c); *Dunedin fined a man $30,000 for tall grass. Now the city is foreclosing on his home.* (https://tinyurl.com/3r7b9vvm); *Fort Myers Beach Baptist Church facing lien and huge fines over disputed code enforcement violations* (https://tinyurl.com/3tsrd644); *Florida man fined $1M over code violations committed by previous homeowners* (https://tinyurl.com/3pwetwjw); *$541,000 Fine for Code Violation* (https://tinyurl.com/mw2h8jt4); *'I'm at my wits' end': Florida woman faced fines of $100 a day' and a possible lien on her home over a patch of landscaping stones* (https://tinyurl.com/46mar78f); *Woman to tear down North Miami-Dade treehouse she called home for 17 years after incurring $40K in fines* (https://tinyurl.com/3hzu66cu).

[9] *South Florida elderly couple faces $366,000 in fines over duplex code violations in Lauderdale Lakes* (https://tinyurl.com/yvyhekxf).

challengeable, it is near-impossible to win. The Framers of Florida's Excessive Fines Clause, and the public they served, expected far more.

## CONCLUSION

Financially catastrophic fines like Sandy's have grown commonplace in Florida. Without this Court's intervention, this problem will continue to worsen. This Court should take this case.

DATED this 2nd day of June 2025.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of June 2025, a true and correct copy of the foregoing *Petitioner's Brief on Jurisdiction* was served via the Florida Courts E-Filing Portal on the following counsel of record:

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## CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font and word count requirements of Rules 9.045(b) and (e) and 9.210(a)(2) of the Florida Rules of Appellate Procedure, as it is computer generated in Bookman Old Style 14-point font and contains 2,463 words.

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