IN THE FOURTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

CASE NO. 4D22-2642

CITY OF HALLANDALE BEACH, FLORIDA,

Appellant,

v.

DANIEL ROSEMOND,

Appellee.

FLORIDA LEAGUE OF CITIES' *AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLANT CITY OF HALLANDALE BEACH

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IDENTITY AND INTEREST OF THE AMICUS CURIAE

The Florida League of Cities ("League") is a voluntary organization whose membership consists of more than 400 cities, towns, and villages throughout the State of Florida. It represents the interests of Florida's municipal governments and promotes local self-governance.

The Order and Verdict in this case awarded $3 million in non-economic compensatory damages to the Appellee after a jury concluded the City of Hallandale Beach ("City") violated the Florida Public Whistleblower Act, section 112.3187, Florida Statutes ("FPWA"). *Record on Appeal* at 4679. The lower court had previously rejected the City's Renewed Motions for Directed Verdict, Motion for Judgment Notwithstanding Verdict, and Motion for New Trial, in which the City argued, among other things, that non-economic compensatory damages were not authorized by the FPWA. *Record on Appeal* at 4515. In its Renewed Motions, the City acknowledged the lower court was bound by a Third District Court of Appeal ("Third District") decision which held the FPWA does not preclude an award of non-economic compensatory damages. *Record on Appeal* at 4479 (referencing *Iglesias v. City of Hialeah*, 305 So. 3d 20 (Fla. 3d DCA 2019)). However, the City contended the *Iglesias* decision was wrongly decided and that the FPWA does not authorize non-economic compensatory damages. *Id.*

The League agrees with the City that the Third District reached the wrong conclusion in *Iglesias*, and this amicus curiae brief is limited to the issue of whether non-economic compensatory damages are authorized by section 112.3187(9), Florida Statutes. The Court's construction of section 112.3187(9) could expose municipalities and governmental entities throughout Florida to increased liability relating to whistleblower actions.

SUMMARY OF ARGUMENT

The League respectfully urges this Court to hold that non-economic compensatory damages are not authorized by the FPWA. First, the FPWA's plain language does not authorize non-economic compensatory damages. Second, the Court should reject the Third District's analysis in the *Iglesias* decision because the rule of liberal statutory construction for remedial statutes cannot be used to defeat a statute's plain meaning. Third, canons of statutory construction demonstrate the Legislature did not intend for the FPWA to include non-economic compensatory damages as a form of relief.

ARGUMENT

I. The Florida Public Whistleblower Act's Plain Language Does Not Authorize Non-Economic Compensatory Damages.

The Court should reject the award of $3 million in non-economic compensatory damages in this case because the plain language of the

FPWA does not authorize this form of relief. Statutory interpretation starts with examining the plain language of the statute, and if the statute is unambiguous the inquiry typically ends. *See State v. Sampaio*, 291 So. 3d 120, 123 (Fla. 4th DCA 2020); *Brown v. City of Vero Beach*, 64 So. 3d 172, 174 (Fla. 4th DCA 2011). Section 112.3187(9) enumerates the types of relief that must be afforded to prevailing employee whistleblowers in actions under the FPWA:

> (9) RELIEF.—In any action brought under this section, the relief must include the following:
> (a) Reinstatement of the employee to the same position held before the adverse action was commenced, or to an equivalent position or reasonable front pay as alternative relief.
> (b) Reinstatement of the employee's full fringe benefits and seniority rights, as appropriate.
> (c) Compensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the adverse action.
> (d) Payment of reasonable costs, including attorney's fees, to a substantially prevailing employee, or to the prevailing employer if the employee filed a frivolous action in bad faith.
> (e) Issuance of an injunction, if appropriate, by a court of competent jurisdiction.
> (f) Temporary reinstatement to the employee's former position….

Fla. Stat. s. 112.3187(9) (2022). The plain language of the FPWA does not mention non-economic compensatory damages in any respect. The forms of relief the Legislature set forth in section 112.3187(9) include equitable and injunctive relief and economic-type compensatory damages, which are described as "compensation, if appropriate, for lost wages, benefits, or other

lost remuneration caused by the adverse action." Fla. Stat. s. 112.3187(9)(c).

The Legislature created in the FPWA a statutory right for whistleblower employees to bring a cause of action for workplace retaliation. This Court has recognized that remedies sought in an action brought under a statute which creates a statutory right or duty, such as the FPWA, are generally limited to those specified within the statute. *Dascott v. Palm Beach County*, 988 So. 2d 47, 48-49 (Fla. 4th DCA 2008) (construing the Sunshine Act to limit the remedies to those specifically enumerated therein and holding the Act does not provide for monetary remedies); *see also Curtis v. City of West Palm Beach*, 82 So. 3d 894, 895 (Fla. 4th DCA 2011) (citing *Dascott* and holding damages were not available under Firefighter's Bill of Rights statute because the only remedy specified in the statute was injunctive relief). The Legislature in section 112.3187(9) specifically identified the forms of relief that would be available under the cause of action it created in the FPWA. It did not identify non-economic compensatory damages as a type of available relief, and this Court should not abrogate the authority of the Legislature by engrafting a remedy into the FPWA the Legislature has not authorized. *See De Armas v. Ross*, 680 So. 2d 1130, 1131 (Fla. 3d DCA 1996) (concluding the FPWA provides no remedy against individual defendants because

"specifically, subsection (9) makes it clear that the relief afforded under the [FPWA] is against the entity that the official represents"); *Robinson v. Department of Health*, 89 So. 3d 1079, 1083 (Fla. 1st DCA 2012), *rev. denied,* 108 So. 3d 656 (Fla. 2012) (stating "we are not at liberty to judicially engraft into the [FPWA] an avenue for Appellant to pursue her whistle-blower claim other than those provided under the [FPWA]"); *Luster v. West Palm Bch. Housing Auth*., 801 So. 2d 122 (Fla. 4th DCA 2001) (finding section 112.3187(9)(f) remedy of temporary reinstatement does not apply to demotions); *see also Curtis*, 82 So. 3d at 896 ("Had the legislature intended to allow claims seeking damages for violations of the Firefighter's Bill of Rights, we presume that it knows how to do so."); *Citrus County v. Halls River Devmt.,* Inc., 8 So. 3d 413, 423 n. 3 (Fla. 5th DCA 2009) (stating it could not "construe [section 163.3167(1), Florida Statutes] to create rights of action not within the intent of lawmakers, as reflected by the language employed in this statute").

II. This Court Should Reject the Third District's Analysis in *Iglesias* Because the Rule of Liberal Statutory Construction for Remedial Statutes Cannot Be Used to Defeat a Statute's Plain Language.

The lower court in this case was bound by the Third District's decision in *Iglesias v. City of Hialeah*, which concluded that section 112.3187(9) does

not preclude an award of non-economic, pain and suffering type damages. *See Iglesias*, 305 So. 3d 20, 22 (Fla. 3d DCA 2019). The Third District in *Iglesias* did not reach its conclusion based on the statute's plain language, nor did it find the statute ambiguous. Instead, it started with the premise that because the FPWA is a remedial statute, it must be liberally construed.[1] *Iglesias* at 22. While the FPWA is a remedial statute, the liberal construction the Third District applied to the statute impermissibly exceeded the scope of the statute's plain language.

The FPWA is in derogation of common law but is remedial in nature, which suggests it should be construed liberally in favor of granting access to the statutory remedy. *Martin County v. Edenfield,* 609 So. 2d 27, 29 (Fla. 1992).

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[1] Three federal district courts have considered the issue of whether the FPWA authorizes non-economic compensatory damages. The Southern District of Florida concluded without analysis that non-economic compensatory damages are not recoverable. *See Burden v. City of Opa Locka*, 2012 WL 12865849, at *3 (S.D. Fla. June 25, 2012); *Torres v. Miami-Dade County*, 2019 WL 1281213, at *3 (S.D. Fla. Mar. 20, 2019). The Middle District of Florida rejected the conclusion in *Burden* and *Torres* because the opinions lacked any supporting analysis. *Wojcik v. School Bd. of Orange Cty.*, 2020 WL 10731652, at *2-3 (M.D. Fla. May 18, 2020). It found the Third District's analysis in *Iglesias* more persuasive than the bare conclusions reached by the Southern District. *Id.* (holding that non-economic compensatory damages were recoverable on the basis that a remedial statute should be construed liberally and that because the private-sector whistleblower act authorized non-economic compensatory damages, the FPWA should be construed to allow them, too). *Id.*

Liberal construction does not require that once a plaintiff has gained access to the statute's remedies that courts should expand the types of relief the Legislature has provided. In multiple instances, courts have applied a liberal construction to the FPWA to ensure potential plaintiffs have ***access*** to bringing an action under the statute. *See Irven v. Dep't of Health & Rehab. Servs.*, 790 So. 2d 403, 405-06 (Fla. 2001) (finding employee's complaint to supervisors relative to the impropriety of transferring venue of child dependency action fell within scope of protections of FPWA)*; Martin County v. Edenfield*, 609 So. 2d at 29 (finding employer could not prevail on summary judgment motion in FPWA action based only on allegation of employee's own wrongdoing); *Hutchinson v. Prudential Ins. Co. of Am.,* 645 So. 2d 1047, 1049 (Fla. 1994) (applying liberal construction to FPWA to conclude insurance company qualified as an "independent contractor" and was covered by FPWA). The remedial nature of the FPWA has not prevented courts from rejecting attempts to engraft additional remedies into the FPWA, and this Court should resist the temptation to do so here. *See De Armas v. Ross*, 680 So. 2d 1130, 1131 (Fla. 3d DCA 1996) (finding FPWA authorizes no remedy against individual defendants; only against the governmental agency); *Luster v. West Palm Bch Housing Auth.*, 801 So. 2d 122, 123-24 (Fla. 4th DCA 2001) (finding no statutory right under FPWA

section 112.3187(9)(f) to temporary reinstatement for employee that has been transferred or demoted, but not discharged); *Metro. Dade Cty. v. Milton*, 707 So. 2d 913, 914-15 (Fla. 3d DCA 1998) (finding remedy of temporary reinstatement is available to employees that have been discharged but not available to employees that have been demoted and declining to imply the word "demotion" into section 112.3187(9)(f)); *Robinson,* 89 So. 3d at 1082 (concluding court was without authority to engraft on the FPWA an avenue for relief other than those provided under the statute). The rule of liberal statutory construction should not be used to defeat the plain meaning of a statute, even one that is remedial. *Quintini v. Panama City Housing Auth.*, 102 So. 3d 688, 690 (Fla. 1st DCA 2012), *rev. denied,* 116 So. 3d 383 (Fla. 2013); *Citrus County v. Halls River Devmt., Inc.,* 8 So. 3d 413, 423 n. 3 (Fla. 5th DCA 2009).

The Third District liberally construed the phrase "must include" in the first sentence of section 112.3187(9) and concluded the section constituted "a floor, rather than a ceiling, on the types of relief that a party can seek." *Iglesias* at 22. The Third District cited *O'Neal v. Florida A&M Univ.*, 989 So. 2d 6 (Fla. 1st DCA 2008), as support. The Third District's reliance on *O'Neal* was misplaced. The issue of whether the FPWA authorizes non-economic compensatory damages was not before the First District in *O'Neal*. Instead,

O'Neal considered whether jury trials are available under the FPWA if a party is seeking legal relief, such as money damages, as opposed to only equitable relief. The First District noted that Florida appellate courts have routinely assumed the right to jury trial in FPWA cases as well as cases brought under the private-sector whistleblower statute, section 448.103, Florida Statutes. *O'Neal* at 13. It found the difference in wording between the types of relief expressed in the FPWA and the private-sector act was "immaterial to the right to jury trial." *Id.* at 13-14. Notably, the First District did not state that the language differences between the FPWA and the private sector act would be immaterial to determining whether either statute authorizes non-economic compensatory damages.[2]

The Third District (and the First District in *O'Neal* dicta) liberally construed section 112.3187(9) to infer that the listed forms of relief is not an exclusive list. But if the Legislature intended to confer open-ended authority on courts to authorize new forms of relief, the Legislature could have done so. For instance, the Legislature could have omitted the listed forms of relief in

[2] In dicta, the court posited, without analysis, that "[n]othing in the (public-sector) Act, moreover, precludes compensatory relief in addition to 'lost wages, benefits, or other lost remuneration.' The Act provides that relief 'must include' the remedies set out in the statute, but does not limit relief to those remedies. s. 112.3187(9), Fla. Stat. (2004)." *O'Neal*, 989 So. 2d 14 at n. 5.

section 112.3187(9) and instead simply stated that relief must include *all forms of legal or equitable relief, as appropriate.* The Legislature did not do so, and the Third District impermissibly engrafted words into the statute that were not contemplated by the Legislature.[3]

Contrary to the Third District's conclusion in *Iglesias*, the phrase "must include" has a different and obvious meaning that is not inconsistent with the statute's plain language and which does not require any judicial engrafting – a meaning this Court has previously recognized. The phrase "must include" means *all* the enumerated forms of relief in section 112.3187(9) *must* be awarded to a prevailing plaintiff if, as the statute suggests, the relief is "appropriate" to the plaintiff's circumstances. The mandatory nature of the phrase means a court has no discretion to pick and choose from the

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[3] The Third District dismissed arguments that it was engaging in judicial engrafting, stating:

> Here, the City argues that it would require judicial engrafting to include noneconomic damages to the FPWA. However, it would also require judicial engrafting to take the City's position to add "must only include" to the statute. The FPWA mandates that an award include the remedies explicitly identified within the statute, but does not expressly exclude other recoverable damages, thereby allowing other forms of relief as may be appropriate under applicable law.

Iglesias, 305 So. 3d at 22.

enumerated list. If the form of relief fits the plaintiff's circumstances, it must be awarded.

This Court recently applied this interpretation in *School Bd. of Palm Beach Cty. v. Groover,* 337 So. 3d 799 (Fla. 4th DCA 2022). In *Groover*, this Court reviewed a lower court decision that denied equitable relief requested by the plaintiff pursuant to section 112.3187(9)(a), which provides relief in the form of reinstatement or reasonable front pay. The lower court concluded "'there are extraordinary circumstances that justify the denial of reinstatement and front pay." 337 So. 3d 799, 808. On review, this Court agreed with the lower court's denial of reinstatement under the circumstances, but held that under section 112.3187(9)(a), a court *must* award front pay when reinstatement is unavailable because of the mandatory nature of the phrase "must include." *Groover*, 337 So. 3d 799, 808-810. This Court concluded the phrase "must include" means that either reinstatement or front pay is mandatory. *Id.* at 810. Similarly, the phrase "must include" in the instant case means that courts are not free to depart from the mandatory forms of relief set forth in section 112.3187(9). The phrase does not mean that courts may depart from these mandatory forms of relief by engrafting additional forms of relief into the statute not authorized by the Legislature.

III. Canons of Statutory Construction Support the Conclusion that the FPWA Does Not Authorize Non-Economic Compensatory Damages.

Courts generally refrain from using extrinsic aids or canons of construction to determine legislative intent unless the plain language of a statute is unclear or ambiguous, but the Florida Supreme Court recently suggested that canons of statutory construction may be applied even when the plain language of a statute is unambiguous. *See Conage v. United States*, 346 So. 3d 594, 598 (Fla. 2022) (abrogating *Holly v. Auld*); *see also State v. Demons*, 351 So. 3d 10, 15 n. 2 (Fla. 4th DCA 2022), *rev. denied,* 2023 WL 2808104 (Fla. Apr. 5, 2023) (noting *Conage* and applying canons of construction). Several canons of statutory construction support a conclusion that non-economic compensatory damages are not authorized by the FPWA.

A. The Reference to "Compensation" in Section 112.3187(9)(c) is Modified by Terms That Narrow Its Meaning.

The term "compensation" in section 112.3187(9)(c) is qualified by words that show the Legislature did not intend to authorize non-economic compensatory damages as a form of relief. In addition, the remainder of the listed forms of relief in section 112.3187(9) do not reference non-economic compensatory damages in any respect. This Court has often relied on the

omitted-case canon of construction, or the principle that "courts are not at liberty to add words to a statute that the legislature has not expressly provided." *State v. Demons*, 351 So. 3d 10, 15 (Fla. 4th DCA 2022); *see also Statler v. State*, 349 So. 3d 873, 879 (Fla. 2022), *cert. den,* 143 S. Ct. 836 (2023). Courts must also presume that a legislature says in a statute what it means and means in a statute what it says there. *Kaplan v. Epstein*, 219 So. 3d 932, 933 (Fla. 4th DCA 2017).

Paragraph (c) is the only reference to "compensation" in section 112.3187(9). The paragraph does not use the phrase "compensatory damages" and it does not use any words that are typically associated with non-economic compensatory damages, such as pain and suffering, mental anguish, or loss of dignity. Paragraph (c) states: "Compensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the adverse action." Fla. Stat. s. 112.3187(9)(c) (2022). The word "compensation" does not stand alone in paragraph (c). If it did, this might suggest the Legislature intended to authorize *any* form of compensatory relief, including non-economic compensatory damages. Instead, the term "compensation" is narrowed by the words that follow it: "for lost wages, benefits, or other lost remuneration." Thus, the Legislature clearly authorized compensation in the form of lost wages and benefits. The

Legislature also authorized compensation in the form of "other lost remuneration." Remuneration typically means money paid for work or a service. *See* **Black's Law Dictionary** *(11th Ed. 2019) ("1. Payment; compensation, esp. for a service that someone has performed. 2. The act of paying or compensating")*. Because the term compensation is qualified by limiting words, it cannot be inferred that other types of compensation that are not "remuneration" are included.[4]

[4] Appellee may argue that section 112.3187(11) provides authorization for non-economic compensatory damages. Section 112.3187(11) provides the FPWA does "not diminish the rights, privileges, or remedies of an employee under any other law or rule or under any collective bargaining agreement or employment contract…."

This language simply preserves an employee's ability to pursue other causes of action and relief that are not specifically provided in the FPWA. *See Dahl v. Eckerd Family Youth Alternatives, Inc.*, 843 So. 2d 956, 959 (Fla. 2d DCA 2003) (noting section 112.3187(11) specifies the FPWA is not the exclusive remedy for employees); *cf. Branche v. Airtran Airways, Inc.*, 314 F. Supp. 2d 1194, 1196 (M.D. Fla. 2004) (construing identical language in private-sector whistleblower statute as not limiting remedies available to plaintiff under other causes of action)*; Curtis v. City of West Palm Beach*, 82 So. 3d 894, 896 (Fla. 4th DCA 2011) (finding nearly identical language in the Firefighter's Bill of Rights was insufficient to imply a monetary damages remedy existed under the statute; the paragraph merely clarified that nothing in the statute should be read to limit any other cause of action available to firefighters through some other statute or in common law).

The mention of "compensation," followed by words that qualify the term's scope, suggests the Legislature intended to exclude forms of compensation that do not constitute "lost wages, benefits, or other lost renumeration." *See Brown v. State*, 263 So. 3d 48, 50 (Fla. 4th DCA 2018) ("'Under the principle of statutory construction, *expressio unius est exclusio alterius*, the mention of one thing implies the exclusion of another.'") (citations omitted). Put another way, "when a statute ... lists the areas to which it applies, it will be construed as excluding from its reach any areas not expressly listed." *Siegle v. Lee Cty.*, 198 So. 3d 773, 775 (Fla. 2d DCA 2016); *see also State v. Hearns*, 961 So.2d 211, 219 (Fla. 2007) ("[T]he forcible felony statute specifically enumerates two types of battery .... BOLEO is not among them.... Had the Legislature intended to include all types of battery as forcible felonies, it would have listed simply 'battery' rather than only the specific types enumerated."); *see e.g., Pro-Art Dental Lab, Inc. v. V-Strategic Grp., LLC*, 986 So.2d 1244, 1258 (Fla. 2008) ("Had the Legislature intended for a commercial tenant [in this situation] to suffer an instantaneous default, it would have explicitly provided for such a severe sanction."); *Am. Bankers Life v. Williams*, 212 So.2d 777, 778 (Fla. 1st DCA 1968) ("Had the legislature intended the statute to import a more specific and definite meaning, it could easily have chosen words to express any limitation it wished to impose.").

Because the Legislature added qualifying words to the term "compensation", section 112.3187(9)(c) does not include non-economic compensatory damages. The remaining forms of relief authorized in section 112.3187(9) do not mention non-economic compensatory damages. Non-economic compensatory damages were clearly omitted from the available forms of relief authorized and this Court should not supply words that were omitted by the Legislature.

B. The History of the FPWA and Other Contemporaneously Enacted Laws Show That Non-Economic Compensatory Damages Were Not Intended in the FPWA.

The Legislative history of the FPWA, as well as acts passed in the same legislative session and prior sessions, demonstrate the Legislature chose to exclude non-economic compensatory damages from the FPWA. In looking at legislative history, "it is proper to consider acts passed at prior or subsequent legislative sessions, … as well as those passed in the same session." *Watson v. Holland*, 20 So. 2d 388, 393 (Fla. 1944), *mot. den.,* 325 U.S. 839 (1945). The FPWA was first enacted in 1986. Ch. 86-233, Laws of Florida. Subsection 9, entitled Relief, remained unchanged until 1992, when the Legislature made the following changes:

> (9) RELIEF.—In any action brought <u>under</u> ~~pursuant to~~ this section, the relief <u>must</u> ~~may~~ include the following:

(a) Reinstatement of the employee to the same position held before the adverse action was commenced, or to an equivalent position or reasonable front pay as alternative relief.
(b) Reinstatement of the employee's full fringe benefits and seniority rights, as appropriate.
(c) Compensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the adverse action.
(d) Payment of reasonable costs, including attorney's fees, to a substantially prevailing ~~the~~ employee, or to the prevailing employer if the employee filed a frivolous action in bad faith ~~party~~.
(e) Issuance of an injunction, if appropriate, by a court of competent jurisdiction.
(f) Temporary reinstatement to the employee's former position or to an equivalent position, pending the final outcome on the complaint, if an employee complains of being discharged in retaliation for a protected disclosure and if a court of competent jurisdiction or the Florida Commission on Human Relations, as applicable under s. 112.31895, determines that the disclosure was not made in bad faith or for a wrongful purpose or occurred after an agency's initiation of a personnel action against the employee which includes documentation of the employee's violation of a disciplinary standard or performance deficiency. This paragraph does not apply to an employee of a municipality.

s. 12, Ch. 92-316, Laws of Florida.

The private-sector whistleblower statute was enacted in 1991, one year prior to the 1992 amendments to the FPWA. s. 8, Ch. 91-285, Laws of Florida (codified at s. 448.103, F.S.). Subsection 448.103(2) of the private sector act, concerning forms of relief, has remained unchanged since the statute's enactment. It provides as follows:

(2) In any action brought pursuant to subsection (1), the court may order relief as follows:
(a) An injunction restraining continued violation of this act.

(b) Reinstatement of the employee to the same position held before the retaliatory personnel action, or to an equivalent position.
(c) Reinstatement of full fringe benefits and seniority rights.
(d) Compensation for lost wages, benefits, and other remuneration.
(e) Any other compensatory damages allowable at law.

Fla. Stat. s. 448.103(2) (2022). Unlike the FPWA, the private sector act has two separate paragraphs that reference compensation. The first reference is paragraph (d) of subsection 448.103(2). It is substantially identical to paragraph (9)(c) of the FPWA. The second reference is paragraph (e), which specifies "Any other compensatory damages allowable at law." This second reference is absent from the FPWA. Paragraph (e) of the private sector act authorizes the award of non-economic compensatory damages for private-sector whistleblowers. *See Aery v. Wallace Lincoln-Mercury*, 118 So. 3d 904, 913 (Fla. 4th DCA 2013) (finding the phrase "any other compensatory damages allowable at law" authorized non-economic compensatory damages under private-sector act). The Legislature could have added paragraph (e) language to the FPWA in the following legislative session (1992) when it modified 112.3187(9), but it did not do so. Had the Legislature intended for subsection (9) to be modeled or construed in the same manner as subsection (2) of the private-sector act, it could have easily done so in its 1992 revisions to subsection (9).

The 1992 Florida Legislature certainly knew how to expressly provide for non-economic compensatory relief in a remedial statute because in that same session the Legislature created subsection 760.11(5) of the Florida Civil Rights Act. Section 760.11(5) expressly and unambiguously authorizes courts to award "compensatory damages, including, but not limited to, damages for mental anguish, loss of dignity, and any other intangible injuries, and punitive damages." *See* s. 8, Ch. 92-177, Laws of Florida; *cf. Robinson,* 89 So. 3d at 1083 (stating "[i]f the Legislature had intended to allow whistle-blower complaints to proceed to circuit court due to a delay by FCHR, it would have included language in the Whistleblowers Act similar to that which it provided in the Florida Civil Rights Act.").

In 1992 the Legislature also had knowledge of the 1991 amendments to Title VII, 42 U.S.C. s. 1981. The 1991 amendments to Title VII expressly and unambiguously provided for the award of non-economic compensatory damages. Civil Rights Act of 1991, Pub. L. No. 102-166, s. 102, 105 Stat, 1071, 1072 (1991). The Legislature's omission of any express reference to non-economic compensatory damages in the 1992 amendments to subsection (9) is telling, given that FPWA claims are often analyzed in the same manner as Title VII retaliation claims. *See School Bd. of Palm Bch. County v. Groover*, 337 So. 3d 799, 804 (Fla. 4th DCA 2022) (citing *Rustowicz*

v. N. Broward Hosp. Dist., 174 So. 3d 414, 419 (Fla. 4th DCA 2015). The Florida Legislature could have expressly provided for this same relief when it revised subsection (9) in 1992, knowing that Congress did, but it chose not to do so.

The compensatory relief the Legislature chose to provide in the FPWA is markedly different than the compensatory relief the Legislature authorized in the private sector act. The relief in the FPWA is markedly different than the express authorization for non-economic compensatory relief in the Florida Civil Rights Act, enacted in the same legislative session as the current version of section 112.3187(9). The relief in the FPWA is markedly different than the non-economic compensatory relief authorized in Title VII retaliation cases. The Legislature is "'presumed to know existing law when it enacts a statute.'" *Schwartz v. Geico Gen. Ins. Co.*, 712 So. 2d 773, 775 (Fla. 4th DCA 1998) (citing *Williams v. Jones*, 326 So. 2d 425, 437 (Fla. 1976)). The Legislature had knowledge of these other contemporaneously enacted or amended laws when it revised subsection (9) of the FPWA. Its intent to exclude non-economic compensatory damages from subsection (9) in the 1992 revision is clear.

CONCLUSION

Based on the foregoing, the League respectfully requests that the Court reverse the lower court order and conclude the FPWA does not authorize non-economic compensatory damages as a form of available relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Florida Courts E-Filing Portal on this 18th day of April 2023, and that a true and correct copy has been automatically provided to:

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CERTIFICATE OF COMPLIANCE WITH FLA. R. APP. P. 9.210

Undersigned counsel hereby certifies that this brief amicus curiae is typed in 14-point Arial and otherwise meets the requirements of Florida Rule of Appellate Procedure 9.210.

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