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Workers' Compensation: Florida's Resistance to Nonstatutory Limits to the Employment-At-Will Doctrine

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CASE COMMENT

WORKERS' COMPENSATION: FLORIDA'S RESISTANCE TO NONSTATUTORY LIMITS TO THE EMPLOYMENT-AT-WILL DOCTRINE* **

Scott v. Otis Elevator Co., 572 So. 2d 902 (Fla. 1990)

Petitioner brought suit against respondent[1] alleging that respondent wrongfully discharged him because he filed a workers' compensation claim,[2] and that respondent's retaliatory termination of his employment violated Florida Statutes section 440.205.[3] The jury found for petitioner, and respondent appealed.[4] Petitioner cross appealed,[5] alleging that the trial court improperly refused to instruct the jury on

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**Author's Note: Dedicated to my parents, Larry J. and Dorothy E. Walker; my sister, Elizabeth; and my brother, Larry. Special thanks to Rodney Smith, Esq. and my advisor, Robin Rosenberg.

1. Scott v. Otis Elevator Co., 572 So. 2d 902 (Fla. 1990).

2. *Id.* at 902. Respondent officially specified customer complaints, absenteeism, and tardiness as reasons for dismissing petitioner. Otis Elevator Co. v. Scott, 503 So. 2d 941, 942 (4th D.C.A. 1987), *quashed*, 524 So. 2d 642 (Fla. 1988). In addition, respondent advised petitioner, unofficially, that he was terminated because of an assault incident. *Id.* In contrast, petitioner contends that he was terminated because respondent believed he would file for workers' compensation benefits. *Id.* at 941.

3. FLA. STAT. § 440.205 (1989). In 1979, the Florida Legislature enacted Florida Statutes § 440.205, which provides: "No employer shall discharge, threaten to discharge, intimidate, or coerce any employee by reason of such employee's valid claim for compensation or attempt to claim compensation under the Workers' Compensation Law." Workers' Compensation Act, ch. 79-40, § 17, 1979 Fla. Laws 244. The wording of the statute remains unchanged. FLA. STAT. § 440.205 (1989).

4. *Scott*, 572 So. 2d at 902. The jury awarded petitioner "$100,000 in past lost wages and benefits and $200,000 for future lost wages and benefits." *Otis*, 503 So. 2d at 941.

5. *Scott*, 572 So. 2d at 903. The Fourth District Court of Appeal initially reversed based on the running of the two-year statute of limitations governing actions to recover wages or overtime. *Otis*, 503 So. 2d at 941. The Supreme Court of Florida quashed that decision and held that petitioner's claim advanced a statutory cause of action and was therefore governed by FLA. STAT. § 95.11(3)(f) (1979), which provides that an action founded on statutory liability must be filed within four years. Scott v. Otis Elevator Co., 524 So. 2d 642 (Fla. 1988). The court remanded to the district court for consideration of the remaining issues on appeal. *Id.* at 643. The instant case arose out of review of the district court's hearing on remand. *Scott*, 572 So. 2d at 903.

damages for emotional distress.[6] The Fourth District Court of Appeal held that the trial court's refusal was not error because the petitioner did not plead the separate tort of intentional infliction of emotional distress.[7] On certification,[8] the Florida Supreme Court ordered a new trial, disapproved the Fourth District Court of Appeal's rationale, and HELD, that an employer who discharges an employee, violating Florida Statutes section 440.205, commits an intentional tort and is consequently liable for damages for emotional distress.[9]

Traditionally, if an employment contract does not specify duration, either party may terminate the contract at will.[10] The at-will doctrine allows the termination of employment relations without cause.[11] Hence, at-will employees serve at the whim of employers.[12] The harshness of the employment-at-will doctrine caused many jurisdictions to soften the rule by creating judicial exceptions.[13] However, some states steadfastly refuse to apply nonstatutory exceptions to the employment-at-will doctrine.[14]

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6. *See* Otis Elevator Co. v. Scott, 551 So. 2d 489, 490 (4th D.C.A. 1989), *aff'd*, 572 So. 2d 902 (Fla. 1990).

7. *Id.* In addition, the Fourth District Court of Appeal held that the trial court erred in allowing an award for lost future wages where the petitioner failed to attempt to mitigate damages and made no showing that reinstatement was impossible. *Id.*

8. *Scott*, 572 So. 2d at 902. *See also* FLA. CONST. art. V, § 3(b)(4) (granting review of "any decision of a district court of appeal that passes upon a question certified by it to be of great public importance. . . ."). The Fourth District Court of Appeal certified the following as a question of great public importance: "ARE DAMAGES FOR EMOTIONAL DISTRESS AVAILABLE TO THE PLAINTIFF IN AN ACTION FOR WRONGFUL DISCHARGE PURSUANT TO SECTION 440.205, FLORIDA STATUTES?" *Scott*, 572 So. 2d at 902.

9. *Scott*, 572 So. 2d at 903.

10. *See generally* M. PLAYER, EMPLOYMENT DISCRIMINATION LAW 1-3 (1988) (outlining the evolution of the American view of the employment-at-will doctrine). The American position on the employment-at-will doctrine departed markedly from the traditional English common law which mandated the continuance of employment relations for one year except where dismissal was grounded on good cause. *Id.* at 1-2. In contrast, an increasingly inflexible American rule emerged in which "employers possessed an absolute right to discharge any employee not protected by an express contract." *Id.* at 2.

11. *Id.*

12. *See id.*

13. M. PLAYER, *supra* note 10, at 3-5. A number of theories limit an employer's discretion to terminate at-will employees. *Id.* For example, most jurisdictions have asserted a check on employer discretion where termination contravenes important public policies. *Id.* Alternatively, courts have circumscribed an employer's absolute discretion by recognizing that an employment arrangement is necessarily contractual in nature and is therefore governed by an implied obligation of good faith and fair dealing. *Id.*

14. *Id.* at 2-5.

Florida courts consistently decline to alter the employment-at-will doctrine.[15] For example, in *DeMarco v. Publix Super Markets, Inc.*,[16] the court refused to adopt a public policy exception to the doctrine.[17] In *DeMarco*, an employee sued for wrongful employment termination.[18] The employee alleged that he was terminated because he refused to discontinue a law suit on behalf of his daughter.[19] The employee contended that his employer forced him to choose between continued employment and his constitutional right to litigate a claim.[20] The employer moved to dismiss the action for failure to state a claim.[21]

The trial court dismissed the complaint, and the district court of appeal affirmed.[22] The Florida Supreme Court affirmed the district court's holding and adopted its rationale.[23] The district court of appeal

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15. *See, e.g.*, Wynne v. Ludman Corp., 79 So. 2d 690, 691 (Fla. 1955) (in the absence of a definite period of employment, trial court correctly entered summary judgment for employer who terminated at-will employee); Gibbs v. H.J. Heinz Co., 536 So. 2d 370, 371 (Fla. 5th D.C.A. 1988) (in the absence of a definite term of employment in an employment contract, employee is terminable at will); De Felice v. Moss Mfg., Inc., 461 So. 2d 209, 210 (Fla. 3d D.C.A. 1984) (in the absence of a definite term of employment, employee is terminable at will); Muller v. Stromberg Carlson Corp., 427 So. 2d 266, 268-70 (Fla. 2d D.C.A. 1983) (in the absence of an employment contract, a promise regarding permanency of employment does not negate employer's right to terminate at will); Servamerica, Inc. v. Rolfe, 318 So. 2d 178, 180 (Fla. 1st D.C.A. 1975) (in the absence of an express agreement, employee is terminable at will, even where an employee left a management position based on an offer for a supervisory position).

16. 384 So. 2d 1253 (Fla. 1980).

17. *Id.* at 1254.

18. *Id.* at 1253.

19. DeMarco v. Publix Super Mkts., Inc., 360 So. 2d 134, 135 (3d D.C.A. 1978), *aff'd*, 384 So. 2d 1253 (Fla. 1980). Employee's minor daughter suffered permanent injuries while shopping in one of employer's stores. *Id.* The employee declined a $200 settlement offer at which time employer informed employee that if the claim was not withdrawn, his employment would be terminated. *Id.* Employee filed suit, and employer terminated his employment. *Id.*

20. *Id.* at 136. The employee argued that the employer violated his constitutional right of access to the courts guaranteed by article I, § 21 of the Florida Constitution. *Id.* The Florida Supreme Court rejected employee's assertion that he had been denied access to the courts noting that "DeMarco's suit on behalf of the daughter was pending at the time of the district court opinion. Therefore, neither he in his representative capacity nor the daughter as beneficiary has been denied access to the courts to vindicate the claim for her injuries." *DeMarco*, 384 So. 2d at 1254 n.1. *See also* FLA. CONST. art. I, § 21 (providing that every person shall have access to the courts in order to redress any injury). *Contra* Scholtes v. Signal Delivery Serv., Inc., 548 F. Supp. 487, 492-94 (W.D. Ark. 1982) (employee may assert a public policy exception to at-will employment where employer sought to force employee to forego a legal right).

21. *DeMarco*, 360 So. 2d at 136.

22. *DeMarco*, 384 So. 2d at 1254.

23. *Id.* The Florida Supreme Court's perfunctory treatment of the case reflects the rigidity with which it applied the employment-at-will doctrine. Thus, if an employee's term of employment was indefinite, no action for wrongful termination would lie no matter how egregious the wrong. *See DeMarco*, 360 So. 2d at 136.

reasoned that the employment term was indefinite, and the employer could terminate the relationship at will.[24] Therefore, the employee's claim that the employer violated article I, section 21 of the Florida Constitution by thwarting his access to the courts, did not state a cause of action.[25] Thus, the *DeMarco* court declined to recognize a public policy exception to the employment-at-will doctrine even when an employer discharges an employee for pursuing a constitutional right.[26]

Florida employers are also free to discharge an employee for pursuing a statutory right.[27] In *Segal v. Arrow Industries Corp.*,[28] an employee argued that his employer wrongfully terminated him because he filed a workers' compensation claim.[29] The court found no Florida authority to support an action for retaliatory discharge.[30] The employee asserted that a cause of action should exist because wrongful termination offends public policy.[31] The court declined to limit the at-will doctrine and instead reaffirmed *DeMarco*.[32] The court held that although a statute entitles employees to file compensation claims, employees hired for an indefinite term may be terminated for filing these claims.[33] Thus, Florida courts consistently refused to grant employees a cause of action for retaliatory discharge.[34]

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24. *DeMarco*, 360 So. 2d at 136.

25. *Id.*

26. *DeMarco*, 384 So. 2d at 1253-54.

27. Segal v. Arrow Indus. Corp., 364 So. 2d 89, 90 (Fla. 3d D.C.A. 1978).

28. 364 So. 2d 89 (Fla. 3d D.C.A. 1978).

29. *Id.* at 89-90.

30. *Id.* at 90.

31. *Id.* Employee offered two nonbinding cases in an effort to encourage the court to recognize a public policy exception: Frampton v. Central Ind. Gas Co., 260 Ind. 249, 297 N.E.2d 425 (1973) and Sventko v. Kroger Co., 69 Mich. App. 644, 245 N.W.2d 151 (1976). In *Sventko*, the court suggested that:

> [A]n employer at will may not suddenly terminate the employment of persons because of their sex, race, or religion. Likewise, the better view is that an employer at will is not free to discharge an employee when the reason for the discharge is an intention on the part of the employer to contravene the public policy of this state.

Sventko, 69 Mich. App. at 646, 245 N.W.2d at 153.

32. *Segal*, 364 So. 2d at 90.

33. *See id. Contra* M. PLAYER, *supra* note 10, at 5. Florida courts' refusal to recognize an exception to the employment-at-will doctrine, when an employee is terminated for filing a workers' compensation claim, essentially emasculates the workers' compensation system. Player explains that, "as the system of compensation depends upon employees initiating claims, reprisals for the filing of such claims would undercut the compensation scheme and improperly forces employee to choose between a statutory right and their jobs." *Id.*

34. *Segal*, 364 So. 2d at 90.

In 1979, the Florida Legislature enacted Florida Statutes section 440.205 prohibiting an employer from discharging, threatening to discharge, intimidating, or coercing an employee because the employee filed a workers' compensation claim.[35] The statute does not expressly create a cause of action or provide a remedy,[36] however, the Florida Legislature did demonstrate its intent to preclude retaliatory discharge of employees who file workers' compensation claims.[37]

The Florida Supreme Court interpreted section 440.205 in *Smith v. Piezo Technology & Professional Administrators*.[38] In *Smith*, an employee alleged he was wrongfully terminated because he filed a workers' compensation claim.[39] The employee sought relief pursuant to section 440.205.[40] The district court of appeal held that section 440.205 creates a cause of action for wrongful discharge.[41] The Florida Supreme Court affirmed.[42]

The supreme court in *Smith* recognized a section 440.205 cause of action even though the legislature failed to designate a proper forum or remedy.[43] The court noted that Florida does not follow other jurisdictions which create a public policy exception to the at-will doctrine by recognizing a common law tort for retaliatory discharge.[44] However, since the legislature expressed its intent by enacting a statute which precludes retaliatory discharge for filing a workers' compensation claim,[45] the supreme court limited the employment-at-will doctrine.[46]

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35. Workers' Compensation Act, ch. 79-40, § 17, 1979 Fla. Laws 244 (current version at FLA. STAT. § 440.205 (1989)). *See generally* Cooper & Westberry, *Handling Retaliatory Discharge Cases Under the Workers' Compensation Act*, 58 FLA. B.J. 253 (1984) (outlining the development of Florida law regarding retaliatory discharge prior to the statute's enactment).

36. *See* FLA. STAT. § 440.205 (1989).

37. Smith v. Piezo Tech. & Prof. Admins., 427 So. 2d 182, 184 (Fla. 1983). *Contra* Piezo Tech. & Prof. Admins., Inc. v. Smith, 413 So. 2d 121, 123-26 (1st D.C.A. 1982) (Ervin, J., dissenting) (asserting that the legislative purpose of § 440.205 is not clear absent specific provisions for sanctions and jurisdiction), *quashed*, Dean v. Publix Super Mkts., Inc., 438 So. 2d 1 (Fla. 1983).

38. 427 So. 2d 182 (Fla. 1983).

39. *Id.* at 183.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.* at 184 n.1.

44. *Id.* at 184.

45. *Id.*

46. *Id.* Florida's development of a retaliatory discharge exception parallels that of Alabama. *See* Meeks v. Opp Cotton Mills, Inc., 459 So. 2d 814, 814 (Ala. 1984) (holding that in the absence of a statutory limit, an employee is terminable at will even in retaliation for filing a workers' compensation claim), *superceded by statute as stated in* McClain v. Birmingham Coca Cola Bottling Co., 578 So. 2d 1299 (Ala. 1991); *see also* Caraway v. Franklin Ferguson Mfg. Co.,

Moreover, the court expressly disapproved earlier opinions conflicting with its holding.[47]

In the instant case, the Florida Supreme Court augmented the *Smith* holding by defining the remedies under section 440.205.[48] In an earlier opinion concerning the instant case,[49] the supreme court stated that wrongful termination is an intentional deprivation.[50] In addition, the court reaffirmed the *Smith* holding that section 440.205 creates a "distinct limited statutory cause of action . . . for retaliatory discharge in the area of workers[']compensation."[51] However, the earlier opinion did not discuss damages.[52]

The instant court did address the issue of damages,[53] and held that an employer who violates section 440.205 contravenes public policy and is liable for an intentional tort.[54] The court noted that jurisdictions recognizing claims for retaliatory discharge typically allow recovery for emotional distress.[55] Employers attempt to circumvent the legislative workers' compensation scheme by using retaliatory discharge.[56] Therefore, the wrongful discharge is intentional and should be characterized as an intentional tort.[57] Accordingly, the court held that tort damages are the appropriate remedy.[58]

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507 So. 2d 925, 926 (Ala. 1987) (holding that when legislature statutorily expresses an intent to preclude retaliatory discharge for filing a workers' compensation claim, a claim under that statute is actionable even where statute is silent as to relief).

47. *Smith*, 427 So. 2d at 184 n.2. The court offered an example of a case impacted by their decision: Publix Super Mkts., Inc. v. Dean, 416 So. 2d 12 (3d D.C.A. 1982) (declining to follow sister court in *Smith* and finding that § 440.205 does not create a cause of action for wrongful termination), *rev'd* Dean v. Publix Super Mkts., Inc., 438 So. 2d 1 (Fla. 1983). *Smith*, 427 So. 2d at 184 n.2.

48. *Scott*, 572 So. 2d at 903.

49. *Scott*, 524 So. 2d at 642; *see also supra* note 5 (outlining the procedural history of the instant case).

50. *Scott*, 524 So. 2d at 643.

51. *Id.*

52. *See id.*

53. *Scott*, 572 So. 2d at 903.

54. *Id.* The court additionally held that an employee need not disprove reinstatement as a viable alternative to recover lost future wages. *Id.* Conversely, the United States Eleventh Circuit Court of Appeals predicates recovery of future wages on the showing of impossibility of reinstatement. Castle v. Sangamo Weston, Inc., 837 F.2d 1550, 1562 (11th Cir. 1988).

55. *Scott*, 572 So. 2d at 903 (discussing Cagle v. Burns & Roe, Inc., 106 Wash. 2d 911, 915-16, 726 P.2d 434, 436 (1986) (entitling an employee discharged in violation of public policy for reporting procedural violations to the Nuclear Regulatory Commission to tort damages including damages for emotional distress)).

56. *See id.* at 903 (quoting *Cagle*, 106 Wash. 2d at 915-16, 726 P.2d at 436).

57. *Id.*

58. *Id.* One court has held that a claim for emotional distress in the absence of physical trauma provides great latitude in the assessment of damages. Harless v. First Nat'l Bank, 169 W. Va. 673, 690, 289 S.E.2d 692, 701 (1982).

Sharply dissenting, Justice McDonald argued that while the majority's position logically extended *Smith*, emotional distress damages should be denied.[59] Justice McDonald contended that employment relations are contractual in nature.[60] Therefore, he argued, contractual damages appropriately remedy wrongful termination.[61]

The instant decision reflects the Florida Supreme Court's reticence to usurp actions which it implicitly stated are properly within the legislature's purview.[62] Although the instant court utilized precedent from other jurisdictions in fashioning damages,[63] the court declined to recognize a judicially imposed public policy exception to the at-will doctrine.[64] In this respect, the instant decision is consistent with previous Florida cases.[65] Based on the express legislative intent of section 440.205, the instant court reaffirmed a narrow exception to the employment-at-will doctrine.[66] Hence, the instant case illustrates what the Florida Supreme Court arguably perceives as a nonactivist position regarding its role in limiting the at-will doctrine.[67]

The instant decision does not necessarily reflect judicial intent to ignore the problems facing at-will employees.[68] On the contrary, by allowing tort damages for section 440.205 violations,[69] the instant court recognized the legislature's attempt to curb unbridled employers' discretion.[70]

In his dissent, Justice McDonald argued that contractual damages are a more appropriate remedy.[71] Contractual damages, however, are

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59. *Scott*, 572 So. 2d at 904 (McDonald, J., dissenting).

60. *Id.* (McDonald, J., dissenting).

61. *Id.* (McDonald, J., dissenting). Justice McDonald suggested that "in a case involving the discharge of an employee under contract for a *specific period*, the actual measure of damages is the amount of compensation agreed upon for the remainder of the period, less the amount that the employee earned or might have earned." *Id.* (emphasis added) (citing 22 AM. JUR. 2d *Damages* §§ 31-35 (1988)). However, Justice McDonald did not address the situation of an employee at-will with no "specific period." Therefore, at best, Justice McDonald's formula is inapplicable to the instant case. At worst, the formula provides no damages to the at-will employee who has been wrongfully discharged.

62. *See Scott*, 572 So. 2d at 903-04; *see also supra* note 13 and accompanying text.

63. *See Scott*, 572 So. 2d at 903.

64. *See id.*

65. *See supra* notes 15-17, 28-32 and accompanying text.

66. *See Scott*, 572 So. 2d at 903.

67. *See id.*

68. *See supra* notes 16-26 and accompanying text.

69. *Scott*, 572 So. 2d at 903.

70. *See supra* note 37 and accompanying text.

71. *Scott*, 572 So. 2d at 904 (McDonald, J., dissenting).

inconsistent with the majority's rationale in reaffirming *Smith*.[72] *Smith* recognized a cause of action to remedy wrongful termination of employees filing workers' compensation claims.[73] Justice McDonald's proposed remedy would defeat that objective because contractual damages evade calculation when employment is at will.[74] Since employers hire at-will employees for an indefinite term,[75] it would be impossible to calculate contractual damages of a wrongfully terminated employee.[76] As a result, section 440.205 would be rendered ineffective.

The instant court held that employers violating section 440.205 are liable for tort damages.[77] Thus, employees potentially may receive dramatic awards.[78] Hence, by choosing this remedy, the instant court implicitly sought to dissuade employers from violating section 440.205.[79] The instant decision comports with the legislative purpose of section 440.205 as defined in *Smith*,[80] and reflects a judicial willingness to breathe life into a legislative scheme designed to protect employees.[81]

In addition to defining the remedial scope of section 440.205, the instant court clarified the parameters of *Smith*.[82] In *Smith*, the Florida Supreme Court recognized a limited statutory action against employers who wrongfully terminate an employee for pursuing a workers' compensation claim.[83] Moreover, that court expressly disapproved opinions conflicting with the instant decision.[84] Hence, if *Segal* was decided today, the employee would have a cause of action.[85] In contrast, *De-*

72. *See supra* text accompanying notes 48-58.

73. *See Smith*, 427 So. 2d at 184.

74. *See supra* note 61.

75. *See supra* notes 10-11 and accompanying text.

76. *See Scott*, 572 So. 2d at 904 (McDonald, J., dissenting); *see supra* note 61.

77. *Scott*, 572 So. 2d at 903.

78. *See* Harless v. First Nat'l Bank, 169 W. Va. 673, 690, 289 S.E.2d 692, 701 (1982) (discussing the open-endedness of awards for emotional distress in the absence of physical injury).

79. *See Scott*, 572 So. 2d at 903 ("Section 440.205 reflects the public policy that an employee shall not be discharged for filing or threatening to file a workers' compensation claim.").

80. *See Smith*, 427 So. 2d at 184 (finding that § 440.205 creates a statutory cause of action because "it must be assumed" that the provision is intended to have a useful purpose).

81. *See Scott*, 572 So. 2d at 903.

82. *See id.* (approving the *Smith* decision which held that § 440.205 creates a statutory cause of action and clarifying that a violation of the statute constitutes an unintentional tort).

83. *Smith*, 427 So. 2d at 184.

84. *Id.* at 184 n.2.

85. *See Segal*, 364 So. 2d at 90 (holding that employee at will may be fired for filing compensation claims).

Marco does not fall within the scope of the *Smith* decision.[86] Thus, in Florida, an employer may no longer discharge an employee seeking recovery pursuant to the workers' compensation statutes.[87] But, an employer may still terminate an employee who files a lawful suit.[88] In Florida, an employee's access to the courts rests not on the lawfulness of the claim but the type of claim.[89] This inconsistency will plague Florida law so long as an employee's umbrella of protection extends only to the pursuit of workers' compensation claims, but not to other lawful claims.[90]

The instant court's decision creates an illogical and unfair inconsistency in Florida law.[91] The Florida Supreme Court cloaks its decision in the mantle of judicial deference to proper legislative authority.[92] Judicial nonactivism, however, smacks of activism. By refusing to create a judicially recognized exception to the at-will doctrine,[93] the supreme court perpetuates an inequitable system which essentially leaves employees subject to the caprice of employers.[94] The instant court's intransigent position advances an inherently employer-biased social policy.[95]

However, the instant decision does not represent unqualified hostility to employees. By applying tort damages, the instant court gives section 440.205 force.[96] The instant court delays softening the at-will doctrine to await a legislative signal.[97] Yet, unmistakably, the legislature has signaled.[98] Broadly construed, section 440.205 repudiates unrestrained retaliatory discharge. The legislature has provided an im-

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86. *See DeMarco*, 384 So. 2d at 1254 (holding that employer may fire employee-at-will for pursuing constitutional right).

87. *See Smith*, 427 So. 2d at 184.

88. *See, e.g., DeMarco*, 384 So. 2d at 1254.

89. *Compare* FLA. STAT. § 440.205 (1989) (forbidding employer from terminating employee-at-will because employee filed workers' compensation claim) *with DeMarco*, 384 So. 2d at 1254 (allowing employer to terminate employee-at-will because employee filed lawful suit against employer).

90. *See Smith*, 427 So. 2d at 185 (Overton, J., concurring) ("There is neither a logical nor justifiable reason for this inconsistency to remain in our law.").

91. *Id.* (Overton, J., concurring).

92. *See Scott*, 572 So. 2d at 903.

93. *See supra* notes 13-14 and accompanying text and text accompanying notes 44-45.

94. *See supra* notes 10-11 and accompanying text.

95. *See supra* text accompanying notes 9-11.

96. *See supra* text accompanying notes 48-58.

97. *See Smith*, 427 So. 2d at 184 (explaining that Florida does not recognize nonstatutory exceptions to the at-will doctrine).

98. *See id.* (stating that the intent of the statute is to preclude retaliatory discharge).

petus to the long delayed retreat from strict application of the harsh employment at-will doctrine.[99] The Florida Supreme Court should pursue that legislative goal by judicially recognizing a common law tort for retaliatory discharge. This solution would remedy both the inconsistency in Florida law and the inequities visited upon employees by the strict application of the employment-at-will doctrine.[100]

Mark E. Walker

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99. *See id.*
100. *See id.* at 185 (Overton, J., concurring).