

# MAKING BEGGARS OUT OF VICTIMS: HOW FLORIDA’S CLAIM BILL SYSTEM LEAVES CLAIMANTS TO LANGUISH

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## Abstract

Within its waiver of state sovereign immunity, Florida requires plaintiffs who secure a judgment against the state, or one of its public entities, to seek legislative approval for payment of the judgment when it exceeds the statutory threshold. This Note explores the history of Florida’s waiver of sovereign immunity and the harm perpetuated by Florida’s claim bill system while also examining the unique features of Florida’s claim process. This Note then reviews other state approaches to sovereign immunity and recommends solutions for Florida’s claim system.

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## INTRODUCTION

Imagine you are jogging on the sidewalk along a busy city street. As you make your way across the driveway entrance to an apartment complex, a county-owned vehicle turns into the complex to report to a job. The driver of the vehicle does not see you, and while navigating the turn into the complex, the driver crashes into you and ultimately runs you over. After being rushed to the hospital, you suffer many broken bones, a concussion, post-traumatic stress, and other injuries from this collision. Even after numerous surgeries, hours of physical therapy, weeks off of work, and endless medical costs, you deal with chronic pain and permanent motor difficulties. These injuries will prevent you from ever regaining consistent employment.

You then consult an attorney to recover the costs incurred from your time in the hospital. After initiating a personal injury action against the driver and their public employer, you ultimately sue the county for your injuries and settle out of court for nearly \$6 million. However, all but \$200,000 of that settlement value, which you need to pay medical costs and other bills, is inaccessible. You will only be able to access the remainder of the settlement if you can successfully persuade the Florida Legislature to pass legislation, informally known as a “claim bill,” specifically to award you the remainder of your judicially approved settlement.<sup>1</sup>

This is the unfortunate reality for Floridians who have been injured at the hands of the state or municipal government. Unlike an ordinary plaintiff who sues a private party, a party who successfully sues the state of Florida or its political subdivisions in tort may recover only a maximum of \$200,000 per person, or \$300,000 total per incident, without a claim bill passed on their behalf.<sup>2</sup> In practice, this system has proven to be a headache for all parties involved: plaintiffs seeking the passage of a claims bill must hire lobbyists to advocate for their interests before the Florida Legislature and must “beseech the Florida Legislature for justice,” typically over multiple legislative sessions.<sup>3</sup> Defendants and their insurers will generally “lobby up” as well, with some defendants reasoning that it is cheaper to repeatedly pay lobbyists to advocate against

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1. This unfortunate hypothetical circumstance has been adapted from the factual findings underlying SB 10 (2023), which appropriated \$5.95 million in relief for a Sarasota schoolteacher who was run over by a county work vehicle in 2020. *See* Fla. S. Special Master on Claim Bills, Special Master’s Final Report – SB 10 1-5 (2023), <https://www.flsenate.gov/Session/Bill/2023/10/Analyses/2023s00010.sm.PDF> [<https://perma.cc/VY5F-Z2Z9>].

2. FLA. STAT. § 768.28(5)(a) (2024).

3. *Change Sovereign Immunity Law That Leaves Floridians Suffering*, ORLANDO SENTINEL (Feb. 22, 2023, 6:56 AM), <https://web.archive.org/web/20230222154120/https://www.orlandosentinel.com/opinion/editorials/os-op-edit-sovereign-immunity-20230222-b6bijzetngk7eu7gscq5grkn4-story.html> [<https://perma.cc/G4G4-XUMX>].

the passage of a claim bill than to pay out any excess damages to a plaintiff.<sup>4</sup> Some legislators, believing that the success of claims bills depends more on the lobbyists behind them than on the substance of the bill, consistently vote against passage of such bills.<sup>5</sup>

Parts I and II of this Note will examine the history of Florida's claim bill system and the unique outcomes that the system has produced. Part III will survey the systems devised in other states and assess how they might be models for change. Finally, Part IV of this Note will advocate for several reforms to Florida's claim system. Most importantly, Part IV will call for restructuring section 768.28 to differentiate between economic and non-economic damages, eliminate the statutory cap for economic damages, and retain a heightened damages cap only for non-economic damages.

## I. FLORIDA'S CLAIM BILL SYSTEM

### A. *Sovereign Immunity, the Federal Tort Claims Act, and the States*

The common law doctrine of sovereign immunity shields a nonconsenting governmental entity from any legal claims against it.<sup>6</sup> Sovereign immunity, whose origins date back to medieval England, flows from the concept that the "king could do no wrong" and, therefore, could not be sued in his own courts.<sup>7</sup> The Supreme Court originally embraced sovereign immunity for the federal government in *Cohens v. Virginia*,<sup>8</sup> holding that "a sovereign and independent State is not liable to the suit of any individual . . . without its consent."<sup>9</sup> In Florida, sovereign immunity was part of the English common law that was adopted as the law of Florida and declared to be of full force and effect upon the state's admission to the union.<sup>10</sup>

The *Cohens* conception of sovereign immunity was later construed to divest federal courts of their jurisdiction to hear claims against the government,<sup>11</sup> and to require legislative waivers of sovereign immunity to be "unequivocally expressed."<sup>12</sup> Sovereign immunity, however, did

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4. See, e.g., Gary Fineout, *Behind Florida's Payments to Victims, Links to Lobbyists*, ASSOCIATED PRESS NEWS (last updated June 4, 2018, 12:54 PM), <https://apnews.com/article/f0c5d7bcf4a64382aceb663b7834d6b9> [<https://perma.cc/YX5L-QALM>] ("We don't have a consistent process," [former Rep. Cord] Byrd said. "It's cheaper to hire a lobbyist to go in year in and year out and kill a local claims bill than pay it out."").

5. *Id.*

6. *Sovereign Immunity*, BLACK'S LAW DICTIONARY (12th ed. 2024).

7. *Cauley v. City of Jacksonville*, 403 So. 2d 379, 381 (Fla. 1981).

8. *Cohens v. Virginia*, 19 U.S. 264, 264 (1821).

9. *Id.* at 303.

10. FLA. STAT. § 2.01 (2024).

11. *United States v. Sherwood*, 312 U.S. 584, 588 (1941).

12. *United States v. King*, 395 U.S. 1, 4 (1969) (citing *Sherwood*, 312 U.S. at 590).

not completely foreclose Americans' First Amendment right "to petition the Government for a redress of grievances."<sup>13</sup> Prior to the 1946 passage of the Federal Tort Claims Act (FTCA), Congress retained the power to pass special legislation that compensated those injured by various government actions.<sup>14</sup> Congress also passed acts that waived sovereign immunity for various claims against the government;<sup>15</sup> however, the 1887 passage of the Tucker Act explicitly excluded "claims sounding in tort" from any waivers of sovereign immunity.<sup>16</sup> Still, Congress spent an inordinate amount of time (by today's standards, at least) considering and passing special relief bills;<sup>17</sup> many state legislatures spent even more of their often-limited time<sup>18</sup> doing so.<sup>19</sup> With the FTCA's passage in 1946, the federal government waived its sovereign immunity for tort claims arising from ministerial functions of government, which constituted an outsized amount of the private claims considered by Congress.<sup>20</sup>

Ultimately, the FTCA marked an impetus for many states to enact their own partial waivers of sovereign immunity, which often mirrored the FTCA in scope and effect.<sup>21</sup> Because the Eleventh Amendment bars lawsuits against nonconsenting states<sup>22</sup> in both state and federal courts,<sup>23</sup> these waivers are critical in allowing injured persons a right to recover against a state for injuries caused by its agents.

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13. U.S. CONST. amend. I; see also Paul F. Figley, *Understanding the Federal Tort Claims Act: A Different Metaphor*, 44:3-4 TORT TRIAL & INS. PRAC. L.J. 1105, 1107 (2009).

14. *Id.* at 1108-09; see also Harry Street, *Tort Liability of the State: The Federal Tort Claims Act and the Crown Proceedings Act*, 47 MICH. L. REV. 341, 343-47 (1949) (noting the common origin of American and English conceptions of sovereign immunity and contrasting the United States' pre-FTCA private claims system and legislative reform with the English landscape for private relief).

15. Street, *supra* note 14, at 344-45.

16. Tucker Act, 28 U.S.C. § 1491 (2024).

17. Figley, *supra* note 13, at 1108-10; see also Kent Sinclair & Charles A. Szypszak, *Limitations of Action Under the FTCA: A Synthesis and Proposal*, 28 HARV. J. ON LEGIS. 1, 3-6 (1991) (observing that Congress considered nearly 2,000 claims bills per year before the FTCA was passed).

18. Only ten states have full-time legislatures. See *Full- and Part-Time Legislatures*, NAT'L CONF. OF STATE LEGISLATURES (updated July 28, 2021), <https://www.ncsl.org/about-state-legislatures/full-and-part-time-legislatures> [<https://perma.cc/3A94-M39G>].

19. Robert M. Ireland, *The Problem of Local, Private, and Special Legislation in the Nineteenth-Century United States*, 46 AM. J. OF LEGAL HIST. 271, 271-73 (2004).

20. Sinclair & Szypszak, *supra* note 17, at 5 (estimating that nearly sixty percent of all private claims bills considered by Congress would be rerouted to the federal courts by the FTCA).

21. Arvo Van Alstyne, *Governmental Tort Liability: A Decade of Change*, 1966 ILL. L. REV. 919, 920 (1966) (chronicling the steady retreat of absolute state sovereign immunity following the FTCA's passage).

22. See generally *Hans v. Louisiana*, 134 U.S. 1, 14-21 (1890).

23. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 120 (1984).

### B. *Florida's Waiver of Sovereign Immunity*

The Florida Constitution incorporates the state's original adoption of sovereign immunity while specifically vesting the Legislature with the power to alter that immunity.<sup>24</sup> Nevertheless, the Florida Legislature did not waive the state's immunity from tort claims until 1973.<sup>25</sup> Before that, Florida retained a system whereby the Legislature would refer claims against the state exceeding \$1,000 to legislative committees for consideration, alteration, and ultimate approval.<sup>26</sup> By subjecting these claims to the legislative process, the Legislature retained broad authority to impose conditions on that compensation or to alter the amount of the claim itself.<sup>27</sup>

Local governments also enjoyed sovereign immunity until 1957, when the Florida Supreme Court formally abrogated the protection and allowed judicial redress for persons “injured . . . by the negligence of a municipal employee while acting within the scope of his employment.”<sup>28</sup> The Florida Tort Claims Act includes municipalities in its immunity waiver through a provision allowing “agencies or subdivisions” of the state to be held liable for their torts.<sup>29</sup>

Against this backdrop, Florida waived its immunity from tort liability in 1973 with the enactment of Florida Statute section 768.28. The clear objective of the statute was to reduce the amount of time that the Legislature spent considering individual claims.<sup>30</sup> The statute provided that the state or its political subdivisions shall be “liable for tort claims in the same manner and to the same extent as a private individual under like circumstances[.]”<sup>31</sup> That provision (and its omission of any delineation between discretionary and governmental functions) generated

24. FLA. CONST. art. X, § 13; *see also* Gerald T. Wetherington & Donald I. Pollock, *Tort Suits Against Governmental Entities in Florida*, 44 FLA. L. REV. 1, 25–26 (1992) (explaining that prior iterations of the Florida Constitution also granted the Legislature the authority to waive state sovereign immunity “by general law”).

25. FLA. STAT. § 768.28 (2024); 1973 Fla. Laws 711–13; *see also* 1969 Fla. Laws 603–04 (explaining the Legislature had previously passed a complete waiver of sovereign immunity, without any cap on recovery, on an experimental basis for one year).

26. Osmond C. Howe Jr., *A Statutory Approach to Governmental Liability in Florida*, 18 FLA. L. REV. 653, 660–61 (1966).

27. *See* *Gamble v. Wells*, 450 So. 2d 850 (Fla. 1984) (upholding pre-1973 private relief act’s \$10,000 cap on attorneys’ fees).

28. *Hargrove v. Town of Cocoa Beach*, 96 So. 2d 130, 133–34 (Fla. 1957).

29. FLA. STAT. § 768.28(2) (2024). For an analysis of the judicial conundrums that this approach has avoided, especially within an environmental context, *see* Samantha M. Kennedy, *Held Accountable: A Comparative Analysis of Public Liability and Executing Judgments for Flood Damage*, 9 L.S.U. J. ENERGY L. & RES. 387, 401–04 (2021).

30. D. Stephen Kahn, *Legislative Claim Bills – A Practical Guide to a Potent(ial) Remedy*, 62 FLA. BAR J. 23, 24 (1988).

31. Act effective Jan. 1, 1975, ch. 73-313, § 1, 1973 Fla. Laws 711 (codified at FLA. STAT. § 768.28 (1977)).

considerable confusion within state courts after its adoption.<sup>32</sup> However, it is the statute's cap on recoverable damages<sup>33</sup>—as well as its provision that judgments exceeding that cap may be paid out “by further act of the Legislature”<sup>34</sup>—that has perpetuated the claim bill system and therefore generated the confusion and tragedy that this Note addresses.

## II. OUTCOMES OF THE CLAIM BILL SYSTEM

### A. *The Current Claim Bill System*

Florida's sovereign immunity waiver originally capped damages against the state or its municipalities to \$50,000 per claimant or \$100,000 total per incident.<sup>35</sup> The damages cap has been modified several times since it was originally enacted and currently sits at \$200,000 per claimant or \$300,000 total per incident since its last boost in 2010.<sup>36</sup> The statutory damages cap does not preclude plaintiffs from receiving a judgment or settlement in excess of the cap, but they may recover a maximum of only \$200,000 without a claim bill passed on their behalf.<sup>37</sup>

There are two types of claim bills: (1) those seeking the uncollected difference between the statutory cap and the claimant's excess tort judgment and (2) those presenting equitable claims for relief without an excess judgment.<sup>38</sup> Both types of claim bills are subject to a four-year statute of limitations,<sup>39</sup> and claim bills must seek full repayment for the value of the claim.<sup>40</sup> Additionally, the party against whom recovery is sought determines whether the bill is filed as a general or local bill. If the bill is seeking payment from the state or one of its agencies, it must be filed as a general bill, while claim bills against local governments must

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32. See generally William N. Drake, Jr. & Thomas A. Bustin, *Governmental Tort Liability in Florida: A Tangled Web*, 77 FLA. BAR J. 8, 10–14 (2003) (summarizing the Florida Supreme Court's difficulty in creating a workable standard for lower courts).

33. See FLA. STAT. § 768.28(5)(a) (2024).

34. *Id.*

35. Ch. 73-313, § 1, 1973 Fla. Laws 711.

36. Act effective Oct. 1, 2011, ch. 2010-26, § 1, Laws of Fla 1 (amending FLA. STAT. § 768.28 (1977)).

37. See FLA. STAT. § 768.28(5)(a) (2024).

38. Fla. S. Rule 4.81(1) (2024); Wetherington & Pollock, *supra* note 24, at 79; *cf.* Dickinson v. Bd. of Pub. Instruction of Dade Cty., 217 So. 2d 553, 560 (Fla. 1968) (Ervin, J., dissenting) (describing Florida's “traditional policy of satisfying . . . moral obligations through the medium of claim bills).

39. FLA. STAT. § 11.065 (2024).

40. Florida Senate & Florida House of Representatives, *Legislative Claim Bill Manual* (2023), <https://www.flsenate.gov/PublishedContent/ADMINISTRATIVEPUBLICATIONS/leg-claim-manual.pdf> [<https://perma.cc/AZ87-KN4R>].

comply with the heightened notice requirements for local bills.<sup>41</sup> Once a legislator files a claim bill on behalf of a claimant, the bill will be referred to various committees and/or a special master appointed by the chamber of which the legislator is a member.<sup>42</sup> If the bill is referred to a special master, he or she will conduct an administrative hearing whereby the plaintiff must prove, *de novo*, that the elements of negligence (duty, breach, causation, and damages) have been met by a preponderance of the evidence.<sup>43</sup> The special master will then publish a final, nonbinding report outlining factual findings, legal conclusions, and an ultimate recommendation of the claim.<sup>44</sup> If the claim bill is reported favorably by a special master and passes both chambers of the Florida Legislature, the governor may sign it into law and complete the claim process.<sup>45</sup> Generally, one in four claim bills will pass both houses of the Florida Legislature;<sup>46</sup> the number of claim bills filed each year hovers around thirty.<sup>47</sup>

### B. *Perpetuating Plaintiffs' Suffering*

Like all other bills, claim bills are subject to Florida's legislative process and often fail to pass both chambers before a legislative session adjourns. Like all other bills, lobbyists are free to persuade legislators to vote for or against a bill; therefore, claimants seeking passage of a claim bill must hire a lobbyist to get their bill passed. The 2022 Legislature passed five out of nine claim bills that were filed that session,<sup>48</sup> their highest total since passing eight claim bills during the 2018 legislative session.<sup>49</sup>

The case of Eric Brody illustrates the struggle claimants face in persuading the Florida Legislature to pass a claim bill on their behalf.

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41. FLA. STAT. § 11.02 (2024) (requiring notice of local legislation to be published in a newspaper, publicly accessible website or public place thirty days before its introduction in the Legislature); *id.* (requiring proof of publication). *See also* Kahn, *supra* note 30, at 25–26.

42. Fla. S. Special Master on Claim Bills, *supra* note 40 (generally, the Florida House of Representatives refers claim bills only to committees, while the Senate first refers claim bills to a special master before their scheduled committee stops).

43. *Id.* at 8–10.

44. *Id.* at 10.

45. *Id.*

46. Kahn, *supra* note 30, at 24.

47. *Id.*

48. Fla. H.R., Florida House of Representatives 2022 Session Summary, 284 (2022), <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Session&CommitteeId=&Session=2022&DocumentType=End+of+Session+Summaries&FileName=2022+End+of+Session+Summary.pdf> [<https://perma.cc/Y4Z9-593W>].

49. Fla. H.R., Florida House of Representatives 2018 Session Summary, 221 (2018), <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Session&CommitteeId=&Session=2018&DocumentType=End+of+Session+Summaries&FileName=2018EOS.pdf> [<https://perma.cc/Q2KE-4EJB>].

Brody was left brain-damaged and permanently paralyzed in 1998 after a speeding police officer rammed into his car.<sup>50</sup> A Broward County jury awarded Brody \$30.7 million in damages, but Brody was barred from receiving more than \$200,000 without a subsequent claim bill.<sup>51</sup> Lawmakers filed claim bills for Brody and his family in four consecutive legislative sessions;<sup>52</sup> on the fourth try, the legislature voted to compensate Brody to the tune of \$10.75 million, just over one-third of his original jury award and less than the \$15.5 million that the bill originally called for.<sup>53</sup> The bill specifically provided that the \$10.75 million award could not be “used toward the payment of attorney fees, lobbying fees, costs, or other similar expenses incurred” in pursuit of the claim bill,<sup>54</sup> Brody’s family was subsequently sued for \$400,000 in unpaid services by the public relations firm that they had contracted with, though the firm ultimately dropped the lawsuit.<sup>55</sup>

The legislature often struggles to compensate claimants whose injuries are both extreme and indicative of obvious state liability. For example, after months of torture by his adoptive parents, Victor Barahona narrowly survived being doused with toxic chemicals by his adoptive father before being left to die in a pesticide trailer.<sup>56</sup> His sister, Nubia, was beaten to death and was found decomposed in the same trailer.<sup>57</sup> Victor settled with the Florida Department of Children and Families for nearly five million dollars after the agency negligently failed to remove the Barahona siblings from the adoption placement,<sup>58</sup> a subsequent

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50. Kathleen Haughney, *Eric Brody, left brain-damaged in accident, set to get \$10.75 million*, S. FLA. SUN-SENTINEL (Jan. 10, 2012), <https://www.sun-sentinel.com/news/fl-xpm-2012-10-10-fl-brody-claims-settlement-20120110-story.html> [<https://perma.cc/HZ8E-NHSU>].

51. *Id.*

52. Toluse Olorunnipa, *Gov. Scott signs Brody, Edwards and seven other claims bills, vetoing one*, MIAMI HERALD (Mar. 29, 2012), <https://miamiherald.typepad.com/nakedpolitics/2012/03/scott-signs-brody-edwards-and-nine-claims-bills-vetoing-one.html> [<https://perma.cc/9YXN-GBWV>].

53. *Id.*

54. S. Res. 4, 2012 (Fla. 2012).

55. Kathleen McGrory, *Firm Drops Lawsuit Against Family of Paralyzed Man*, TAMPA BAY TIMES (Sept. 16, 2014), <https://www.tampabay.com/archive/2014/09/16/firm-drops-lawsuit-against-family-of-paralyzed-man/> [<https://perma.cc/P46N-JRC3>]. A similar restriction on legislative payout of attorneys’ fees was later overturned by the Florida Supreme Court. *See also* Searcy v. State, 209 So. 3d 1181, 1190, 1193–97 (2017) (overturning portion of claim bill which appropriated only \$100,000 of overall \$15 million award for attorneys’ fees); FLA. STAT. § 768.28(8) (2024) (barring attorneys from collecting more than twenty-five percent of any judgment awarded under that section).

56. Mary Ellen Klas, *DCF agrees to pay victim of child abuse and torture; Legislature won’t give the money*, TAMPA BAY TIMES (Mar. 1, 2016), <https://www.tampabay.com/dcf-agrees-to-pay-victim-of-child-abuse-and-torture-legislature-wont-give/2267536/> [<https://perma.cc/8NA6-DVRF>].

57. *Id.*

58. *Id.*



claims bill on behalf of Nubia's estate and Victor did not pass until 2017 when it completed its fourth run through the legislature.<sup>59</sup> For the family of Devaughn Darling, a Florida State linebacker who died during preseason workouts in 2001, it took thirteen tries before the legislature passed a claim bill.<sup>60</sup> Darling's bill did not even receive a hearing from 2005 to 2014,<sup>61</sup> even though the Darling family traveled to Tallahassee each legislative session to "open up a wound" and plead their case.<sup>62</sup> Traci Wohlgemuth, whose daughter Jenni suffered a traumatic brain injury after a speeding Pasco County sheriff's deputy crashed into her car, stopped following the progress of her daughter's claim bill after numerous failures in the Florida Senate.<sup>63</sup> After six previously failed efforts, the legislature finally passed a claim bill for Jenni on its seventh attempt.<sup>64</sup>

Claimants petitioning the legislature to pass a claim bill are stuck in a cruelly ironic situation: they would be better off if their injuries were caused by anyone other than a municipal agent. By subjecting their claims to the legislative process, Florida forces persons injured by government acts to relive those injuries repeatedly by petitioning legislators for the compensation they deserve. While they wait for compensation, the results can be tragic. After being run over by a Palm Beach County school bus in 2008, Carl Abbott settled his claim against the school district for \$1.9 million.<sup>65</sup> Abbott, who was left totally disabled and unable to collect more than \$200,000 without a successful claim bill, waited for the legislature to pass a bill on his behalf.<sup>66</sup> His health and finances deteriorated until he was forced to enter a nursing home that was unable to provide the therapy

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59. Relief of "Survivor" and the Estate of "Victim" by the Department of Children and Families, 2017-20 Fla. Laws, 1 (2017).

60. See Joe Reedy, *Deceased FSU player's brother says bill provides closure*, LAKELAND LEDGER (May 3, 2017, 7:05 PM), <https://www.theledger.com/story/news/state/2017/05/03/deceased-fsu-players-brother-says-bill-provides-closure/21232893007/> [<https://perma.cc/9G7Q-SR97>].

61. See *id.*

62. See Tia Mitchell, *Politics and process can obscure the human tragedies behind state claims bills*, FLA. TIMES-UNION (July 3, 2017), <https://www.jacksonville.com/story/news/2017/07/03/politics-and-process-can-obscure-human-tragedies-behind-state-claims-bills/15762017007/> [<https://perma.cc/VA9W-BH7V>].

63. See Katie LaGrone & Matthew Apthorp, *The ugly truth behind government mistakes: victims linger for years*, WPTV (Nov. 6, 2017, 11:12 PM), <https://www.wptv.com/longform/the-ugly-truth-behind-government-mistakes-victims-linger-for-years> [<https://perma.cc/X8G3-7G5P>].

64. S.B. 228, 117th Leg., Reg. Sess. (2017).

65. Kathleen Haughney, *Palm Beach man makes plea to Legislature to help ailing dad*, S. FLA. SUN-SENTINEL (May 1, 2013), <https://www.sun-sentinel.com/news/politics/sfl-palm-beach-man-makes-plea-to-legislature-to-help-ailing-dad-20130501-post.html> [<https://perma.cc/P768-QK8G>].

66. *Id.*

he needed.<sup>67</sup> Abbott's doctor wrote letters to legislators asserting that, without that therapy, Abbott would die.<sup>68</sup> His son wrote a letter to Senate President Don Gaetz promising that a claim bill would not be a "windfall" for his father.<sup>69</sup> His attorneys even agreed to accept only half of the fees to which that were legally entitled.<sup>70</sup> Despite the pleas and concessions, the legislature did not pass a bill compensating Abbott until 2015.<sup>71</sup> By then, Abbott was dead.<sup>72</sup>

### C. Giving Defendants Another Day in Court

If a plaintiff wins an excess judgment against a state or municipal defendant—or even settles out of court—the plaintiff must then petition the legislature for a claims bill awarding the outstanding payment.<sup>73</sup> This necessarily requires a plaintiff to hire a lobbyist to make their case to the legislature. Defendants and their insurers—who often have an existing team of lobbyists in the legislature to seek appropriations and influence legislation—can effectively re-litigate the case before the legislature by having their lobbyists make the case against a claim bill filed on a given plaintiff's behalf.

Municipal defendants on the wrong side of a claim bill often find sympathetic ears among Republican state legislators, who are typically apathetic toward the interests of trial attorneys.<sup>74</sup> These defendants get their first crack at re-litigating a claim bill if it is referred to a special master's hearing; there, at an ostensibly administrative hearing, the claimant must prove that the defendant's conduct fit the elements of negligence.<sup>75</sup> If the claim bill is reported favorably by a special master, it will move to committees for consideration, where a defendant could

67. Jane Musgrave, *Florida government slow to right wrongs on claims bills*, PALM BEACH POST (Mar. 31, 2012), <https://www.palmbeachpost.com/story/news/state/2012/03/31/florida-government-slow-to-right/7856379007/> [<https://perma.cc/3EMF-2SDX>].

68. Jane Musgrave, *Doctor, family of North Palm Beach man injured in 2008 school bus crash plead with legislature to sign claims bill*, PALM BEACH POST (Apr. 26, 2013), <https://www.palmbeachpost.com/story/news/crime/2013/04/26/doctor-family-north-palm-beach/6779204007/> [<https://perma.cc/V9DP-RBT6>].

69. *Id.*

70. *Id.*

71. Act for the relief of Carl Abbott by the Palm Beach County School Board, Ch. 2015, 209 Fla. Law 1.

72. John Pacenti, *Palm Beach County claims bill head to governor 'too late to help Dad'*, PALM BEACH POST (Apr. 28, 2015, 12:01 AM), <https://www.palmbeachpost.com/story/news/state/2015/04/28/palm-beach-county-claims-bill/6790353007/> [<https://perma.cc/MNK6-ZNDL>].

73. FLA. STAT. § 768.28(5)(a) (2023).

74. John Kennedy, *Fight over Dontrell Stephens claims bill hotly debated in Tallahassee*, PALM BEACH POST (Mar. 29, 2019), <https://www.palmbeachpost.com/story/news/politics/state/2019/03/29/dontrell-stephens-claims-bill-hotly-debated-in-tallahassee-hearing/5580063007/> [<https://perma.cc/6Z8Y-LYH3>].

75. Fla. S. Special Master on Claim Bills, *supra* note 40, at 9.

lobby to amend the bill further or to kill it entirely. Special master and committee hearings have proven to be contentious arenas for this re-litigation. In one such committee hearing for Dontrell Stephens' claim bill, a lobbyist representing the Palm Beach County Sheriff's Office urged lawmakers to vote against the bill because of the "poor choices" Stephens made "before and after the accident occurred."<sup>76</sup> The "accident" was a sheriff's deputy shooting Stephens in the back as he ran away from the deputy, leaving Stephens permanently paralyzed.<sup>77</sup> While lawmakers were outraged by that argument,<sup>78</sup> they were also distrustful of the amount that Stephens' lobbying team stood to gain from the bill.<sup>79</sup>

Local governments generally view the sovereign immunity cap as a "levee" against potentially ruinous liability<sup>80</sup> and are therefore incentivized to lobby against claim bills. Section 768.28 allows a public defendant's insurer to settle claims within the insured's policy limits, even if the policy limits exceed the statutory maximum,<sup>81</sup> however, such settlements are infrequent. While sunbathing on Daytona Beach, Kansas resident Erin Joynt was run over by a lifeguard driving a county-owned Ford F-150.<sup>82</sup> A Volusia County jury awarded Joynt \$2.6 million for her injuries;<sup>83</sup> however, two claim bills were filed on her behalf failed amid opposition from the county's insurer. The first, filed in 2017, was voted down in a scheduled committee hearing after Joynt's attorney filed a federal declaratory action arguing that the insurer—who insured the county for \$5 million in liability claims—should be responsible for paying out the remainder of Joynt's claim.<sup>84</sup> The second, filed in 2018, was killed in the same committee after the insurer continued to oppose the bill.<sup>85</sup> The bill's sponsor alleged that it was cheaper for the insurer to

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76. Jane Musgrave, *'The nerve of you': Lawmakers appalled at way sheriff portrays man shot by deputy*, PALM BEACH POST (Feb. 14, 2020), <https://www.palmbeachpost.com/story/news/courts/2020/02/14/rsquothe-nerve-of-yoursquo-lawmakers-appalled-at-way-sheriff-portrays-man-shot-by-deputy/112231700/> [<https://perma.cc/MX45-QF5C>].

77. *Id.*

78. *Id.*

79. *Id.*

80. Andrew Gant, *Tourist with \$2.6m verdict against Volusia faces long road to see any money*, DAYTONA BEACH NEWS-J. (July 7, 2014), <https://www.news-journalonline.com/story/news/2014/07/08/tourist-with-26m-verdict-against-volusia-faces-long-road-to-see-any-money/30673032007/> [<https://perma.cc/5K8A-PRP7>].

81. FLA. STAT. § 768.28(5)(a) (2024).

82. Dustin Wyatt, *Florida House bill fails for woman run over on beach*, DAYTONA BEACH NEWS-J. (Apr. 4, 2017), <https://www.news-journalonline.com/story/news/local/volusia/2017/04/04/florida-house-bill-fails-for-woman-run-over-on-beach/21607385007/> [<https://perma.cc/QX7J-E3TM>].

83. *Id.*

84. *Id.*; see H.B. 6543, 2017 Leg., Reg. Sess. (Fla. 2017).

85. Fineout, *supra* note 4.

pay lobbyists to fight the bill rather than pay Joynt the amount she was owed.<sup>86</sup>

Florida's claim bill process effectively requires all three branches of government to sign off on a jury verdict or out-of-court settlement against the state or its political subdivisions.<sup>87</sup> In exposing claimants to the legislative process, Florida gives defendant state agencies or local governments another "bite at the apple" to either re-litigate their case before the 160-member jury comprising the Florida legislature or stall out a claimant in a lobbying war of attrition. The process also incentivizes local governments to settle claims against them; however, the frustration a plaintiff can anticipate from the claims bill process allows local governments to offer settlements for much less than the actual damages sustained by the plaintiff.<sup>88</sup> In any case, claimants—who, in many cases, have already received a judgment recognizing the gravity of their injuries—lose.

#### D. *Engendering Legislative Skepticism*

Any claim bill filed in Florida must be voted favorably out of its assigned committees before being voted on in both houses of the legislature.<sup>89</sup> This process has generated frustration among some legislators who view the claim bill procedure as a feeding frenzy for the trial attorneys and lobbyists who stand to profit from a successful claim bill.<sup>90</sup> Legislators who are philosophically opposed to the claim bill process are not shy about making their feelings known to practitioners<sup>91</sup> or the media. For example, former state Representative Bill Hager, who viewed the process as a waste of time and taxpayer dollars to primarily consider "imperfect baby cases,"<sup>92</sup> called it "one of the most perverted systems we administer in the legislature."<sup>93</sup>

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86. *Id.*

87. Gant, *supra* note 80.

88. Lynn Hatter, *Tallahassee Family Among Those Up For Claims Bill Consideration*, WFSU PUB. MEDIA (Apr. 28, 2015), <https://news.wfsu.org/state-news/2015-04-28/tallahassee-family-among-those-up-for-claims-bill-consideration> ("'You've got brain damaged people accepting \$700,000. If it were a [FedEx] truck instead of a city truck, that person would be receiving millions of dollars with an injury that serious,' says Tallahassee attorney Lance Block." . . . "[The claims process] gives local governments the advantage in negotiating settlements that are peanuts compared to what the injuries are.").

89. Fla. S. Special Master on Claim Bills, *supra* note 40, at 10.

90. Fineout, *supra* note 4.

91. Kahn, *supra* note 30, at 24.

92. Hatter, *supra* note 88.

93. *Id.*

Even legislators willing to sponsor claim bills acknowledge that lobbyists are the primary driving force behind a bill's introduction.<sup>94</sup> Those legislators know that a claims bill's fate depends largely on the reputation or political savvy of lobbyists supporting or opposing the legislation.<sup>95</sup> On the other side of that coin, such awareness has motivated some legislators to blindly vote against claim bills due to the perception that lobbyists, not substance, drive the ultimate success of the bill.<sup>96</sup>

### 1. A Tale of Two Legislatures

The legislative unease generated by claim bills and their lobbyists is best illustrated by comparison. The Speaker of the Florida House and President of the Florida Senate hold considerable influence in setting the agenda for the chamber they lead. Former Senate President Don Gaetz and former Speaker Richard Corcoran held strong opinions about claim bills; however, those opinions generated radically different results.

Gaetz led the Florida Senate during the 2013 and 2014 legislative sessions.<sup>97</sup> Under his leadership, the legislature did not pass a single claims bill, largely because Gaetz viewed the claim process as fundamentally unfair.<sup>98</sup> Gaetz, like former Speaker (and current U.S. Representative) Daniel Webster, used his leadership to grind the claim process to a halt,<sup>99</sup> even when claimants and defendants came together to beg for legislative consideration of a claim bill.<sup>100</sup>

Corcoran rang in his 2017–18 House speakership by restricting interactions between lobbyists and state legislators.<sup>101</sup> During his tenure,

94. Fineout, *supra* note 4 (“Every claims bill I’ve ever done, it’s been a lobbyist coming to me saying, ‘Would you mind carrying a claims bill?’” [former Rep. Evan] Jenne said.”).

95. See, e.g., Fineout, *supra* note 4 (describing former Senate president’s perception that claim bills passed not on substance but on lobbying strength); Mitchell, *supra* note 62 (describing lobbyist Ron Book’s representation of defendant school board in ultimate reduction of \$8.7 million verdict to \$1.5 million claim bill); Sun-Sentinel Editorial Board, *When government owes you, lobbyists win, you wait*, S. FLA. SUN-SENTINEL (June 07, 2018), <https://www.sun-sentinel.com/opinion/editorials/fl-op-editorial-claims-bills-sovereign-immunity-20180607-story.html> [<https://perma.cc/M36E-84WV>] (“Five lobbyists from the GrayRobinson firm, one of Florida’s most influential lobbying shops, filed notices of appearance against [Erin Joynt’s claim] bill on behalf of Volusia County” before ultimate defeat of the claim bill).

96. Fineout, *supra* note 4.

97. Don Gaetz, *The Florida Senate Handbook 2012-2014*, 2013, at 1, [https://www.fl-senate.gov/UserContent/Publications/SenateHandbooks/pdf/2012-14\\_Senate\\_Handbook.pdf](https://www.fl-senate.gov/UserContent/Publications/SenateHandbooks/pdf/2012-14_Senate_Handbook.pdf) [<https://perma.cc/QNH5-6UGR>].

98. Andrew Pantazi, *Jacksonville City Council to Senate President Don Gaetz: Let us pay paralyzed teen*, FLA. TIMES-UNION (Mar. 26, 2014), <https://www.jacksonville.com/story/news/2014/03/26/jacksonville-city-council-senate-president-don-gaetz-let-us-pay/15798936007/> [<https://perma.cc/DZ5U-K889>].

99. Mitchell, *supra* note 62.

100. Pantazi, *supra* note 98.

101. Fineout, *supra* note 4.

the legislature approved twenty-one claim bills. Eight of those bills compensated claimants who were represented by Corcoran's brother Michael before the state legislature.<sup>102</sup> Based on state-mandated lobbying disclosures, Michael Corcoran's firm received at least \$89,000 in lobbying fees from claim bills alone.<sup>103</sup>

Ultimately, claimants' fates are beholden both to the lobbyists and legislators supporting or opposing their claim bill and to state legislative leadership, whose opinions on the claim process may determine whether their bill is heard at all. Legislators must juggle claim bills with appropriations, bills, and various other matters that consume much of the legislature's already limited time.<sup>104</sup> Even if a claim bill does pass the legislature, it must be ratified by the governor, which is not necessarily a foregone conclusion.<sup>105</sup>

### E. *Chilling Civil Rights Litigation*

Florida's sovereign immunity caps may dissuade civil rights actions against state or municipal defendants in state court due to the limited damages available to plaintiffs without a subsequent claim bill. Additionally, the unavailability of punitive damages or attorney fee awards in state civil-rights cases makes such cases a nonstarter for most attorneys who might represent these prospective plaintiffs.<sup>106</sup>

Joanna Schwartz argues that statutory damages caps make state courts an unfavorable alternative to federal courts for plaintiffs with both state and federal civil rights claims. Schwartz notes that civil rights practitioners in the Orlando area have seen an uptick in federal courts granting qualified immunity motions and in defense counsel asserting a qualified-immunity defense.<sup>107</sup> Thus, some practitioners have filed

102. *Id.*

103. *Id.*

104. Florida's Legislature meets for only sixty days per year, one of the shortest legislative sessions in the country. *Cf.* Mitch Perry, *More and more 'special' sessions: Will FL Legislature ever review changing the way it operates?*, FLA. PHOENIX (Jan. 23, 2023, 7:00 AM), <https://floridaphoenix.com/2023/01/23/more-and-more-special-sessions-will-fl-legislature-ever-review-changing-the-way-it-operates/> [<https://perma.cc/Y2Z2-R7CV>] (Among the ten most populous states, only Georgia's Legislature meets for fewer days than Florida's[.]). Georgia's Legislature only meets for 40 days out of the year. GA. CONST. art. III, § 4.

105. Kahn, *supra* note 30, at 26; Olorunnipa, *supra* note 52 ("Donald Brown, whose leg was lost when his motorcycle was struck by a Sumter County school bus, was slated to receive \$1.4 million after lawmakers approved his claims bill. In a letter, [then-Gov. Rick] Scott said he was acting on advice that the amount exceeds the 'proper amount of compensation' for Brown [before vetoing the bill].").

106. FLA. STAT. § 768.28(5)(a) (2024) (barring punitive damages in actions against the state or a municipality). For a discussion of Florida attorneys' perception of the various disincentives to state civil rights claims created by § 768.28, *see* Joanna Schwartz, *Civil Rights Ecosystems*, 118 MICH. L. REV. 1539, 1587–89 (2021) [hereinafter *Civil Rights*].

107. *Civil Rights*, *supra* note 106, at 1587.

parallel state law claims in state court, believing that such claims are both easier to prove and more likely to reach sympathetic judges or juries.<sup>108</sup> However, state courts have only proven worthwhile for plaintiffs with relatively low-value claims, as those who assert high-value damages may only receive \$200,000 without navigating the claims process.<sup>109</sup> Schwartz has additionally identified several cases<sup>110</sup> where plaintiffs pursuing both state and federal claims saw their federal claims dismissed on qualified immunity grounds, but allowed the plaintiffs to pursue their parallel state law claims.<sup>111</sup> That remedy—which eliminates the possibility of heightened damages under section 1983<sup>112</sup>—is hardly a welcome one for plaintiffs. In one such case in federal district court, the surviving parents of a twenty-year-old man sued the Sarasota County deputy sheriff who shot and killed the man after he rang the deputy’s doorbell in a late-night prank.<sup>113</sup> After granting summary judgment for the deputy on the decedent’s federal claims, the district court remanded the remaining state law claims to state court.<sup>114</sup> In correspondence with the decedent’s attorney, Schwartz revealed that the decedent’s family elected not to pursue a state law claim due to the statutory cap on damages.<sup>115</sup>

Florida’s statutory damages cap, and its intersection with the contingent fee model, has proven difficult to navigate in other contexts as well. Florida inmates who do not wish to comply with the Prison Litigation Reform Act’s administrative remedies requirement<sup>116</sup> will not find a desirable alternative in state court, as the state Department of Corrections’ liability is capped at \$200,000 per claim. Brittany Henderson and Gary Farmer<sup>117</sup> argue that such a figure is insufficient to compel accountability or adequate concern for inmate safety from the Department.<sup>118</sup> Echoing Schwartz’s concerns, Henderson and Farmer allege that section 768.28’s “utterly outrageous” limitation on damages dilutes any incentive for injured prisoners to effect change in state

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108. *Id.*

109. *Id.* at 1588–89.

110. Joanna Schwartz, *Qualified Immunity’s Selection Effects*, 114 Nw. U. L. REV. 1101, n.114 (2020).

111. *Id.* at 1128.

112. *Civil Rights*, *supra* note 106, at 1551.

113. Complaint & Demand for Trial by Jury ¶¶ 9–30, *Spann v. Verdoni*, No. 8:11-cv-00707 (M.D. Fla. Nov. 27, 2012); *Civil Rights*, *supra* note 106, at 1588 n.252.

114. Summary Judgment Order, *Spann v. Verdoni*, No. 8:11-cv-0707 (M.D. Fla. Nov. 27, 2012); *Civil Rights*, *supra* note 106, at 1588 n.252.

115. *Civil Rights*, *supra* note 106, at 1588 n.252.

116. 42 U.S.C. § 1997e(a).

117. Gary Farmer served as Florida Senate Minority Leader from November 2020 to April 2021. *Senator Gary M. Farmer Jr.*, THE FLA. SENATE, <https://www.flsenate.gov/Senators/2020-2022/S34/5198> [<https://perma.cc/GZD9-4QVZ>].

118. Brittany N. Henderson & Gary M. Farmer, *Correlation Between Inmate and Brutality and Lack of Whistleblower Protection in Florida*, 40 NOVA L. REV. 1, 12 (2021).

court<sup>119</sup> while also allowing state officials to commit heinous crimes against inmates with little to no liability incentive for the Department to change course.<sup>120</sup>

### F. *Successes*

Though Florida's claim bill system is widely acknowledged as imperfect, it allows claimants to pursue compensation for their claims in the absence of a jury verdict or court settlement.<sup>121</sup> In this sense, section 768.28 functions not as a roadblock to compensation (as it might for a plaintiff who won an excess judgment) but rather as a gateway. This provision is the vehicle used to compensate certain wrongfully incarcerated persons<sup>122</sup> and, in perhaps the most notable application of the claim process in Florida history, was used to compensate descendants and survivors of the Rosewood massacre.<sup>123</sup> This mechanism allows the State of Florida to recognize and atone for its past misdeeds while providing victims with the closure that they often seek.

Currently, the equitable claim process is most frequently used to pay wrongfully incarcerated persons who are statutorily barred from receiving compensation. However, legislators have brought equitable relief claims for a myriad of other issues experienced by claimants.<sup>124</sup> Notwithstanding current reform efforts,<sup>125</sup> persons who were convicted of certain felonies prior to their wrongful incarceration may not be seeking the \$50,000 per year that Florida provides to wrongfully

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119. *Id.*

120. *Id.*

121. *Id.*

122. As of this writing, Florida bars wrongfully incarcerated persons from receiving compensation for their wrongful incarceration if they have certain prior felony convictions. FLA. STAT. § 961.04 (2023). However, the Florida Senate has passed legislation eliminating this requirement, and similar legislation is currently pending in the House. See Anne Geggis, *Senate unanimously passes wrongful incarceration compensation revamp*, FLA. POLITICS (Mar. 31, 2023), <https://floridapolitics.com/archives/599808-senate-unanimously-passes-wrongful-incarceration-compensation-revamp/> [<https://perma.cc/5KBT-MR5D>].

123. C. Jeanne Bassett, *House Bill 591: Florida Compensates Rosewood Victims and Their Families for a Seventy-One-Year-Old Injury*, 22 FLA. ST. U. L. REV. 503, 505–06 (1994).

124. Notably, Sen. Oscar Braynon and Rep. Cynthia Stafford filed a 2018 claim bill on behalf of Brian Pitts, a notorious gadfly at state legislative hearings, seeking restitution for alleged mistreatment by various state and local authorities related to Pitts' unauthorized practice of law. Fla. SB 22 (2018); Fla. HB 6529 (2018). See also Ana Ceballos, *'It was time for a sabbatical': Scandals drive Brian Pitts away*, FLA. POLITICS (Mar. 14, 2018), <https://floridapolitics.com/archives/259014-time-sabbatical-scandals-drive-brian-pitts-away/> [<https://perma.cc/F8FM-DPWR>] (detailing Pitts' frequent presence in committee proceedings). Sen. Joe Gruters filed a 2023 claim bill on behalf of constituents whose claim for recovery from a bankrupt contractor was denied by a state compensation fund because claims against that contractor had already reached the maximum aggregate limit established by the fund. Fla. SB 14 (2023).

125. S. B. 382 (Fla. 2023).



imprisoned persons.<sup>126</sup> Successful bills of this type generally have the support of legislative leadership;<sup>127</sup> on the whole, however, equitable claims have historically faced longer odds in receiving the legislature's support than those funding an underlying excess judgment.<sup>128</sup>

### 1. The Rosewood Claim Bill

In 1994, the Florida legislature passed its most consequential claim bill when it allocated \$2.1 million to the survivors of the 1923 Rosewood massacre and their families.<sup>129</sup> Rosewood was a small, prosperous, African-American community in western Levy County whose residents largely worked at a sawmill in the nearby town of Sumner.<sup>130</sup> In January 1923, after a white Sumner resident reported being attacked by an unidentified African-American man, white vigilantes murdered several Rosewood residents before driving the rest from their homes and burning the community to the ground.<sup>131</sup> A grand jury was convened to investigate the massacre, but declined to indict any of its perpetrators.<sup>132</sup> Rosewood disappeared from public memory until 1982 when journalist Gary Moore published the first detailed account of the community and the massacre.<sup>133</sup>

In 1993, Rosewood survivors—represented by lobbyists at Holland & Knight—first made their case for a claim bill before the Florida legislature.<sup>134</sup> That claim was initially opposed by the State of Florida, largely due to the seventy-year span that had passed between the massacre and the claim and the resulting inability to hold the actual perpetrators accountable.<sup>135</sup> State officials additionally feared<sup>136</sup> that the claim bill would establish a precedent for compensation of other

126. FLA. STAT. § 961.04 (2023) (barring compensation for persons with previous felonies); FLA. STAT. § 961.06 (2023) (providing benefits for wrongfully incarcerated persons).

127. See, e.g., Aaron Deslatte, *Scott apologizes, signs bill giving William Dillon \$1.35M*, ORLANDO SENTINEL (Mar. 01, 2012), <https://www.orlandosentinel.com/politics/os-dillon-claims-bill-passes-20120301-story.html> [<https://perma.cc/2RJS-BP64>] (reporting lobbyist hired to promote claim bill said claimant's "case had been made easier thanks to the support of Senate President Mike Haridopolos, R-Merritt Island").

128. Kahn, *supra* note 30, at 27.

129. H.B. 591, 1994 Leg., (Fla.1994).

130. Bassett, *supra* note 123.

131. *Id.* at 506–07.

132. *Id.* at 507.

133. Gary Moore, *Rosewood Massacre*, ST. PETERSBURG TIMES, July 25, 1982, at 6.

134. Bassett, *supra* note 123, at 508.

135. *Id.* at 509.

136. Adam Yeomans, *Senator opposes Rosewood bill*, ST. PETERSBURG TIMES (Mar. 3, 1994), <https://www.tampabay.com/archive/1994/03/03/senator-opposes-rosewood-bill/> [<https://perma.cc/FZ5S-3GKV>] ("It has nothing to do with any racial issue whatsoever," said Sen. Charles Williams, D-Tallahassee. . . . "I think [the Rosewood claim bill will] open a Pandora's box to many other claims of social injustices by others other than blacks.").

populations that were persecuted in Florida's early history.<sup>137</sup> Two bills were filed during the 1993 legislative session to compensate Rosewood survivors: one included a "dramatic account of the incident at Rosewood" before calling on lawmakers to provide an unspecified amount to survivors,<sup>138</sup> while the other sought to appropriate \$50,000 for an investigation of, and report on, the destruction of Rosewood.<sup>139</sup> The legislature did not pass either bill in 1993, but had greater success the following year<sup>140</sup> after then-Speaker Bolley "Bo" Johnson called for a study of the Rosewood massacre.<sup>141</sup>

The 1994 legislation signed by Governor Lawton Chiles ultimately provided \$150,000 each for survivors,<sup>142</sup> a \$500,000 pool to be divided among families who could demonstrate real or personal property damages sustained in the massacre,<sup>143</sup> and for the creation of the "Rosewood Family Scholarship Fund" to subsidize the college tuition of students whose ancestors were displaced during the massacre.<sup>144</sup> Though the final \$2.1 million appropriation was a far cry from the \$7 million the bill originally sought,<sup>145</sup> the Rosewood claim bill marks the only reparations payment ever awarded to black victims of racial violence.<sup>146</sup> Despite the bill's significance, it still reflects the struggle that victims endure in translating their injuries to language that legislators are receptive to. The bill's focus on property rights was an intentional feature to secure the support of conservative state legislators.<sup>147</sup> Even with this focus, members of both chambers repeatedly pushed to amend the bill to

137. *Id.*; Larry Rohter, *Paying for Racial Attack Divides Florida Leaders*, N.Y. TIMES (Mar. 14, 1994), <https://web.archive.org/web/20150526103813/https://www.nytimes.com/1994/03/14/us/paying-for-racial-attack-divides-florida-leaders.html> [<https://perma.cc/F2W8-KE8F>] ("Paying Rosewood victims, the state argued in a legal brief filed last month, would invite 'piecemeal claims by other minority groups—black, Native American, Jewish, Japanese, Vietnamese—who may feel similarly aggrieved by other racial violence in Florida's history.'").

138. HB 813, 95th Sess. (Fla.1993).

139. HB 2425, 95th Sess. (Fla.1993).

140. 1994 Fla. Laws 3297.

141. Bassett, *supra* note 123, at 513. For that study's findings, see Maxine D. Jones et al., A DOCUMENTED HISTORY OF THE INCIDENT WHICH OCCURRED AT ROSEWOOD, FLA., IN JAN. 1923, H.R. 95th Sess. (Fla. 1993).

142. 1994 Fla. Laws 3297–98.

143. *Id.*

144. *Id.*

145. Bassett, *supra* note 123, at n.120.

146. Esther Schrader, *Rosewood Remembered: Centennial of Racist Massacre That Destroyed A Black Florida Town Spotlights Racial Injustice Past and Present*, SOUTHERN POVERTY L. CTR. (Jan. 06, 2023), <https://www.splcenter.org/news/2023/01/06/rosewood-centennial-racist-massacre-destroyed-black-florida-town> [<https://perma.cc/CRC5-3N2F>].

147. Robert Samuels, *After Reparations: How a Scholarship Helped—and Didn't Help—Descendants of Victims of the 1923 Rosewood Racial Massacre*, WASH. POST (Apr. 3, 2020), <https://www.washingtonpost.com/graphics/2020/national/rosewood-reparations/> [<https://perma.cc/7AB7-S6TY>].

either replace its appropriated funds with directives for commemorative highway markers, or to allow white Rosewood survivors to access scholarship funds.<sup>148</sup>

The Rosewood claim bill has provided a model for other legislators' efforts to provide restitution for other victims of large-scale state wrongdoing. Most recently, state Senator Randolph Bracy and Representative Kamia Brown filed claim bills to compensate families of the 1920 Ocoee massacre survivors.<sup>149</sup> The Ocoee bills would have established a trust fund like the one used to compensate Rosewood survivors,<sup>150</sup> and the bills were similarly backed by legislatively funded research into the events of the massacre.<sup>151</sup> Similar steps have also been taken on behalf of residents who suffered abuse at the Dozier<sup>152</sup> and Okeechobee<sup>153</sup> reform schools between 1940 and 1975.<sup>154</sup> To be sure, these bills face the same issues as all other claim bills; previous efforts to compensate abused reform school students at the Dozier School for Boys in Marianna were derailed by a state senator who represented the area.<sup>155</sup>

148. Bassett, *supra* note 123, at 519.

149. S.B. 1264, 2020 Leg., 122d Reg. Sess. (Fla. 2020); H.B. 1247, 2020 Leg., 122d Reg. Sess. (Fla. 2020). *See also* Stephen Hudak, *Bill seeks to compensate descendants of Ocoee massacre victims 100 years later*, ORLANDO SENTINEL (Sept. 16, 2019, 5:30 AM), <https://www.orlandosentinel.com/news/orange-county/os-ne-ocoe-massacre-reparations-20190916-6qvbvbm6vjazrof4j4w2uxjphy-story.html>.

150. Hudak, *supra* note 149.

151. *Id.* *See also* OFF. OF PROGRAM POL'Y ANALYSIS & GOV'T ACCOUNTABILITY, NO. 19-15, OCOEE ELECTION DAY VIOLENCE – NOV. 1920 (2019) (legislative findings regarding the Ocoee massacre).

152. *See* Ben Montgomery & Waveney Ann Moore, *For their own good: a St. Petersburg Times special report on child abuse at the Florida School for Boys*, ST. PETERSBURG TIMES (Apr. 17, 2009, 11:55 AM), available at <https://archive.ph/20131014125731/http://www.tampabay.com/features/humaninterest/article992939.ece#selection-4441.0-4441.103> [<https://perma.cc/RP9J-Z4FL>] (detailing the horrific physical and sexual abuse that occurred for decades at the Dozier School for Boys).

153. Ben Montgomery, *Sheriff investigates claims of 'torture,' killings at Okeechobee reform school*, TAMPA BAY TIMES (July 12, 2014), <https://www.tampabay.com/features/humaninterest/okeechobee-reform-school-victims-heartened-by-investigation-of-alleged/2188161/> [<https://perma.cc/2NXD-2AKU>] (outlining similar patterns of abuse at the Florida School for Boys at Okeechobee).

154. S.B. 482, 2023 Leg., 125th Reg. Sess. (Fla. 2023); H.B. 161, 2023 Leg., 125th Reg. Sess. (Fla. 2023); S.B. 1046, 2023 Leg., 125th Reg. Sess. (Fla. 2023); H.B. 629, 2023 Leg., 125th Reg. Sess. (Fla. 2023). If passed, these bills would allow state certification of reform school survivors, who would likely receive payments from a state trust fund established future claim bill. In 2024, state lawmakers passed HB 21, which established a compensation program that allows victims of reform school abuse to submit applications for certification and, ultimately, compensation. The compensation is, per the terms of the law, “[s]ubject to appropriation.” H.B. 21 2024 Leg., 126th Reg. Sess. (Fla. 2024).

155. Jake Stofan, *Restitution for victims of infamous Dozier boys school hits snag*, WJXT NEWS4JAX (Mar. 31, 2021, 6:24 PM), <https://www.news4jax.com/news/florida/2021/03/31/rest-itution-for-victims-of-infamous-dozier-boys-school-hits-snag/> [<https://perma.cc/9RJC-LAR9>].

That being said, the unique provision for equitable relief within Florida's waiver of sovereign immunity has produced results not yet replicated in any other state.

### III. OTHER STATES' APPROACHES

Though the Federal Tort Claims Act provided a common model for most state waivers of sovereign immunity, the piecemeal adoption of such state waivers has produced wildly different outcomes.<sup>156</sup> Florida is among a minority of states that preserve a legislative mechanism for resolving claims against the state,<sup>157</sup> and is among a minority that treats claims against the state and claims against local governments the same.<sup>158</sup> Most states have either eliminated damages caps on state tort liability,<sup>159</sup> established special courts or commissions to handle claims,<sup>160</sup> or restricted any payment of claims beyond that state's statutory damages cap.<sup>161</sup>

Florida legislators have considered reforming the claim bill system before. In 2013, the state House of Representatives convened the Select Committee on Claim Bills, which considered various reform efforts before proposing a bill that would have, among other things, raised Florida's statutory damages caps to \$1 million per claimant and \$1.5 million per occurrence<sup>162</sup> while incentivizing local governments to purchase liability insurance for such claims. That bill failed to pass after local governments voiced concerns about a potential flood of litigation and finding adequate coverage.<sup>163</sup>

Reforms to Florida's claim bill process should minimize claimants' exposure to the legislative process and government agencies' exposure to ruinous financial liability. With that framework in mind, this Part will

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156. See, e.g., FLA. TAXWATCH, REFORMING FLORIDA'S CLAIM BILL PROCESS: BALANCING THE NEEDS OF CLAIMANTS WITH THE INTERESTS OF TAXPAYERS (2013), <https://floridatxwatch.org/Research/Full-Library/reforming-floridas-claim-bill-process-2> [<https://perma.cc/V78V-DP7F>] (“... [I]t appears that there are probably as many different claim processes as there are states.”).

157. *Id.* at 4.

158. *Id.*; see also Cauley, *supra* note 7, at 387 (applying sovereign immunity waiver “equally to all constitutionally authorized governmental entities”); compare, e.g., ALA. CONST. art. I, § 14 (providing that “the State of Alabama shall never be made a defendant in any court of law or equity[.]”) with ALA. CODE § 11-47-190 (providing that municipalities are not immune from tort suits).

159. FLA. TAXWATCH, *supra* note 156, at 4.

160. *Id.*

161. *Id.*

162. H.B. 7123, 45th Leg. (Fla. 2013).

163. Jim Saunders, *Local Governments Fear Lawsuit Bill*, LAKELAND LEDGER (Mar. 21, 2013, 12:01 AM), <https://www.theledger.com/story/news/2013/03/21/local-governments-fear-lawsuit-bill/2682733800/> [<https://perma.cc/K7FE-MYQY>].

examine the varying approaches taken by states to handle claims against them or their political subdivisions.

### A. *Restricting Litigation on the Front End*

Several states preserve their sovereign immunity by only allowing claims for certain causes of action, restricting the class of defendants against whom claims can be brought, or eliminating a claim system entirely.

While virtually all states allow claims to be brought against counties or municipalities, Alabama, Arkansas, and West Virginia's state constitutions provide absolute immunity from all tort actions by specifying that the state shall not be made a defendant in its courts.<sup>164</sup> Several states waive their tort immunity only for certain specifically enumerated acts. These "mini waivers" vary in construction and scope; Texas waives its immunity only for property damage, premises defects, or motor vehicle negligence cases,<sup>165</sup> while Wyoming assumes liability for all torts committed by public employees working in certain employment settings.<sup>166</sup> Despite waiving tort immunity to the extent that "a private individual" would be liable,<sup>167</sup> Iowa and its political subdivisions retain that immunity for several different activities, including swimming pool inspection and municipal beekeeping.<sup>168</sup> Florida, on the other hand, waives all tort immunity for itself and its political subdivisions to the extent that a private party would also be liable in like circumstances.<sup>169</sup>

Most states that retain damages caps do not allow judgments exceeding those caps.<sup>170</sup> Additionally, those states that do not allow such judgments do not provide a claim bill mechanism for plaintiffs to seek any additional amount owed.<sup>171</sup> Uniquely, Maine allows plaintiffs to seek judgment in excess of the state's \$400,000 damages cap only if they get

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164. ALA. CONST. art. I, § 14; ARK. CONST. art. V, § 20; W.VA. CONST. art. VI, § 35.

165. TEX. CIV. PRAC. & REM. CODE ANN. §§ 101.001, .021 (2023).

166. WYO. STAT. ANN. § 1-39-104 (2023) (preserving sovereign immunity except in enumerated cases); §§ 1-39-105 to -110, -112 (2023) (waiving immunity for torts committed by public employees acting in course and scope of their employment at, e.g., public parks, airports, or medical facilities).

167. IA. CODE § 669.4 (2023).

168. IA. CODE § 670.4(1), (q) (2023).

169. FLA. STAT. § 768.28(1) (2023).

170. *See, e.g.*, *Evans v. Avery*, 100 F.3d 1033 (1st Cir. 1996) (upholding jury instruction that, per Massachusetts law, plaintiff injured by city-owned vehicle was limited to \$100,000 in damages per claim); *Horton v. Ore. Health & Sci. Univ.*, 376 P.3d 908, 1046 (Ore. 2018) (quashing trial court's entry of jury verdict exceeding statutory maximum); *Rudnick v. Ferguson*, 179 P.3d 26, 29–30 (Colo. App. 2007) (mooting plaintiff's claim after defendant state employees, fearing cost of litigation, deposited maximum recoverable amount into court registry).

171. FLA. TAXWATCH, *supra* note 156, at 10–15.

legislative clearance for an alternative amount before initiating litigation.<sup>172</sup> Florida's waiver of sovereign immunity from tort liability specifically authorizes judgments in excess of the \$200,000 statutory maximum.<sup>173</sup> That statutory provision suggests that the state intends to (at least theoretically) honor such excess judgments with the passage of an appropriate claims bill, and imposing a maximum value on *any* judgment against the state would upend Florida's tradition of providing just compensation<sup>174</sup> to persons injured by state action.

### B. Rerouting Authority Over Claims

Many states have vested administrative divisions of their legislature or judiciary with the primary authority to consider or adjudicate claims against the state or its political subdivisions. Alabama, Arkansas and West Virginia—the only three states whose constitutions bar all *lawsuits* in which the state or its agencies are named defendants<sup>175</sup>—circumvent those state constitutional restrictions by vesting the authority to resolve claims against the state in claims commissions that report exclusively to each state's legislature.<sup>176</sup> Illinois,<sup>177</sup> Michigan,<sup>178</sup> New York,<sup>179</sup> Ohio<sup>180</sup> and Tennessee<sup>181</sup> have either created courts specifically to hear claims against the state or claim commissions that are contained within the state's judiciary branch. New York's court was established after voters approved a constitutional amendment clarifying that the Legislature

172. ME. STAT. tit. 14, § 8105(3); *see also* Turner v. Collins, 390 A.2d 537, 540 (legislative resolve that allowed plaintiff to proceed with claim stating \$250,000 in damages did not authorize plaintiff to collect post-judgment interest exceeding that amount).

173. § 768.28(1) (2023).

174. § 11.065 (2023).

175. *Supra* note 165.

176. *See, e.g.*, Fireman's Ins. Co. v. Ark. State Claims Comm'n, 784 S.W.2d 771, 773, 775 (Ark. 1990) (upholding structure of Arkansas' state claims commission, which reported solely to the state legislature, as compliant with the Arkansas Constitution's ban on the state being "made defendant in any of her courts").

177. *See* 705 ILL. COMP. STAT. 505/1-2 (2023) (establishing the Illinois Court of Claims, whose judges are appointed to six-year terms by the governor and confirmed by the Illinois Senate).

178. *See* MICH. COMP. LAWS §§ 600.6404, .6413, .6419, .6422 (2023) (establishing the Michigan Court of Claims within the Michigan appellate court system).

179. *See* N.Y. CT. CL. ACT § 2 (establishing New York Court of Claims). Judges on the Court of Claims are appointed by the governor to nine-year terms subject to senate confirmation. *Id.* The Court of Claims does not have jurisdiction over claims against any county or city governments or employees. *New York State Court of Claims, Frequently Asked Questions*, N.Y. STATE UNIFIED CT. SYS., <https://ww2.nycourts.gov/COURTS/nyscourtofclaims/faq.shtml> [<https://perma.cc/V3V2-TKDP>].

180. *See* OHIO REV. CODE ANN. § 2743.03 (LexisNexis 2023) (establishing Ohio Court of Claims as the court of exclusive jurisdiction for claims against the state).

181. *See* TENN. CODE ANN. § 9-8-301 *et seq.* (2023) (establishing the Tennessee claims commission).

could only “appropriate money” for claims “audited and allowed according to law”;<sup>182</sup> that amendment, like a similar one in Ohio,<sup>183</sup> was motivated by widespread perception that the legislature abused its claim bill procedure.<sup>184</sup>

Cases brought before these adjudicative bodies are generally heard without a jury and are frequently conducted in a manner analogous to other non-jury trials or administrative law proceedings.<sup>185</sup> Even if a plaintiff succeeds on their claim in court, the legal strength of their claim may still be limited. Claims court decisions are binding in Michigan<sup>186</sup> and Ohio,<sup>187</sup> while West Virginia requires its state legislature to sign off on claims approved by its state commission.<sup>188</sup> In California, wrongfully imprisoned persons may petition the state Victim Compensation Board for financial relief;<sup>189</sup> if the Board determines that a claimant is factually innocent, the Board is required to report its factual findings and conclusions to the California legislature, where an appropriations committee chairperson will compile those findings for all successful claimants into one bill appropriating funds to pay those claimants.<sup>190</sup>

In 2013, Florida’s Select Committee on Claims introduced the Florida Fair Claims Act.<sup>191</sup> Part of that Act would require judges to determine damages in claims against public entities through a bench trial.<sup>192</sup> That

182. N.Y. CONST. art. III, § 19.

183. OHIO CONST. art. I, § 16; *see History of the Court*, OHIO COURT OF CLAIMS, <https://ohiocourtsofclaims.gov/about-us/history-of-the-court-2/> [<https://perma.cc/5U2R-FP2G>].

184. JOSEPH F. ZIMMERMAN, *THE GOVERNMENT AND POLITICS OF NEW YORK STATE* 214 (2d ed. 2008).

185. *E.g.*, John J. Russo, *How Do The Ohio Courts Work?*, CUYAHOGA CTY. COMMON PLEAS CT., <https://cp.cuyahogacounty.us/media/1042/how-ohio-courts-work.pdf> [<https://perma.cc/W7T5-U73N>] (“In almost every instance, a single judge will hear a case, but the [Ohio Supreme Court] Chief Justice may assign a panel of three judges to a civil action that presents novel or complex issues of law and fact.”); *Court of Claims*, MICH. CTS., <https://www.courts.michigan.gov/courts/court-of-claims/> [<https://perma.cc/PZ28-Y747>] (“The Court of Claims operates much like any other Michigan circuit court. In the Court of Claims, however, there is no right to a jury trial.”); *Representing Yourself in the Claims Commission*, TENN. DEPT. OF TREASURY 1, 3, <https://treasury.tn.gov/Portals/0/Documents/Claims%20Commission/ProSeHandout-October2022-RepresentingYourselfCC.pdf> [<https://perma.cc/4NJE-WFGE>] (“Hearings in the Claims Commission are similar to non-jury trials held in other courts.”).

186. MICH. COMP. LAWS § 600.6419(2) (2023) (“The judgment entered by the court of claims upon any claim . . . upon becoming final is res judicata of that claim.”).

187. Russo, *supra* note 185.

188. FLA. TAXWATCH, *supra* note 156, at 17.

189. Cal. Victim Comp. Bd., *Claims for Erroneously Convicted Persons*, <https://victims.ca.gov/legal/pc4900/> [<https://perma.cc/4TP4-QHG6>].

190. Chris Micheli, *Drafting Claims Bills in the California Legislature*, CAL. GLOBE (May 4, 2022, 6:27 AM), <https://californiaglobe.com/articles/drafting-claims-bills-in-the-california-legislature/> [<https://perma.cc/P2U8-83BZ>].

191. H.B. 7123, 45th Leg. (Fla. 2013).

192. *Id.*

proposal, which did not pass either house of the state legislature, drew objections from a lobbying group representing the state's trial attorneys.<sup>193</sup> Florida's administrative law judges, housed within the Division of Administrative Hearings, have jurisdiction over some claims whose underlying issues overlap with tort claims against public entities; for instance, ALJs have jurisdiction to certify wrongfully incarcerated persons in some instances<sup>194</sup> and, like claims courts in other states, routinely hear cases involving bid protests or other contractual disputes with state agencies.<sup>195</sup> Rerouting claims against public entities proceeding under section 768.28 to DOAH, or a DOAH-like commission, might relieve the potential inflation of damages that jury verdicts currently create.

### C. Removing Immunity Caps on the Back End

Several states have eliminated their statutory maximums for collectible damages in actions stating a claim against the state<sup>196</sup> (or, if applicable, a political subdivision). Alternatively, some states retain caps only for pain-and-suffering or other noneconomic damages, though many states do not allow punitive damages to be recovered against them.<sup>197</sup> Claims against the state of Hawaii, for instance, are only capped by a state statute restricting all non-economic damages to \$350,000.<sup>198</sup> While still preserving its sovereign immunity cap, Missouri directs its state commerce director to recalculate its damages cap every year to account for inflation.<sup>199</sup>

Economic damages, such as calculable medical expenses and lost earnings, reflect a plaintiff's actual economic loss from their injuries; noneconomic damages (like loss of consortium or pain and suffering), on the other hand, are intangible and often unquantifiable losses.<sup>200</sup> The Florida legislature has recognized, at least in the medical malpractice context, that sky-high jury awards for pain-and-suffering or other noneconomic damages were a key factor in driving up insurance premiums.<sup>201</sup> Therefore, a restriction on non-economic damages could

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193. Saunders, *supra* note 163.

194. FLA. STAT. § 961.03(4)(b) (2023).

195. *We Hear You at DOAH*, FLA. DIV. OF ADMIN. HEARINGS, <https://www.doah.state.fl.us/ALJ/services/> [<https://perma.cc/BVM3-NJTK>].

196. ORLANDO SENTINEL, *supra* note 3.

197. *E.g.*, N.J. STAT. ANN. § 59:9-2 (2023); MISS. CODE ANN. § 11-46-15 (2023); MO. STAT. § 537.610 (2023); MASS. GEN. LAWS ch. 258, § 2.

198. HAW. REV. STAT. § 663-8.5 (2023).

199. MO. STAT. § 537.610(5) (2023).

200. Allison Mangan, *The Future of Statutory Caps on Noneconomic Damages in Florida Medical Malpractice Actions: Constitutional or Not?*, 31 U. FLA. J. L. & PUB. POL'Y 481, 482 (2021).

201. *Estate of McCall v. United States*, 134 So. 3d 894, 906 (Fla. 2014).



balance the claimant's interest in receiving needed compensation with the public entity's interest in stewarding tax dollars and avoiding potentially ruinous financial exposure.

While an appealing route for reform, a restriction only on noneconomic damages may face some legal hurdles. The Florida Supreme Court held in 2014,<sup>202</sup> and again in 2017,<sup>203</sup> that a statutory cap on noneconomic damages in a medical malpractice context violated the Florida Constitution's Equal Protection Clause. The Court most recently encountered such a statute in *N. Broward Hosp. Dist. v. Kalitan*, where it found that such a statutory cap failed rational-basis inquiry because (1) the statute's definition of "catastrophic injury" unreasonably restricted the recovery of those who were most severely injured<sup>204</sup> and (2) because the crisis affecting the medical malpractice insurance market no longer existed.<sup>205</sup> Writing for the dissenters, Justice Polston argued that the legislation would have adequately served the legislature's desire to mitigate the crisis by reducing malpractice damage awards and, therefore, insurance premiums for medical providers.<sup>206</sup>

To be sure, the ideological median of the Florida Supreme Court has shifted dramatically to the right since 2017.<sup>207</sup> Only two justices from the *Kalitan* court remain on the bench: Jorge Labarga, who voted with the majority, and Charles Canady, who concurred in Polston's dissent.<sup>208</sup> As the Federalist Society observes, the new conservative majority would likely be less hostile to tort-reform efforts than the *Kalitan* court.<sup>209</sup> Even when discounting the Court's shifting partisan makeup, Florida's interest in safeguarding the taxpayer dollars at stake in claims against its municipalities is clearly more compelling than its interest in preserving the profit margins of malpractice insurers. A cap solely on non-economic damages in claims against the state might provide Florida's newly conservative high court with the right opportunity to reconsider its jurisprudence on such caps.

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202. *Id.* at 900–11.

203. *N. Broward Hosp. Dist. v. Kalitan*, 219 So. 3d 49, 57–59 (Fla. 2017).

204. *Id.* at 58.

205. *Id.* at 58–59.

206. *Id.* at 61 (Polston, J., dissenting).

207. *Governor Ron DeSantis Gives the Florida Supreme Court a Conservative Makeover*, FEDERALIST SOC'Y (Jan. 29, 2019), <https://fedsoc.org/commentary/fedsoc-blog/governor-ron-desantis-gives-the-florida-supreme-court-a-conservative-makeover> [<https://perma.cc/X4UE-2SQT>].

208. *Florida Supreme Court Justices*, FLORIDA SUPREME COURT, <https://supremecourt.flcourts.gov/Justices> [<https://perma.cc/E3VF-J6RP>].

209. FEDERALIST SOC'Y, *supra* note 207.

#### D. Other Concerns

While much of this Note has focused on claimant-friendly reforms, attention must also be paid to the financial interests of taxpayers and defendant public entities. A thoughtful claim reform effort should incentivize public entities to purchase liability insurance against claims<sup>210</sup> while promoting flexibility for those entities to pay such claims out on a gradual basis as needed.<sup>211</sup>

Florida law allows public entities flexibility in determining how, and how much, they choose to insure themselves.<sup>212</sup> After the Florida Supreme Court's holding in *Avallone v. Board of County Commissioners of Citrus County* that municipalities who purchased liability insurance policies in excess of the statutory cap waived sovereign immunity up to their policy limits,<sup>213</sup> Florida legislators amended the state's sovereign immunity waiver to provide that a public entity's purchase of liability insurance does not constitute a waiver of the sovereign immunity defense or of liability beyond the statutory cap.<sup>214</sup> Many public entities in Florida are already insured by the Florida Municipal Insurance Trust, which is administered by the Florida League of Cities.<sup>215</sup> The Trust provides workers' compensation, property, and health insurance lines along with traditional liability insurance.<sup>216</sup> The results of being uninsured can be financially catastrophic for a public entity. In 2012, lawmakers passed a claim bill awarding \$15 million of a \$31 million jury verdict to Aaron Edwards, who was gravely injured during his birth at Lee Memorial Hospital in Fort Myers.<sup>217</sup> The hospital, which operates within a special district public entity, did not have cash or insurance to cover their liability,<sup>218</sup> and was forced to decide how to "mitigate the negative impact on services and programs" it provided, including the construction of a children's hospital.<sup>219</sup>

Some states allow certain judgments to be paid off gradually. Notably, California explicitly provides its municipalities the ability to pay off

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210. FLA. TAXWATCH, *supra* note 156, at 6.

211. *Id.* at 7.

212. FLA. STAT. § 768.28(16) (2023).

213. 493 So. 2d 1002, 1004–05 (Fla. 1986).

214. 1987 Fla. Laws 1061–62; *see Pensacola Jr. Coll. v. Montgomery*, 539 So. 2d 1153, 1155 n.1 (Fla. Dist. Ct. App. 1989).

215. *About Us*, FLA. MUN. INS. TRUST, <https://insurance.flcities.com/home/about-us> [<https://perma.cc/Z5PP-22QP>].

216. *Id.*

217. Jim Saunders, *Lee Memorial ordered to compensate former child patient \$15 million*, SARASOTA HERALD-TRIBUNE (Mar. 7, 2012), <https://politics.heraldtribune.com/2012/03/07/lee-memorial-hospital-ordered-to-compensate-former-child-patient-15-million/> [<https://perma.cc/6Q9R-RQUT>].

218. *Id.*

219. *Id.*

judgments against them on installment plans<sup>220</sup> if the municipality shows, through a judicial hearing or promulgated ordinance, that “unreasonable hardship” will result if the judgment is not paid in installments.<sup>221</sup> Installment plans must provide for the payment of the judgment in equal installments,<sup>222</sup> and such installment plans may not have a term longer than ten years.<sup>223</sup> Hawaii allows claims against the state exceeding \$1 million to be paid out periodically over a term of five years or less.<sup>224</sup> Florida currently allows some flexibility in paying judgments awarding future economic damages<sup>225</sup> and provides that claimants may not execute judgment against municipalities,<sup>226</sup> but does not expressly authorize its public entities to create payment plans for judgments against them.

#### IV. MOVING FLORIDA’S PROCESS FORWARD

Florida’s claim process unfairly subjects injured persons’ claims against public entities to competition with other legislative matters for state funding and legislative attention. This process makes beggars out of plaintiffs by forcing them to relive their injuries before the Legislature to secure just compensation. Defendants, on the other hand, may effectively retry their case before the 160 members of the Legislature and have the upper hand in lobbying the Legislature against awarding the full amount they owe to the claimant. Whether a claim bill is even heard at all depends, of course, on individual legislators and chamber leaders’ personal feelings about the claim process.

While there is a widespread consensus that Florida’s claim bill process is crying out reform, its critics are divided on what those reforms should look like.<sup>227</sup> For at least the past forty years, legislators have argued that the steady increase in medical costs justifies increasing the statutory damages cap, while opponents argued that such increases would harm local governments’ fiscal health.<sup>228</sup> Legislation raising the damages cap has been introduced numerous times<sup>229</sup> since 2010, but none of those efforts successfully passed. Since 1992, the average value of a legislative

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220. CAL. GOV’T CODE § 970.6 (2023).

221. *Id.*

222. *Id.*

223. *Id.*

224. HAW. REV. STAT. § 657-24 (2023).

225. FLA. STAT. § 768.78 (2023).

226. FLA. STAT. § 55.11 (2023).

227. FLA. TAXWATCH, *supra* note 157, at 7.

228. S. COMM. ON JUDICIARY, 36TH LEG., ORG. SESS., SOVEREIGN IMMUNITY AND THE CLAIM BILL PROCESS, at 3 (Fla. 2005) (describing 1981 Legislature’s debate on precisely this topic).

229. S.B. 604, 54th Leg., Spec. Sess. B (Fla. 2023) (raising cap to \$400,000 per claimant); S.B. 1302, 52d Leg. (Fla. 2020) (raising cap to \$500,000); H.B. 985, 54th Leg. (Fla. 2022) (raising cap to \$1 million); H.B. 1305, 49th Leg. (Fla. 2017) (raising cap to \$1.5 million).

claim bill has exceeded \$1 million;<sup>230</sup> therefore, simply raising the damages cap to exceed that average would likely cause outcry among public entities who would then be on the hook for, at a minimum, hundreds of thousands of dollars in additional liabilities.

In reforming its claim process, Florida should prioritize three outcomes: minimizing claimants' exposure to legislative branch priorities, minimizing public entities' exposure to unpredictable financial liability, and maximizing the flexibility of public entities in paying off claims against them.

Regarding the first goal, Florida legislators should consider altering the structure of section 768.28's damages cap to only restrict non-economic damages. Restructuring the cap in this manner would compensate claimants for their calculable future medical costs and lost earnings while also shielding defendants from exorbitant damages awards. The *Kalitan* decision was restricted only to the noneconomic damages caps in the medical malpractice setting,<sup>231</sup> and would likely not restrict legislation enacting a noneconomic damage cap, so long as the Legislature can show that such caps would rationally support a stated objective of mitigating damages against public entities. The Legislature should additionally consider, as it already has,<sup>232</sup> incentivizing public entities to purchase liability insurance by restricting damages in actions against insured public entities to the insured entity's policy limits. The Florida Fair Claims Act contemplated that such a scheme would effectively cap damages against insured entities at \$4.5 million.<sup>233</sup>

In the alternative, the Legislature should explore possible avenues of transferring jurisdiction over damages awards to judges or transferring jurisdiction over all tort claims against public entities to an administrative hearing division. Section 768.28's equitable relief provision—indubitably a successful feature of Florida's sovereign immunity waiver—would still provide legislators with an avenue to compensate catastrophically injured claimants, for whom a hypothetical non-economic damage cap would not suffice.

To support public entities, the Legislature should formally adopt legislation allowing the state or its political subdivisions to pay judgments in installments. Such legislation should provide a maximum term of years for those installments, provide that installments should be for equal payment amounts, and provide that installment plans should only be used if (1) both parties consent to the plan, or (2) that the defendant public

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230. Cf. H.R. SELECT COMM. ON CLAIMS BILLS, 45TH LEG. ANNUAL SUMMARY OF ALL CLAIM BILL ACTIVITY IN THE FLORIDA LEGISLATURE SINCE 1955, at 2 (Fla. 2013).

231. *N. Broward Hosp. Dist.*, 219 So. 3d at 59.

232. H.B. 7123, 45th Leg. (Fla. 2013).

233. *Id.*

entity would suffer undue financial hardship if an installment plan was not used.

The above reforms would bring claimants' current odyssey through the labyrinth of state government to its rightful end in the judicial system. Moreover, such reforms would promote non-negligent conduct among Florida's public entities while affording them the ability to preserve their financial health. Most importantly, these policies would broadly eliminate the Legislature's role in handling claims that should be managed through the courts.

Florida's current claim bill system unfairly turns victims of negligent state conduct into beggars for limited state funds. It gives well-heeled public defendants the ability to re-litigate their case or lobby a claimant's bill into a black hole, while also giving legislators an outsize role as jury members in such re-litigations. Claimants who win their day in court are rewarded with years spent petitioning the state legislature; these reforms will give them the compensation and closure that they deserve.