

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

VICTORIA QUINTANA &
LUIS RODRIGUEZ,

CASE NO. 2025-020098-CA-01

Plaintiffs,

vs.

CITIZENS PROPERTY INSURANCE
CORPORATION,

Defendant.

NOTICE OF APPEAL OF NONFINAL ORDER AND
NOTICE OF AUTOMATIC STAY PENDING APPEAL OF NON-FINAL ORDER

Notice is given that Defendant Citizens Property Insurance Corporation (“Citizens”) appeals to the Third District Court of Appeal the nonfinal order of this Court rendered on Thursday, May 7, 2026 [DIN 41]. *See* Art. V, § 4(b)(1), Fla. Const.; § 682.20(1)(a), Fla. Stat.; Fla. R. App. P. 9.030(b)(1)(B), 9.130(a)(3)(I), 9.420(e); Fla. R. Gen. Prac. & Jud. Admin. 2.514(a)(1), (a)(4), (a)(5). The nature of the May 7, 2026 order attached as **Exhibit 1** is a nonfinal order denying Citizens’ motion to compel arbitration and dismiss and determining that Citizens is not entitled to arbitration. The May 7, 2026 order also incorporates by reference the Court’s preliminary order [DIN 40], which is attached as **Exhibit 2** and of which Citizens seeks review in this appeal. *See City of Tampa v. Addison*, 979 So. 2d 246, 252 n.5 (Fla. 2d DCA 2007).

Further, Citizens hereby gives notice of the automatic stay of proceedings in this action, in accordance with Florida Rule of Appellate Procedure 9.310(b)(2), during the appeal to the Third District Court of Appeal of this Court’s nonfinal order rendered on May 7, 2026. *See Citizens Prop. Ins. Corp. v. Admiralty House, Inc.*, 66 So. 3d 342, 343 (Fla. 2d DCA 2011) (holding that, on appeal of the circuit court’s nonfinal order, “Citizens was entitled to an automatic stay under

Florida Rule of Appellate Procedure 9.310(b)(2)').

Respectfully submitted on June 8, 2026.

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CERTIFICATE OF SERVICE

I certify that on June 8, 2026, this document has been filed and served by the E-Filing Portal to: Vin Roy Venkatesh, Esq., Property Litigation Group, PLLC, 2750 SW 145th Ave., Suite 509, Miramar, FL 33027, service@plglawyersfl.com; vv@plglawyersfl.com.

/s/ Garrett A. Tozier

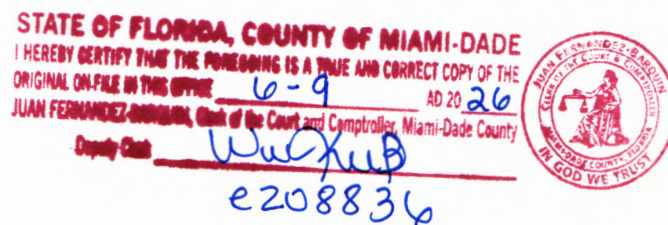


EXHIBIT 1

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CIVIL DIVISION

VICTORIA QUINTANA AND
LUIS RODRIGUEZ,

CASE NO. 2025-20098-CA-01

Plaintiffs,

v.

CITIZENS PROPERTY INSURANCE CORP.,

Defendant.

**ORDER DENYING CITIZENS'S MOTION
TO DISMISS AND TO COMPEL ARBITRATION**

Plaintiffs, as insureds, sue Citizens Property Insurance Corp. ("Citizens"), their insurer, and seek trial by jury as to their claims. Citizens, citing recent statutory changes, moves to dismiss, claiming that its insureds can seek relief by arbitration only. In an order entered on April 10 I accepted certain of Citizens' arguments; but I hesitated over Plaintiffs' claim that mandatory arbitration, to be conducted exclusively before Citizens' bedfellow agency in the executive branch of Florida government, created an appearance of impropriety inconsistent with Plaintiffs' due process rights under Art. I § 9 of the Florida constitution. Concerned but uncertain how best to proceed, "I decline[d]," in my April 10 order, "to resolve this due process question without input from the Office of the Attorney General. Accordingly, that Office is ordered, within 21 days of the entry of the present order," – i.e., not later than May 1 – "to submit a memorandum reflecting its position on this due process question." *Order on Citizens's Motion to Dismiss and to Compel Arbitration* 12 ("April 10 Order").

The April 10 Order was duly delivered to and received by the Office of the Attorney General. But "the rest is silence." Wm. Shakespeare, *Hamlet*, Act V sc. 2. The Office of the Attorney General has not filed a responsive pleading. It has not moved for an enlargement of time in which to file such a pleading. It has not contacted my chambers. Ordinarily when the Office of the Attorney General wishes to confess error it does so forthrightly. Am I to conclude that it has done so here by negative inference?

Bereft of guidance from my betters on the Third District, bereft of assistance or even acknowledgment of my existence from the Attorney General, I am "left to go where angels and even Justices fear to tread." *United States v. Summers*, 414 F. 3d 1287, 1300 (10th Cir. 2005). With respect to the issue at bar, no Florida appellate opinion is squarely on point. But certain uncontested principles, first principles, provide guidance.

"It is beyond dispute that an impartial decision maker is a core guarantee of due process, fully applicable to adjudicatory proceedings before administrative agencies." *In the Matter of 1616 Second Avenue Restaurant, Inc., v. New York State Liquor Authority*, 75 N.Y.2d 158, 161 (N.Y. 1990). *See generally Tumey v. Ohio*, 273 U.S. 510 (1927); *Pinardi v. State*, 718 So. 2d 242 (Fla. 5th DCA 1998). And it is not enough that the decision maker *be* impartial; it is equally "a core guarantee of due process" that the decision maker *appear to be* impartial. *Steinhorst v. State*, 636 So. 2d 498 (Fla. 1994); *see also id.* at 501 (Kogan, J., concurring). "It . . . is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done." *Rex v. Justices* [1924] 1 K.B. 256, 259. As noted in my April 10 order, the statutory changes upon which Citizens relies make arbitration mandatory when an insured makes a claim against Citizens. Those changes exclude jury fact-finding entirely. Those

changes provide that the arbitration is to be performed, not by any of the countless retired Florida judges who are in the business of performing alternate dispute resolution, but by the Florida Department of Administrative Hearings ("DOAH"), a sister agency of Citizens. And those changes provide that Citizens is to pay DOAH for its arbitration services, thus making Citizens an important source of DOAH's revenues. "If Floridians reasonably conclude that the alternative dispute resolution process upon which Citizens seeks to rely in the case at bar is not a system of just adjudication but merely a well-dressed scheme to dispose of policyholders' claims quickly, quietly, and on the cheap, the appearance-of-impropriety prong of the due process guarantee may be implicated." *April 10 Order 11*.

It would be difficult to overstate the importance of trial by jury to our system of government; and to our faith, our belief, in our system of government. Examples can be offered dating back to our earliest history. The *Providence Gazette and Country Journal* of October 7, 1786, reported on the outcome of a case that had held the attention of the entire state of Rhode Island: The case arose under a statute of August, 1786, aimed at enforcing the use of paper money. In September of 1786 a Mr. Trevett tendered paper bills to a butcher named Weeden in payment for meat purchased. Weeden refused the money, insisting on hard currency. He was prosecuted pursuant to the new statute, which provided for no jury trial, severe punishments, and no appeal.

At the time, the state of Rhode Island continued to operate (as it would for many years) under the colonial charter granted by Charles II, the only change to the charter being that after the Revolutionary War it referred to Rhode Island as a state rather than a colony. Weeden's lawyers argued before the state supreme court that the charter expressly confirmed to Rhode Islanders all

the “liberties of Englishmen” – and what could be more fundamental to the liberties of Englishmen than trial by jury, guaranteed by Magna Carta itself? The legislature, Weeden’s lawyers argued, “have the uncontrollable power of making laws not repugnant to the constitution. The Judiciary have the sole power of judging those laws, and are bound to execute them; but cannot admit any act of the Legislative as law, which is against the constitution” – the royal charter functioning, in Weeden’s lawyers’ view, as a constitution for the state.

The justices agreed, finding the statute unconstitutional. The legislature was outraged, and excoriated the justices; to which Justice Howell replied that, “for the reasons of their judgment upon any question judicially before them, they [*i.e.*, the justices] were accountable only to God and their own consciences” and were not bound to please the legislature.

But the issue here is not a Floridian’s constitutional entitlement to jury trial pursuant to Art. I § 22 of the Florida Constitution. As I noted in the April 10 order, the issue here:

is the unease and distrust naturally engendered when a system of alternative dispute resolution eliminates juries – not as an option, but mandatorily. Citizens’s policyholders, and Floridians generally, are entitled to ask – indeed cannot help but ask – *why* they must be stripped of their right to trial by jury as a condition of insuring their homes. Citizens’s policyholders, and Floridians generally, are entitled to suspect – indeed cannot help but suspect – that, bereft of a jury willing and able to stand up to the power of the State and see justice done, policyholders will be unable to stand up to the power of the State, and justice will not be seen to be done.

April 10 Order 11. The symbiotic relationship between Citizens and DOAH serves only to add to the appearance of impropriety. Citizens provides DOAH with much of its work, and with much of its revenue for that work. *Manus manum lavat*, said the Roman juriconsulti: one hand washes the other. Must Floridians not think the same here?

Consider the case of Susan Syquia. Ms. Syquia was a schoolteacher of 25 years standing whom the local school board sought to dismiss. Pursuant to the governing statutes, Ms. Syquia demanded arbitration. *In the Matter of Susan R. Syquia v. Board of Education of the Harpursville Central School District*, 180 A.D.2d 883, 883 (N.Y. App. 1992). Ms. Syquia chose Henry Stafford as an arbitrator; the school board chose Richard McLean; and Messrs Stafford and McLean chose William Babiskin to serve as chair of the arbitration panel. Under then-governing law the chair would receive a payment of \$200 per day, and the other panel members a payment of \$50 per day. *In the Matter of Syquia*, 180 A.D.2d at 884. Without disclosing it to Ms. Syquia or his other panel members, however, Mr. McLean sought and obtained from the school board an additional \$100 per diem fee. In the event, the arbitration panel conducted 46 days of hearings, and recommended Ms. Syquia's termination from employment. *Id.* It was well after this that Ms. Syquia's lawyers learned about McLean's receipt of the secret payments, and instituted suit on her behalf asserting a violation of due process. *Id.*

Before the appellate court the issue was "not whether actual bias existed, but, rather, whether the [School] Board's payments to a Hearing Panel member conveyed the appearance of impropriety. To ask the question is to answer it." *Id.* The court added that,

Implicit in . . . considerations of impartiality is that the decision-making body be above reproach and even the appearance of impropriety must be avoided. . . . To us it seems utter sophistry to suggest that the appearance of bias does not exist in a case where a litigant makes payments to a Hearing Panel member charged with impartially determining the outcome of the litigation.

Id. at 884-85.

I well recognize the obvious distinction between the foregoing case and the case at bar.

In *Syquia*, the payments made to the member of the arbitration panel by one of the litigants were clandestine. The payments that Citizens makes to DOAH are a matter of public record. But that distinction does not undermine the analogy between *Syquia* and the present case. From a standpoint of the appearance of impropriety, what was wrong about a litigant making a payment to a member of an administrative hearing panel was not that the payment was made clandestinely, *but that it was made at all*. Mr. McLean received a few hundred dollars under the table from the school board in connection with one case. DOAH receives a not-insignificant share of its funding from Citizens, not in connection with one case but in case after case, year in and year out. In truth the mephitic odor of impropriety arises more pungently from the facts at bar than from the facts of *Syquia*. The arbitration panel in *Syquia* was constituted in the customary fashion: each side chose one arbitrator, and the two arbitrators thus chosen then chose a third. In Florida neither Plaintiffs nor any insureds who seek to sue Citizens have any choice at all in the constitution of the arbitration panel. Quite the opposite: the arbitrating body is DOAH, a sister agency to Citizens within Florida's executive branch, and Citizens is the very adversary whom Plaintiffs and like-kind litigants oppose. The claim made in *Syquia* was not of the sort that is traditionally resolved by jury trial. The claim at bar is of a kind that has always been resolved in Florida by jury trial – and is still so resolved against *any insurer other than Citizens*. The claim made in *Syquia* was of the sort that was appropriate for arbitration, in that it required a certain technical familiarity with the policies and practices of public schools and school boards. The claim at bar requires for its adjudication nothing more, and nothing less, than that sense of fair play and justice that a jury provides – and is perceived as providing.

I do not go so far as to say that there is an immutable due process impediment to any use

of arbitration in resolving disputes between Citizens and its insureds. I do not go so far because the present case does not invite me to go so far. The circumstances of the present case do not permit even limited jury fact-finding, which if permitted might ameliorate due-process concerns. The circumstances of the present case do not allow for participation by the plaintiffs in the choice of arbitrators, which if allowed might ameliorate due-process concerns. The circumstances of the present case do not provide for independent arbitrators, unaligned with the executive branch of Florida government, which if provided for might ameliorate due-process concerns. The circumstances of the present case do not throw a cordon between Citizens's wallet and DOAH's extended palm, which also might ameliorate due-process concerns. And so on.

Citizens's Motion to Dismiss and to Compel Arbitration is respectfully denied on due process grounds. SO ORDERED in chambers in Miami, Miami-Dade County, Florida, this 7th day of May, 2026.



Hon. Milton Hirsch
Judge, 11th Judicial Circuit

cc: all counsel of record
Office of the Attorney General

EXHIBIT 2

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CIVIL DIVISION

VICTORIA QUINTANA AND
LUIS RODRIGUEZ,

CASE NO. 2025-20098-CA-01

Plaintiffs,

v.

CITIZENS PROPERTY INSURANCE CORP.,

Defendant.

ORDER ON CITIZENS' MOTION TO DISMISS AND TO COMPEL ARBITRATION

Citizens Property Insurance Corporation “was created by the Florida Legislature in August 2002 as a not-for-profit, tax-exempt government entity to provide property insurance to eligible Florida property owners unable to find insurance coverage in the private market.”

<https://www.citizensfla.com/who-we-are> (visited April 3, 2026). It “serve[s] . . . as the state’s insurer of last resort.” *Id.* As a matter of tautology, then, the Floridians who seek coverage from Citizens are those with limited financial resources and no other home-insurance options.

In May of 2023, the Florida Legislature enacted statutory changes that enabled Citizens to insert mandatory arbitration provisions in its policies. From and after that time, policyholders who were called upon to renew their coverage with Citizens faced a choice between the Scylla of foregoing their rights to trial by jury in the event of a dispute with their insurer, and the Charybdis of leaving their homes uninsured. Victoria Quintana and Luis Rodriguez, plaintiffs herein, faced that choice. Acting as any homeowners would, they renewed their insurance

coverage.

A coverage dispute has now arisen, and Plaintiffs seek to resolve it by the time-honored method of trial by jury. According to John Adams, “Representative government and trial by jury are the heart and lungs of liberty.” <https://www.arktla.org/?pg=FounderQuotes> (visited April 3, 2026). According to Thomas Jefferson, trial by jury is “the only anchor ever imagined by man, by which government can be held to the principles of its constitution.” *Id.* But according to Citizens, Plaintiffs made a knowing, informed, and voluntary waiver of their right to jury trial when they renewed their insurance policy.

That being the case, Citizens moves to dismiss two counts of the present complaint and to compel arbitration. I consider its arguments in turn.

I. Failure of notice

In Count I of their complaint, Plaintiffs seek a declaratory judgment that both the language of the insurance policy endorsement providing for compulsory arbitration, and the statutory provision authorizing that language, are unconstitutional as violative of a host of constitutional guarantees, notably the guarantees of access to courts, Fla. Const. Art. I s. 21,¹ and of trial by jury, Fla. Const. Art. I s. 22.² Citizens argues that Plaintiffs’ claim is barred by Fla. R. Civ. P. 1.071, which requires that a litigant making such a constitutional challenge must “promptly” give notice to the Office of the Attorney General or the Office of the State Attorney. Section 86.091, Fla. Stat., is to the same effect. At the time Citizens filed its motion to dismiss,

¹ “The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay.”

² “The right of trial by jury shall be secure to all and remain inviolate.”

Plaintiffs had not yet given such notice. Plaintiffs have now done so. But in Citizens's view, this belated notice does not satisfy the "promptly" requirement of the Rule. That, in Citizens's view, is fatal to Plaintiffs' constitutional challenge. *See gen'ly Shelton v. Bank of New York Mellon*, 203 So. 3d 1003, 1005 (Fla. 2d DCA 2016) (citing *Diaz v. Lopez*, 167 So. 3d 455, 460 n.10 (Fla. 3d DCA 2015)).

There are any number of instances in Florida law in which notice must be given not later than a particular date, *see, e.g.*, Fla. Stat. s. 90.404(2)(d)1 (notice to be given "no fewer than ten days before trial"); or prior to a particular juncture in the litigation. Rule 1.071 could similarly have been drafted to provide that notice of intent to bring a constitutional challenge must be filed, for example, not later than X days after the filing of an answer; or, for example, prior to the filing of motions for summary judgment. But the rule was not so drafted. It employs the adverb "promptly." What is prompt in any given case will turn on the attendant facts and circumstances, and a determination of promptness in one case will likely be of little precedential value in determining promptness in a case possessed of different facts and circumstances.

In its motion to dismiss, Citizens quite properly cites to *Lee Memorial Health System v. Progressive Select Insurance Co.*, 260 So. 3d 1038 (Fla. 2018). There, Progressive raised a constitutional challenge and duly filed and served notice. Its notice identified only one claim of unconstitutionality. *Lee Memorial Health System*, 260 So. 3d at 1042. After argument on summary judgment, however, Progressive filed an amended notice, identifying additional constitutional challenges. "Progressive argue[d] that it cured [its initial] non-compliance by serving notice . . . after the summary judgment hearing." *Id.* This argument the Supreme Court rejected. "By the time Progressive attempted to cure the defect in its notice, the trial court had

already announced its decision not to address the issue [as to which notice had not been given] and given directions for the preparation of an order disposing of the motion for summary judgment and, ultimately, the case.” *Id.* “Progressive’s notice was therefore not prompt as required by Rule 1.071” in that it “did not provide the State a sufficient opportunity to participate in the trial court proceedings.” *Id.*

The facts of the case at bar are easily distinguished. This case is in its infancy, Citizens’s motion to dismiss having been recently filed in response to Plaintiffs’ complaint. Assuming *arguendo* that this lawsuit goes forward, motion practice and discovery will likely go on for months. Summary judgment appears on the distant horizon of time like a small cloud no bigger than a man’s hand. In the meantime, the State has received notice of Plaintiffs’ constitutional challenges. Indeed it has received notice many times over. It has received notice in the manner required by Rule 1.071 and § 86.091. It has, in a sense, received notice because Citizens is, itself, an arm of the State, and Citizens is possessed of Plaintiffs’ pleadings. It has, in a sense, received notice because claims identical to those raised by Plaintiffs herein have been raised in a host of lawsuits around the State of Florida in which Citizens is presently litigating.

In the circumstances, it is difficult to argue that the notice filed and served herein is insufficiently prompt. In its motion to dismiss, Citizens addresses Plaintiffs’ constitutional arguments with comprehensive scholarship. There can be no serious suggestion that Citizens, or the State of Florida, was prejudiced or disadvantaged because notice was not given days earlier; or that Citizens, or the State of Florida, would have been in a better position to brief the court on the constitutional issues at bar if notice had been given days earlier. The Rule requires promptness. It does not require immediacy.

Had Plaintiffs filed and served their notices contemporaneously with the filing of their complaint, Citizens would have had one fewer argument to include in its motion to dismiss. But that is the only difference it would have made. Given the present posture of this case, notice, although it could have been given even more promptly, was given promptly enough.

II. Waiver

Central to Citizens's motion to dismiss is its claim of waiver. Citizens does not deny that Plaintiffs, like all Floridians, have, as a general matter, constitutional rights to access to courts, to trial by jury, to due process, and so on. But it is a proposition too well-settled to invite citation to authority that even constitutional rights can be waived, so long as the waiver is knowing, intelligent, and voluntary.

It is Citizens's position that its policies contain language advising policyholders that submission to mandatory arbitration is a condition of coverage; and that by accepting the policy and paying the premium, the policyholder accepts that condition, thus waiving any constitutional rights inconsistent with mandatory arbitration. The language in which the policyholder is instructed of this condition is neither more nor less obtuse than most contractual language, but that is not the point. If a policyholder does not understand the contract he is signing, it is his responsibility to seek legal counsel or otherwise better advise himself regarding that contract. If a policyholder could, after the fact, renounce contractual provisions not to his liking simply by declaring, "But I didn't understand what I was signing," there would be an end to the law of contract and to the practice of insurance. In all but exceptional circumstances, the policyholder's signature is dispositive evidence that any waiver of rights subsumed in the policy was made knowingly and intelligently.

The question remains, however, whether the waiver was made voluntarily. It has been the law in Florida since antebellum days that a waiver of constitutional rights must be voluntary, and not the product of irresistible pressure or improper influence. *Simon, a slave, v. State*, 5 Fla. 285 (Fla. 1853). At the extremes, waivers of rights produced by coercion are readily identified. To take a silly example: If Victoria Quintana and Luis Rodriguez had been beaten with a Louisville Slugger until they agreed to waive their rights to jury trial and accept binding arbitration, we would have no difficulty characterizing their waiver of rights as involuntary. But coercion is rarely so easily recognizable. Forms of pressure calculated to overwhelm one man's will may leave another man cold. Cf. *Albritton v. State*, 769 So. 2d 438 (Fla. 2d DCA 2000) with *Moser v. State*, 763 So. 2d 1165 (Fla. 4th DCA 2000).

Victoria Quintana and Luis Rodriguez were faced with a stark choice. When the next hurricane hits Florida – not “if,” but “when” the next hurricane hits Florida – their home, like the homes of so many Floridians, may be utterly destroyed. If so, they will lose the roof over their heads, and over the heads of any children they may have. If so, they will lose what is almost certainly their largest, perhaps their only, investment. If so, they will likely find themselves and their children homeless and penniless. All these things will likely come to pass *unless they have insurance*. Insuring their home will enable them to repair or replace it. Insuring their home will enable them to protect their investment. Insuring their home will enable them to provide a place of shelter for their family, and a nest egg for their future. Thus the stark choice with which they were presented: Waive your right to trial by jury, that most precious heritage of Americans and free people generally, or know that your home and hearth will go uninsured and you and your children will take the consequences. Is a waiver made at the point of that sword fairly described

as voluntary?

The question is one that Citizens feels it need not answer. The right to access to courts codified in Art. I § 21 is, in Citizens's view, inapplicable to claims made against Citizens. Citizens is an entity of the State of Florida, and at the time that Art. I § 21 was made part of our state constitution in 1968, Florida law did not waive sovereign immunity as to claims arising out of contract disputes. The access to courts guaranteed by the then-new constitutional provision was, in Citizens's view, access to bring claims then recognized under law; and no contract claim against the State akin to the one presented here was then recognized under law. The issue, as Citizens sees it, is whether the arbitration feature of the insurance policy, and the statutory change providing for that feature, deprived Plaintiffs of "a right of access to the courts for redress for a particular injury [that was] provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right ha[d] become a part of the common law of the State." *Shova v. Eller*, 606 So. 2d 400, 404 (Fla. 2d DCA 1992) (Altenbernd, J., dissenting on other grounds) (*quoting Kluger v. White*, 281 So. 2d 1, 4 (Fla. 1973)). If the answer to that question is no, then in Citizens's view it matters not whether Plaintiffs renewed their policy voluntarily, grudgingly, or at gunpoint. *See gen'ly Jetton v. Jacksonville Elec. Auth.*, 399 So. 2d 396 (Fla. 1st DCA 1981). They had no constitutionally-protected right to assert, or to waive.

Plaintiffs' reply is ingenious. Plaintiffs argue that what they seek here is simply to sue their insurance carrier in a court of law – something that has been routinely done in Florida and elsewhere time out of mind, and certainly long before 1968.

Although it earns high marks for ingenuity, Plaintiffs' argument must fail. True, lawsuits

against insurance carriers have been brought since the dawn of time; but state entities have acted as insurance carriers only relatively recently, and in Citizens's case, only since 2002. Caught between the crossfire of a booming population and the devastating hurricane damage that caused private-sector insurers to withdraw from the Florida market, the State of Florida felt itself obliged to step into the breach. Citizens was created, not to compete with for-profit insurers, but to provide limited coverage to a limited stratum of the population in circumstances in which for-profit insurers could not or would not do so. Neither Citizens nor any like-kind state-funded entity existed to provide homeowners insurance in 1968, when the "right to access to courts" provision became the constitutional law of Florida. There is no merit to the argument that because homeowners have been entitled to access to courts to sue private insurers in the past, Citizens's policyholders should be entitled to access to courts to sue the State's insurer of last resort in the present. "The dispositive issue before this court is whether the balance of power established in 1968 by Art. I, § 21, of the Florida Constitution gives the judiciary the authority to facially invalidate this questionable legislative enactment." *Shova*, 606 So. 2d at 404 (Altenbernd, J., dissenting on other grounds). Like Judge Altenbernd (albeit in a different context), I conclude that the answer to the question is no.

III. Due Process

In lieu of trial before six good men and women and true, Plaintiffs, according to the insurance policy and the statute, must present their claim *against* an entity of the Florida executive branch – Citizens – *before* an entity of the Florida executive branch – the Division of Administrative Hearings ("DOAH"). Such proceedings are, in Plaintiffs' view, redolent with violations of due process. The arbitrating tribunal is by no means fully neutral and independent.

There is the appearance of impropriety. And above all things, there is the loss of trial by jury.

As noted, DOAH is an entity of the Florida executive branch. *See*

<https://www.floridabar.org/the-florida-bar-journal/the-florida-division-of-administrative-hearings/> (visited April 6, 2026). Citizens has nice things to say about its sister agency. Its website notes that, “DOAH is an alternative dispute resolution option. This endorsement offers a uniform and impartial forum through which either the policyholder or Citizens can demand resolution of a disputed claim.”

https://securesupport.citizensfla.com/app/answers/detail/a_id/5061/~/_what-is-the-division-of-administrative-hearings-%28doah%29%3F (visited April 6, 2026). As Citizens acknowledges in its pleading before this court, when Citizens compels a policyholder to arbitrate, it is Citizens that pays DOAH the cost of arbitration. Thus Citizens is one of the principal sources of DOAH’s revenues. In its pleading, Citizens offers the conclusory assertion, “That Citizens pays DOAH for its services is not indicative of bias.” The matter is not that simple.

I am perfectly willing to assume that DOAH’s hearing judges act with every intention of impartiality and neutrality, the relationship between DOAH and Citizens notwithstanding. But due process of law is a coat of many colors, and whatever else it requires, due process requires not only that justice be done but also that justice be seen to be done. Courts have consistently held that the appearance of impropriety is, in the extreme, itself a failure of due process of law. “[C]onsistent with one of the most important dictates of due process . . . proceedings . . . must both be and appear to be fundamentally fair.” *Steinhorst v. State*, 636 So. 2d 498, 501 (Fla. 1994); *see also id.* at 501 (Kogan, J., concurring) (“The appearance of impropriety at issue here was so grave that I believe due process has been seriously violated, creating fundamental error

under the due process clause of the Florida Constitution”). *See also Levine v. United States*, 362 U.S. 610, 616 (1960) (trials must reflect “the notion, deeply rooted in the common law, that justice must satisfy the appearance of justice”) (internal quotations and citation omitted); *Rex v. Justices* [1924] 1 K.B. 256, 259 (“It . . . is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done”). If Plaintiffs are made to contest their claim against one executive-branch agency before another executive-branch agency; in circumstances in which the former agency funds, in substantial part, the latter agency; will justice “manifestly and undoubtedly be seen to be done”?

Citizens, in its pleading, insists that “the reality” of the situation is “that multiple claimants have proceeded by DOAH arbitration and prevailed.” *Citizens’s Motion to Dismiss* 23. It offers three examples (which isn’t very many), and notes that in many instances arbitration, like conventional litigation, results in settlement (which isn’t the point). *Id.* According to the Florida Bar, about half of American states utilize a procedure akin to DOAH. *See* <https://www.floridabar.org/the-florida-bar-journal/the-florida-division-of-administrative-hearings/> (“Twenty-three states now have some form of a central panel of administrative law judges”). But I cannot know, on the present record, whether the procedures in those other 22 states are identical or even similar, for purposes of due-process analysis, to the procedures at issue here. Do those other states make arbitration mandatory? Do they completely exclude jury fact-finding? Is the agency that conducts the hearings a sister entity of the agency that appears most frequently before it? Is the latter agency an important source of revenue for the former? Citizens is quite right to direct my attention to “the reality” of the situation; but as noted *supra*, due process may be called upon to protect the appearance, the perception, of justice separate and

apart from its reality. If Floridians reasonably conclude that the alternative dispute resolution process upon which Citizens seeks to rely in the case at bar is not a system of just adjudication but merely a well-dressed scheme to dispose of policyholders' claims quickly, quietly, and on the cheap, the appearance-of-impropriety prong of the due process guarantee may be implicated.

A component of Plaintiffs' claim of the appearance of impropriety is the complete elimination of that palladium of our liberties, trial by jury. To deny a man "the judgment of his peers," said Winston Churchill in a 1943 telegram to his home secretary, "is in the highest degree odious and is the foundation of all totalitarian government." The issue here is not a Floridian's constitutional entitlement to jury trial under Art. I § 22. It is the unease and distrust naturally engendered when a system of alternative dispute resolution eliminates juries – not as an option, but mandatorily. Citizens's policyholders, and Floridians generally, are entitled to ask – indeed cannot help but ask – *why* they must be stripped of their right to trial by jury as a condition of insuring their homes. Citizens's policyholders, and Floridians generally, are entitled to suspect – indeed cannot help but suspect – that, bereft of a jury willing and able to stand up to the power of the State and see justice done, policyholders will be unable to stand up to the power of the State, and justice will not be seen to be done. If the constitutional promise of due process of law does not protect against that, then it does not "express[] a demand for civilized standards of law."

Malinski v. New York, 324 U.S. 401, 414 (1945) (Frankfurter, J., concurring).

I recognize that, as a general principle, administrative adjudication has been a feature of our litigation landscape since New Deal days. But it is an old truth that general principles do not decide specific cases. Whether the terms of Citizens's policy at issue here, and the statute purporting to authorize those terms, pass constitutional muster is a matter of first impression.

Although I concluded *supra* at 2-4 that notice was given in this case with sufficient promptness for the State to participate if it wished to do so, I decline to resolve this due process question without input from the Office of the Attorney General. Accordingly, that Office is ordered, within 21 days of the entry of the present order, to submit a memorandum reflecting its position on this due process question, viz., do the terms of Citizens's policy, and the statutory provision enabling those terms, transgress Plaintiffs' due process rights to be free from the appearance of impropriety in their dealings with the State of Florida? Plaintiffs, if they feel obliged to do so, may reply to the Attorney General's response within 14 days.

IV. Equal Protection

Weakest of Plaintiffs' claims is the averment that because policyholders insured by private insurers have rights as against those insurers that Citizens's policyholders do not have as against Citizens, the Citizens's policyholders are deprived of the constitutional guarantee to equal protection of the law. *See* U.S. Const. Amend. XIV; Fla. Const. Art. I § 2. Although Citizens, in its pleadings, devotes protracted discussion to this issue, no such protracted discussion is warranted.

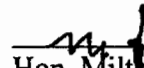
"[T]he test for consideration of equal protection is whether individuals have been classified separately based on a difference which has a reasonable relationship to the applicable statute, and the classification can never be made arbitrarily without a reasonable and rational basis." *Estate of McCall v. United States*, 134 So. 3d 894, 901 (Fla. 2014). *See also* *Troy v. State*, 948 So. 2d 635, 645 (Fla. 2006) (*quoting* *Duncan v. Moore*, 754 So. 2d 708, 712 (Fla. 2000)) ("Equal protection is not violated merely because some persons are treated differently than other persons. It only requires that persons similarly situated be treated similarly"); *City of*

Miami v. Haigley, 143 So. 3d 1025 (Fla. 3d DCA 2014). For better or for worse, Floridians who are insured by private-sector insurers are dissimilarly situated from Citizens's insureds. Private-sector insurers must compete for their insured's policy dollars, and they are not likely to compete effectively if their policies require mandatory arbitration of disputed claims. Citizens does not compete in the marketplace. It provides coverage for those who cannot obtain it elsewhere, and in so doing exposes itself – and, what is the same thing, exposes the State of Florida and the people of this State – to massive liability in the event of catastrophic hurricane damage. To limit that exposure, it limits the means, methods, and costs, of recovery for contested claims. These limitations reflect the substantial difference between Citizens's policyholders and private-sector policyholders; and between Citizens and private insurers. Those substantial and meaningful distinctions rebut any claim of violation of equal protection of the law.

V. Conclusion

Subject to what appears hereinabove, Citizens's motion is abated pending receipt of the views of the Office of the Attorney General.

SO ORDERED in chambers in Miami, Miami-Dade County, Florida, this 10th day of April, 2026.



Hon. Milton Hirsch
Judge, 11th Judicial Circuit

cc: all counsel of record