

**IN THE SUPREME COURT OF THE STATE OF FLORIDA**

SC02-2088  
CASE NO. 4D01-3492  
L.T. NO. CL 00-4035 AW

DAVID NORBERT GRIX  
Plaintiff/Appellant,

vs.

FLORIDA FISH AND WILDLIFE  
CONSERVATION COMMISSION,  
Defendant/Appellee.

**A NOTICE TO INVOKE DISCRETIONARY JURISDICTION**

**JURISDICTIONAL BRIEF OF PETITIONER**

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ISSUE

WHETHER THE SUPREME COURT SHOULD INVOKE IT=S  
DISCRETIONARY JURISDICTION PURSUANT TO FLA. RULE OF  
APP. PROC. NO. 9.030(a)(2)(A)(iv) TO REVIEW WHETHER THE 4TH  
DCA DECISION RENDERED IN GRIX v. FWCC 4d01-3492(2002)  
DIRECTLY CONFLICTS WITH THE SUPREME COURT ON THE  
SAME QUESTION OF LAW THE DEPARTMENT OF  
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STATEMENT OF THE CASE AND OF THE FACTS

On July 6, 2000, the Appellant, David Norbert Grix, a commercial fisherman and court certified expert net maker, filed a two count amended complaint, alleging, AViolation of his Civil Rights under 42 U.S.C. 1983, and False Imprisonment and False Arrest@ against the FWCC.

The court in Grix v. FWCC 4d01-3492 (2002) found the FWCC operating in

AGood Faith,@ even though Grix was arrested and issued a citation by the FWCC on

June 26, 1996, for a misdemeanor that the three veteran FWCC officers admittedly

never saw. (And never occurred.) Apparently, in the eyes of the 4th DCA, the

officers were also operating in AGood Faith@ as they created a Apossession@ charge

that did not exist, and illegally measured the cast nets stretched mesh in their boat

Alike a handful of spaghetti,@ contrary to the Aopen mesh@ and Ageometrical shape@

measurement requirements of Art. X, Sec.16, The Department of Environmental

Protection v. Bruce Millender, SC 85,880 (1996), F.A.C. 46-4.002, and their own

orders. Judge Warner, spoke 100% of the time for the tribunal, creating false

Aprobable cause,@ while making prejudicial remarks from the bench. The DCA was

able to claim the FWCC was operating with a good motive by ignoring that the

officers attempted to make an unethical deal involving the use of Grix's juvenile

son, which Grix refused. The DCA also found the FWCC officers to be operating

in good faith, even though the FWCC denied Grix due process by (A) refusing to

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allow the state attorney to drop the case (B) refusing to appear in court 6 times, and

(C) when ordered by the judge to appear, the officers informed the court to, give

the nets back to Mr. Grix. As stated in court, the FWCC has refused Grix the use

of his cast nets since 1996, continually claiming they, don't care what the

Supreme Court said. The DCA ignored the fact that the FWCC knew the nets were

legal due to their failure to appear in court, and the fact that the nets were returned

to Grix, which they could not do if the nets were contraband. The DCA opinion

erroneously stated that Grix filed the lawsuit as a result of the incident, which

allowed a door for the Qualified Immunity opinion. The suit was filed two days

before the statute of limitations ran out, after Grix exhausted every conceivable non

judicial way to persuade the FWCC to allow him to return to making his living with

his legal cast nets, without suing. The lawsuit paperwork clearly shows that the

case was filed for the FWCC refusing to obey the Supreme Court. The DCA

decision also ignored that Grix was trying to stop the FWCC from measuring cast

nets in an arbitrary, and capricious manner that deprived him of a state verified

42% of his income for the first 3 1/2 years and a little over 20% the last 3 years.

The final decision ignored the appeal that the officer granted Qualified Immunity

wasn't even a named defendant, prompting Grix to investigate the Judge=s background.

Grix discovered Judge Warner=s marital ties (thus financial), to politician

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Tom Warner (an avid anti net fishing advocate), on a political campaign website

which touted Tom Warner pushing the Net Limitation Act through legislation, and

his AFCA Legislator of the Year Award.@

### SUMMARY OF ARGUMENT

Whether intentional bias or not, The Fourth DCA in Grix v. The FWCC

4d01-3492(2002) issued an unjust opinion, granting AQualified Immunity@ to an

unnamed defendant, while ignoring the true defendant, The FWCC. The DCA also

ignored a clear constitutional deprivation case brought to their courtroom, requiring

The Discretionary Jurisdiction of the Supreme Court due to direct conflict of opinion on the same question of law, as determined in this court in The Department

of Environmental Protection v. Bruce Millender SC 85,880 (1996).

### ARGUMENT - ISSUE NUMBER ONE

Grix cites the possibility of unjust influence in his case due to Chief Judge

Martha C. Warner failing to recuse herself from the Case of Grix v. The FWCC

4D01-3492 (2002). Post opinion, Grix discovered Judge Warner is married to the

Solicitor General of Florida, Tom Warner, an avid anti netter. Mr. Warner=s

Campaign website touted his involvement in getting The Net Limitation Act through legislation and , and his FCA Legislator of the Year award. Judge Warner

was pictured on this same political website sportsfishing with Tom Warner.

AA judge shall disqualify himself or herself in a proceeding in which the judge=s

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impartiality might reasonably be questioned...@ Canon 3 E (1) AFurthermore, even the appearance of impropriety is to be avoided.@ Suarez v. Dugger So. 527 2d, 190, 193, 194

Tom Warner was attempting to obtain a higher position in Government, running on

anti netting values. Thus, Judge Warner had the obligation under law not only to

disclose her marital ties to a man who legislatively helped put Grix out of business,

his home, and lose his boat, but also had the duty to recuse herself to preserve the

integrity of the judiciary in accordance with Canon 3 E 1, which the Supreme Court

adopted to avoid an appearance of bias in litigation.

Grix asserts that Judge Warner=s words and conduct manifested bias and

prejudice in violation of Canon 3 A (5) during the hearing of Grix v. The FWCC

4D01-3492 (2002).

The Judicial Canon 3 A (5) states;

AA judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including, but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials, and others subject to the judge=s direction and control to do so. This section does not preclude the consideration of race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status, or similar factors when they are issues in the proceeding.@

During the proceedings, Judge Warner gave the FWCC false probable cause

by applying felony arrest standards to their wrongful misdemeanor arrest of Grix.

The FWCC officers admittedly did not even witness what they charged Grix with.

FS.901.15(1) Clearly states; A sworn member may arrest for a misdemeanor under

the following situations: An arrest for the commission of a misdemeanor shall

be made immediately or in fresh pursuit when the offense is committed in front of a sworn member

Probable cause for a misdemeanor arrest and a felony arrest are the most basic of

Statutes known by all law enforcement officials. Judge Warner verbally compared

the officer spotting Grix's legal cast net in the hands of his son with an officer

spotting something in an ashtray at a traffic stop, and something sticking out of

a pocket during an arrest...Like drugs Comments like these destroy public confidence in the judiciary while distorting the judgment of the other two judges

sitting in her tribunal. At one point Judge Warner attempted to give the FWCC

officers probable cause for the arrest of Grix by stating, In terms of probable

cause, can't the officers circumvent (Abruptly halting herself). Grix asserts that the

above listed actions in Grix v. 4d01-3492(2002) led to bias in the final opinion.

## ISSUE NUMBER TWO

The DCA in Grix v. The FWCC 4d01-3492(2002) was wrong in stating The

Department of Environmental Protection v. Bruce Millender SC 85,880 (1996),

only dealt with shrimp trawls. The DCA totally ignored that the Supreme Court

clearly, and constitutionally defined the meaning of open mesh in The DEP v.

Bruce

Millender SC 85,880 (1996). The definition of Aopen mesh@ which was defined as

A1/2 of the stretch mesh length,@ is the same for all nets, constitutionally, through

F.A.C. 46.31-006(2), historically, and the way that all net makers purchase all netting, as defined by the Supreme Court <sup>5</sup> and agreed upon by the State of Florida.

That one definition alone, combined with ANets must be measured with meshes

open, in Article X, Section 16, is supposed to protect fishermen from further restrictive, arbitrary, and capricious net measurements, and maintain constitutional

consistency. The FWCC has decided to measure cast nets in the Arelaxed mesh@

position since 1999, in defiance of Aopen mesh@ as stated in Art. X, Sec. 16, and

law created in The DEP v. Bruce Millender SC 85,880 (1996). This matter requires

the attention of The Supreme Court due to The FWCC stating that they will start

making arrests using the decision in Grix v. The FWCC 4d01-3492(2002).

### ISSUE NUMBER 3

The Grix v. The FWCC 4d01-3492 (2002) decision destroys numerous

aspects of the constitutional consistency and protections defined by the Supreme

Court of Florida in *The DEP v. Bruce Millender* SC 85,880 (1996), and the Florida

Statutes. The definitions of *Amesh area* and *Aopen mesh* were made clear to the

FWCC, The State, The FCA (Now CCA), and the Fishermen. The Decision rendered in the 4th DCA case of *Grix v. The FWCC* 4D01-3492 (2002) reflects the

same total disregard for fishermen=s due process rights, civil rights, the Supreme

Court of Florida decisions, the Florida Constitution, Florida Statutes, Canons, and

Florida Administrative Code, that the *Aautonomous* FWCC currently displays.

Grix points out that the DCA found false probable cause for the FWCC officers

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misdemeanor arrest by just *Aseeing* a net being held in Grix=s juvenile son=s hands

and then measuring it. The DCA disregarded that the net was A. clearly a legal net

under constitutional law, the Supreme Court decision in *The DEP v. Bruce*

*Millender* SC 85,880 (1996), FAC 46-4.002 AA cast net is a cone shaped net, and

the definition of *Amesh area* FAC 46-31.006, B. Admittedly never seen *Aused* as

charged, and C. That there was no such law as *Apossession* under Article X,

Section 16 as Grix was charged with. The final decision gave qualified immunity

for an officer who has never been a named defendant in the suit. By doing this, the

DCA found a way to ignore the years of constitutional deprivation that Grix has

suffered. Grix=s attorney was attacking 6 years of intentional lawlessness on the

part of the entire FWCC, not just one of three officers at the arrest. In the final

decision. In Grix v. The FWCC 4d01-3492(2002), the DCA intentionally took

F.A.C.46-4.002 AA cast net is a cone shaped net,@ which was the legal definition 3

1/2 years into Grix=s case, decided to quietly and retroactively delete the legal

definition by 3 1/2 years in order to disregard constitutional law and Grix=s

constitutional deprivations. The decision in Grix v. The FWCC 4d01-3492(2002),

warrants either a new hearing, or preferably, a final decision from the Supreme

Court based on laws passed in the DEP v. Bruce Millender SC 85,880 (1996) and

Article X, Section 16 of the Florida Constitution.

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### CONCLUSION

This was originally a APost Opinion Motion to Recuse,@ changed to AA Writ

of Prohibition,@ and now The Court wants this to be a Discretionary Jurisdiction.

Confused, finding no precedence to continue in the same vein, I submit this brief. I

make 3 relief requests. 1. Accept jurisdiction of both of my cases, SC02-2088 and

SC02-2087, and if possible, my requests for relief listed in 2, making a decision the

FWCC can't ignore. or 2. Accept Jurisdiction over this case, if possible, awarding

me \$40,00 for lost wages and \$40,000 for pain and suffering. or (3) Grant me a new

hearing, and if possible, reimburse my wasted 4th DCA \$1,850 attorney fee. The

FWCC has knowingly and willfully destroyed my life. This brief represents only a

small percentage of what the FWCC and their staff attorneys, have willfully done in

violation of the law to bury me (please hear me), and they know I can prove it.

The FWCC=s wrongful perception that they have complete autonomy with no

checks and balances is constantly protected by a hostile political environment and

prejudicial courts, leaving the honest commercial fishermen, who hold the truth of

law to heart, without rights, due process, or honest remedy. I am an honest man,

driven into poverty, and fighting for my life against a corrupt FWCC that laughs at

the law. As I stated, they know I can prove it.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Initial  
Jurisdictional Brief

has been furnished Walter Postula Esquire, 708 Eastwind Drive, North Palm  
Beach,

Florida, 33408, by hand, this 1st day of February, 2003.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Appellant=s Initial  
Jurisdictional Brief is in compliance with the Florida Rules of Appellate  
Procedure 9.210 (a)(2) in that the font used for the brief complies with the  
required size of Times New Roman, font size 14.

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IN THE SUPREME COURT OF FLORIDA

No. SC02-2088  
District Court 4D01-3492  
Trial Court L.T. NO. CL. 00-4035 AW

DAVID NORBERT GRIX

Petitioner

vs.

The Florida Fish and Wildlife Conservation Commission

Respondent

A Notice To Invoke Discretionary Jurisdiction

APPENDIX TO JURISDICTIONAL BRIEF OF PETITIONER

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APPENDIX TO JURISDICTIONAL BRIEF OF PETITIONER  
Opinion of the District Court of Appeal, Fourth District  
Filed May 22, 2002

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