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FREEDOM TO PROSPER

# **How Florida Promoted Job Growth by Cutting Red Tape**

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# Introduction

Today, over 95 million U.S. adults are not working or looking for work. Hovering under 63 percent, the labor force participation rate is at its lowest level since the large-scale movement of women into the workforce in the late 1970s.<sup>1</sup> But as the share of Americans working has declined steadily, the number of Americans who are dependent on welfare has increased sharply. The number of people dependent on Medicaid has more than doubled over the last 15 years, reaching 75 million people in 2016.<sup>2-3</sup> Likewise, food stamps enrollment has grown by more than 150 percent during that same time, reaching 43 million in 2016.<sup>4</sup> In both programs, able-bodied adults represent the fastest-growing group.

President Ronald Reagan once said that “the best social program is a productive job for anyone who’s willing to work.”<sup>5</sup> His remarks are as true today as they were when delivered in 1982. According to the U.S. Census Bureau, only 2.4 percent of people who work full-time, year-round jobs live in poverty.<sup>6</sup> Even having a part-time job cuts the likelihood of poverty in half.<sup>7</sup> Alternatively, nearly 1 in 3 adult Americans under the age of 65 who did not work over the past year are stuck in poverty.<sup>8</sup> Having a job is the number one predictor of how likely someone is to live in poverty — ahead of family makeup, disability status, race, sex, and education.<sup>9</sup>

Governors across the country understand the many economic and social ills that come with joblessness, so they are following Reagan’s advice and taking job creation seriously. An effective way to encourage job creation is by instituting reforms to the burdensome regulations that stand between those in need and the jobs that will set them on the path to independence. This allows millions of individuals to lift themselves up and reclaim their dignity through work.

When regulations become too numerous and onerous to comply with, job creation suffers. The annual “Small Business Friendliness Survey,” conducted by the Kauffman Foundation and Thumbtack, Inc., consistently finds that small business owners cite compliance with regulatory permits and licenses as a bigger impediment to their success than tax rates.<sup>10</sup> When small businesses prosper, the economy grows. As the 2014 Small Business Friendliness Survey states, “Over 99 percent of U.S. employer firms meet the Small Business Administration’s definition of small businesses, and they account for nearly half of all private sector employees. Over the past two decades, almost two-thirds of net new private sector jobs have come from these small businesses.”

Beyond supporting small businesses, new business formation is vital for economic growth. But the Brookings Institution reports that business startup rates are much lower now than in the 1980s.<sup>11</sup> Here too regulation plays a role. A 2015 study by the Mercatus Center at George Mason University found that year after year of accumulating regulation contributes to the declining number of new businesses and has an even stronger negative effect on hiring.<sup>12</sup>

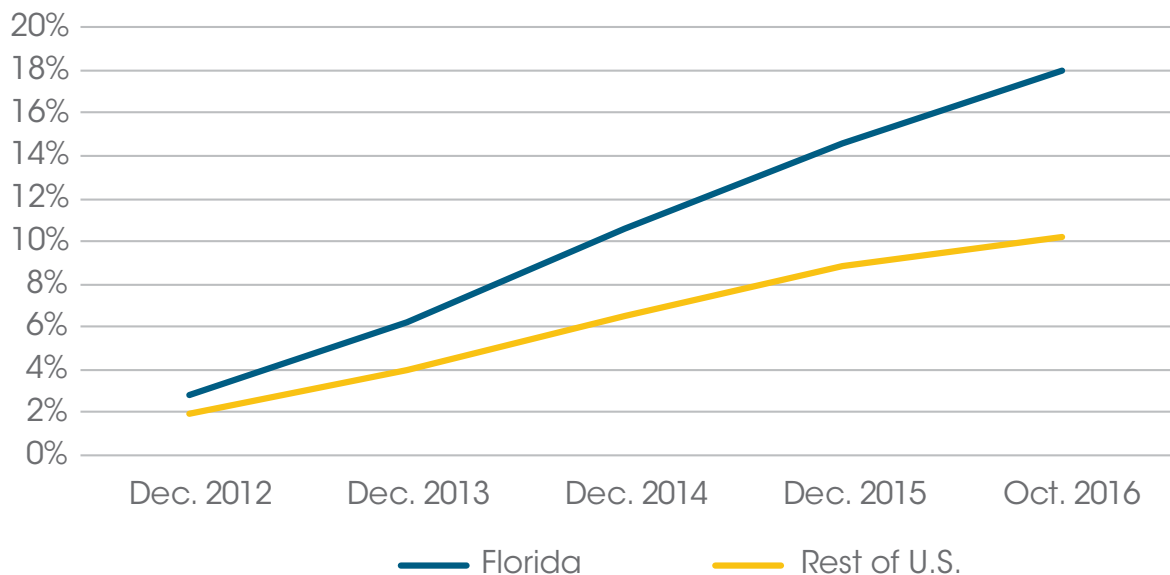
Even when policymakers realize that regulatory reform is necessary, the task can seem daunting. It is often difficult to figure out where to start and how to identify which regulations need to go. Florida’s experience in reining in bureaucracy, cutting job-killing regulations, and unleashing the private sector provide a replicable strategy for other states seeking to promote economic prosperity.

## Case Study: The Florida Turnaround

When Governor Rick Scott took office in January 2011, Florida was in a deep economic hole. In the three years following the Great Recession's start in December 2007, the state lost over 900,000 jobs and saw its unemployment rate increase from 3.5 percent to a peak of just over 11 percent.

Florida was one of the states hit hardest by the Great Recession. However, by 2014, it was leading the nation in economic recovery.<sup>13</sup> Since 2012, Florida's job growth rate has exceeded the national job growth rate every year and the state has added over one million private-sector jobs.<sup>14</sup>

### Private-Sector Job Growth Rate in Florida and rest of the United States from December 2011



At the same time, the unemployment rate in Florida dropped nearly a full six points, from 10.7 percent in December 2010 to 4.8 percent in October 2016.<sup>15</sup> This decline was even more drastic than the 4.5 percentage point drop in the overall U.S. rate over that same time.<sup>16</sup>

Florida led the economic recovery by focusing on job creation. This effort was spearheaded by Governor Rick Scott, who was sworn in as Florida's 45th governor on January 4, 2011. On that day, Governor Scott launched Florida's deregulation efforts by signing Executive Order 11-01, which he later reinforced with Executive Order 11-211. This executive order was a direct statement of the administration's position on bureaucratic regulation.

Executive Order 11-01 did two primary things. First, it required all agencies under the direction of the governor to "immediately suspend all rulemaking" and requested the suspension of rulemaking by other agencies not under the direction of the



governor.<sup>17</sup> Second, it created the Office of Fiscal Accountability and Regulatory Reform (OFARR) to oversee the state's deregulation efforts.

Specifically, OFARR, which reports directly to the governor, is empowered to “review proposed and existing rules and regulations” to establish whether they adversely affect job creation or restrict access to employment, impose burdensome regulations or costs on businesses, or unreasonably restrict the ability of individual citizens to find employment.<sup>18</sup>

OFARR provides regulatory oversight to all agencies where the agency head serves at the pleasure of the governor. It also reviews proposed rules moving through bureaucratic agencies to screen for regulations that create barriers to work. Additionally, each agency under the direction of the governor is required to perform a comprehensive annual review of existing rules and regulations to identify those that are outdated, duplicative, or unnecessarily burdensome.<sup>19</sup>

Importantly, Executive Order 11-01 granted OFARR the ability to hold agencies accountable for following through on the goal of reducing the adverse impact of regulation on businesses and job creation.<sup>20</sup> Each year, agencies must submit a list of identified rules and regulations to OFARR, along with recommendations as to whether those rules should be eliminated or amended.<sup>21</sup> According to John MacIver, previous Director of OFARR, rules that receive the most scrutiny are those that place additional requirements on individuals as a prerequisite for entering a specific profession or business.<sup>22</sup>

While Executive Order 11-01 did elicit a legal challenge, Governor Scott's office effectively responded and modified the process to continue the success of reform without further interruption.<sup>23-24</sup> Governors in other states like Arizona and Michigan have pursued similar actions without legal challenge, proving that executive-led reform is attainable with the proper motivation and structure.<sup>25-26</sup>

When Governor Scott took office in 2011, Florida had nearly 21,000 individual rules and regulations that directly affected business.<sup>27-28</sup> Since 2011, deregulation efforts led by OFARR have resulted in the repeal of over 4,700 individual rules and regulations – a reduction of more than 20 percent.<sup>29</sup>

# Pairing Regulatory Reform with Welfare Reform

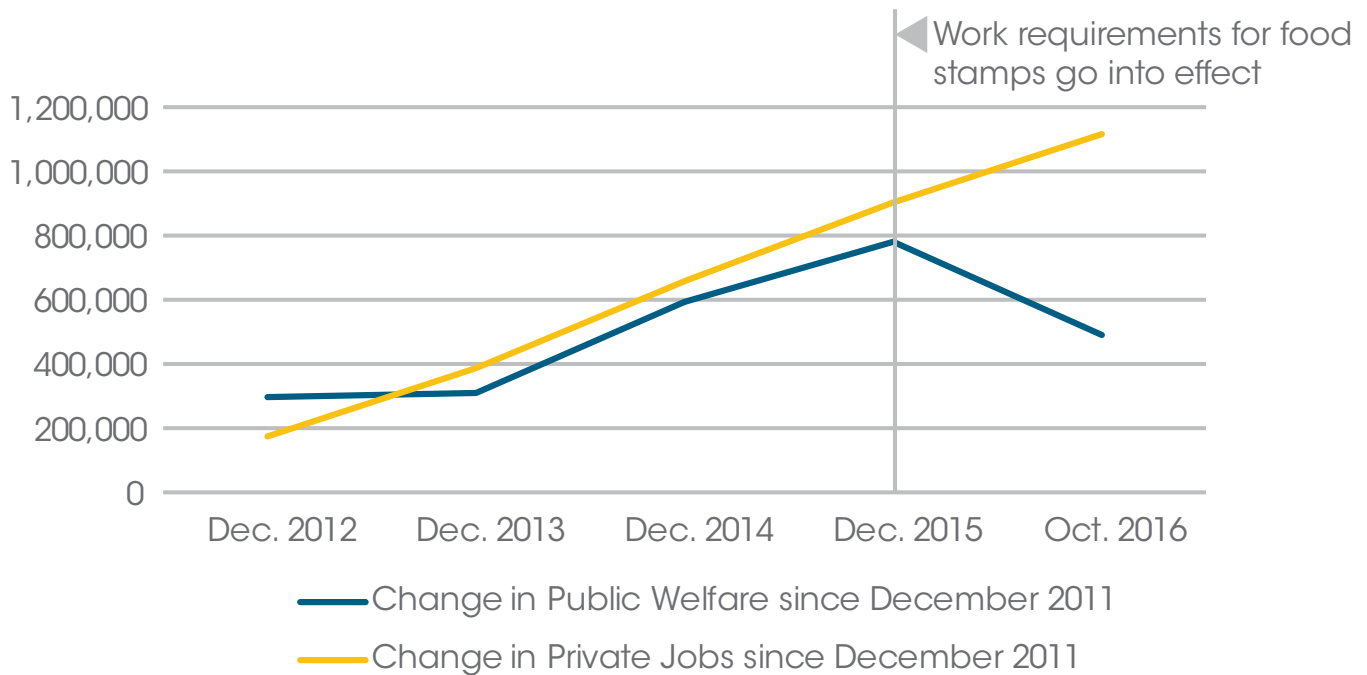
Even with Florida's impressive economic turnaround, the state's increase in public welfare program participation tracked private-sector job growth.<sup>30</sup> While job creation is a major part of moving people off government dependency, this shows policymakers that there is much more to be done.

In 2016, Florida began requiring able-bodied adults without dependents on food stamps to work, train, or volunteer as a condition of continued eligibility.<sup>31</sup> Within ten months, enrollment among this group had dropped by 85 percent.<sup>32</sup> Evidence from other states indicates that those exiting welfare as a result of work requirements quickly re-enter the workforce and more than double their wages within a year.<sup>33-34</sup>

Because of these common-sense reforms, total enrollment in Florida's various welfare programs has fallen by 300,000 individuals since work requirements were implemented, while private-sector job growth has continued uninterrupted.

To combat falling labor force participation, persistent long-term unemployment, and rising enrollment in welfare, job creation and welfare reform must go hand-in-hand. Regulatory reform means more job creators. Welfare reform creates more job seekers.

## Change in Private Sector Jobs and Public Welfare Recipients in Florida from December 2011



# 3 Things Governors Can Do Right Now to Rebuild Opportunity

Sustaining the success of regulatory reform requires persistence, organization, and a system of checks to hold bureaucracies accountable. Among the most important of these checks is a system for the regular review of all existing and newly-proposed regulations. As Governor Scott's administration has shown, it is worth it.

In addition to effective executive-level leadership in prioritizing and guiding regulatory reform, Florida's experience outlines three key things governors and their administrations can do right now to reverse the tide of government overreach.

## 1. Focus. Set and communicate clear, measurable goals for regulatory reduction.

Florida's success at translating significant regulatory reduction into tangible gains in employment and economic prosperity is due in part to setting focused, measurable goals for reform efforts.

In 2012, for example, Governor Scott set an ambitious goal of repealing 1,000 regulations by the end of that year. But realizing that merely setting arbitrary goals for deregulation without a defined purpose could be ineffective, the state specifically targeted rules that actively restricted individuals from attaining stable employment or burdened business formation. Florida focused on things like fee increases, preliminary training hours, and continuing education requirements.<sup>35</sup> This clarity of direction and expectations was a major factor in Florida's rapid success.

## 2. Consolidate. Give one entity clear ownership of the rulemaking process.

Like members of any institution, agencies often have legitimate concerns about reducing their scopes of authority. As a result, any regulatory effort is doomed from the outset if it is merely delegated to individual agencies without thorough, enforceable follow-up. Florida paved the way for success in large part by establishing and empowering OFARR to oversee regulatory reform and hold agencies accountable for meeting benchmarks set by the governor's office. Additionally, OFARR directly reports to the governor, ensuring that it executes its responsibilities in keeping with the administration's priorities.

After centralizing responsibility for regulatory oversight within OFARR, Florida went one step further and directed each agency under the direction of the governor's office to conduct a comprehensive annual review of existing rules and regulations, along with recommendations for specific rules to be modified or repealed. Following on this direction, the Florida legislature passed legislation that required each administrative agency to complete an annual review of the agency's rules.<sup>36</sup> Under this law, agencies must also submit a report to the legislature that identifies the rules the agency plans to amend, along with an estimated timetable for that publication.

Although Florida's regulatory review process was operating effectively when governed solely by executive order, the legislative action strengthened this process by centralizing it within OFARR and ensured its continuation after Governor Scott leaves office.

While Florida chose to establish a new agency to manage regulatory reform, it is not essential that a new agency be created to accomplish similar results. For example, Arizona Governor Doug Ducey issued Executive Order 2015-01, which is similar in language and intent to Florida's Executive Order 11-01 and Executive Order 11-211. This mandated that all state agencies submit annual rule reviews and repeal recommendations directly to the governor's office. Executive Order 2015-01 also prohibited agencies from engaging in any new rulemaking without the prior written approval of the governor's office.<sup>37</sup>

States should structure regulatory reform in the most efficient way permitted by their laws and constitution. Regardless of which method is selected, the priority should be maintaining the independence of this system from the bureaucracy. It is recommended that governors avoid creating new bureaucracy.

### **3. Simplify. Establish a simple, consistent process for review and repeal.**

While centralizing the review process in one place was a strong first step, it became incumbent on OFARR to establish a simple mechanism by which agencies could comply with the directives of the governor and the legislature. One significant step taken by OFARR was to minimize the number of points of contact within each agency who are responsible for conducting the annual review.

In Florida, each agency has a general counsel or rules attorney who is tasked with drafting agency rules. Since these individuals typically have the best knowledge of their agency's rules and regulations, they are primarily responsible for conducting the regulatory reviews and communicating the results to OFARR.<sup>38</sup>

The state of Florida has more than 20 administrative agencies that participate in the regulatory review process each year. The state's administrative code contained nearly 21,000 rules pertaining to businesses alone when OFARR was created. In 2016, OFARR reviewed more than 3,200 individual rules and regulations.

Given the size and scope of Florida's regulatory reform efforts, an already complex process could become increasingly complicated — if not impossible — to manage as more individuals are added to the process.<sup>39</sup> By identifying the one or two people within each agency who have the most comprehensive knowledge of the agency's rules, OFARR dramatically simplified the process.

OFARR also created a standardized questionnaire that each agency receives at the beginning of the regulatory review period. The questionnaire is brief, direct, and helpful in communicating OFARR's priorities.<sup>40</sup>



# Conclusion

A governor's legacy is largely influenced by the health of the state's economy when he or she leaves office. While there are numerous economic factors that are outside of a governor's control, the regulatory environment related to business and job creation is a major factor over which governors can exercise considerable influence.

Governors have a unique opportunity to reduce regulatory burdens and allow for economic prosperity in their states. Florida's experience since the beginning of 2011 is just one example of an effective roadmap for deregulation. Since then, the state reined in its bureaucracy, cut job-killing regulations, and unleashed the private sector. The lesson for states wishing to replicate Florida's job-creation success is clear: set clear deregulation goals, then create a simple process that is focused on those goals every step of the way.



## Appendix 1

# Florida Executive Order 11-01

STATE OF FLORIDA

OFFICE OF THE GOVERNOR EXECUTIVE ORDER NUMBER 11-01

(Suspending Rulemaking and Establishing the Office of Fiscal Accountability and Regulatory Reform)

WHEREAS, the Governor is the chief administrative officer of the state responsible for planning and budgeting for the state and for ensuring the laws are faithfully executed; and

WHEREAS, the administration of each state agency, unless otherwise provided in the Constitution, shall be placed by law under the direct supervision of the Governor; and

WHEREAS, agency heads are responsible for developing and implementing sufficient internal controls to ensure fiscal accountability; and

WHEREAS, government should be held accountable for efficient and effective performance; and

WHEREAS, no profession or occupation should be subject to regulation by the state unless regulation is necessary to protect the health, safety and welfare from significant and discernible harm or damage; and

WHEREAS, no profession or occupation should be regulated by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation, adversely affects the availability of the professional or occupational services to the public, or imposes burdensome costs on businesses; and

WHEREAS, the people of the State of Florida deserve a regulatory process that is efficient, effective, understandable, responsive, and open to the public; and

WHEREAS, existing state regulations may impose duplicative, obsolete and unnecessarily burdensome requirements on Florida's citizens and businesses; and

WHEREAS, the inspection of proposed and existing regulations and rules in Florida is necessary to assure that the laws of the state are faithfully executed without unduly burdening the state's economy and imposing needless costs and requirements on the businesses, local governments, and citizens of this state; and

WHEREAS, fiscal accountability by all agencies is necessary to ensure integrity in state government;

NOW, THEREFORE, I, RICK SCOTT, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section (1)(a) of the Florida Constitution, and all other applicable laws, do hereby promulgate the following Executive Order, to take immediate effect:

**Section 1.** I hereby direct all agencies under the direction of the Governor to immediately suspend all rulemaking. No agency under the direction of the Governor may notice the development of proposed rules, amendment of existing rules, or adoption of new rules, except

at the direction of the Office of Fiscal Accountability and Regulatory Reform (the "Office"), established herein. The Secretary of State shall not publish rulemaking notices in the Florida Administrative Weekly except at the direction of the Office.

**Section 2.** State agencies not under the direction of the Governor are requested to likewise suspend rulemaking procedures pending a review by the Office.

**Section 3.** I hereby create the Office of Fiscal Accountability and Regulatory Reform within the Executive Office of the Governor. The Office shall have the following responsibilities:

1. Review proposed and existing rules and regulations to determine if they:
  - (a) unnecessarily restrict entry into a profession or occupation;
  - (b) adversely affect the availability of professional or occupational services to the public;
  - (c) unreasonably affect job creation or job retention;
  - (d) place unreasonable restrictions on individuals attempting to find employment;
  - (e) impose burdensome costs on businesses; and
  - (f) are justifiable when the overall cost-effectiveness and economic impact of the regulation, including indirect costs to consumers, is considered.
2. Analyze, or require the analysis of, the impact of proposed and existing rules on matters of public health, safety and welfare, job creation, and other matters that may impact the creation or expansion of business interests in the state, and make recommendations for simplifying the regulations or regulatory processes of state agencies.
3. Consistent with statutory provisions, require agencies to prepare a cost-benefit analysis, risk assessment, and analysis of the effect of proposed rules and regulations on the creation and retention of jobs in the state.
4. Review actions taken by state agencies to improve program performance and meet program standards.
5. Identify agency activities promoting economy and efficiency and benchmark such activities for other agencies.
6. Identify fraud, waste, abuses, and deficiencies relating to programs and operations administered or financed by state agencies and make recommendations for corrective action.
7. Investigate allegations of fiscal mismanagement.
8. Consistent with statutory provisions, work with the Florida Small Business Regulatory Advisory Council, the Office of Small Business Advocate, the Rules Ombudsman, and the Florida Legislature, to identify rules and regulations that adversely or disproportionately impact businesses, particularly those relating to small businesses, and make recommendations that alleviate those effects.

**Section 4.** Prior to submitting a notice of proposed rulemaking or attempting to amend existing rules, agencies under the direction of the Governor shall submit the complete text of the

proposed rule or amendment to the Office, along with any other documentation required by the Office. No notice of proposed rulemaking, or notice of the amendment of existing rules, may be submitted for publication in the Florida Administrative Weekly except with the consent of the Office.

**Section 5.** Within 30 days of this Order, each agency head under the direction of the Governor shall designate an Accountability and Regulatory Affairs Officer who shall be responsible for coordinating agency fiscal and performance accountability and regulatory and rule reform, and who shall serve as the liaison between the agency and the Office.

Each agency head under the direction of the Governor is directed to review and evaluate current policies relating to programs and operations administered or financed by the agency and make recommendations to improve performance and fiscal accountability.

In order to reduce the regulatory burden on the citizens of Florida, to determine whether existing rules and regulations remain justified and necessary, and to determine whether such existing rules and regulations are duplicative or unnecessarily burdensome, each agency under the direction of the Governor shall submit to the Office, within 90 days of the date of this Order, and annually thereafter, a comprehensive review of existing rules and regulations, with recommendations as to whether any rules and regulations should be modified or eliminated. All rules and regulations identified as duplicative, unnecessarily burdensome, or no longer necessary, shall be identified by the agency, and the agency shall pursue the repeal or amendment of such rules and/or regulations. The agency is further directed to identify any legislative mandates that require the agency to promulgate or continue to impose rules that the agency believes negatively impact business and job creation or retention in the state.

No later than July 1, 2011, and on July 1 of each successive year, each agency under the direction of the Governor shall submit to the Office a regulatory plan which shall identify and describe each rule that the agency expects to begin promulgating during the following 12-month period. The Office may describe other items to be included in the regulatory plan.

**Section 6.** Upon execution of this Order, and for a period of 90 days from the date of this Order, no agency under the direction of the Governor may execute a contract with a value in excess of \$1,000,000.00, without obtaining prior approval from the Office.

**Section 7.** All agencies under the direction of the Governor are directed to fully cooperate with the Office, and any representative thereof. Agencies not under the direction of the Governor are requested to provide such assistance as is required by the Office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, the Capitol, this 4th day of January, 2011.

## Appendix 2

### Brief Discussion of *Whiley v. Scott*

In March 2011, three months after Governor Scott took office and issued Executive Order 11-01, Rosalie Whiley, a food stamp recipient, filed suit alleging that Governor Scott's order the authority of the governor's office under the Florida Constitution and directly harmed her by delaying the implementation of a new rule that would have made it easier for her to apply for her food stamps online.<sup>41</sup>

In a 5-2 decision, the Florida Supreme Court agreed with Whiley and concluded that the governor exceeded his Constitutional authority insofar as Executive Orders 11-01 and 11-211 suspended the rulemaking process established by the legislature under the state's Administrative Procedure Act (APA).<sup>42</sup> The majority in *Whiley* found that, under the Florida Constitution, "rulemaking is a derivative of lawmaking" and is thus a legislative function that cannot be encroached upon by the executive.

This ruling was reached even though the executive orders were only binding on agencies that legally fell under the direct control of the governor. The majority's decision found that the delegation of authority to an agency by the legislature supersedes even the power of the governor to alter the procedure by which those rules are made.

The dissent in *Whiley* objects to the majority's imposition of "unprecedented and unwarranted restrictions on the governor's constitutional authority to supervise subordinate executive branch offices."<sup>43</sup> Additionally, the dissent points out "an area of executive policy discretion exists with respect to rulemaking," which is acknowledged even in the Administrative Procedures Act.<sup>44</sup> According to the dissenting justices, the majority's opinion ignored these two facts and interfered with the governor's constitutional authority to "supervise and control" policy decisions made by subordinate executive branch officials.<sup>45</sup>

Regardless of one's opinion as to whether the Florida Supreme Court correctly decided *Whiley v. Scott*, the case has important lessons for any executive seeking to implement comprehensive deregulation in the model of Florida.

First, it is essential to understand the extent of the authority a state's constitution bestows upon the executive branch. In the case of Florida, the state constitution divides the executive power between the governor and three independently elected cabinet members. The Florida Department of State notes in its examination of the structure of the government of Florida that this system effectively "gives Cabinet officers powers equal to the governor," thus limiting his ability to fulfill his constitutional responsibilities.<sup>46</sup> Although the dissent in *Whiley* makes a strong case that the Florida Supreme Court overstepped and improperly limited the authority of the governor, the extent of the authority bestowed upon the governor by the state constitution is an important consideration to take into account when constructing a deregulation plan.

This is not to say, however, that bold steps, like those taken by Governor Scott, should be avoided. Following the *Whiley* decision, Governor Scott issued Executive Order 11-211, which, although somewhat narrowing the authority of OFARR, reaffirmed the process that required all agency heads to submit proposed rules to OFARR for review. A few months later, during the 2012 legislative session, the Florida Legislature passed House Bill 7055, which expressly affirmed that Executive Orders 11-01 and 11-211 were consistent with the laws of the state of Florida. The

bill also stated that rules and policies made by executive branch departments were subject to the final authority and control of the governor or the applicable elected constitutional officer.<sup>47</sup>

The nature and extent of power afforded a state's executive will influence the implementation of any deregulation plan. In Arizona, for example, which tends to follow a stronger-governor model than that of Florida, Governor Doug Ducey issued an executive order prohibiting "all state agencies from conducting any new rulemaking."<sup>48</sup> This order is similar to Florida Executive Orders 11-01 and 11-211 in terms of content and its effect on the rulemaking process. Unlike Florida, however, the order has not been challenged and was reissued in 2016 following its expiration at the end of 2015.<sup>49</sup>

## Appendix 3

# Florida Rule Review Questionnaire

Please find attached below the questionnaire for the Office of Fiscal Accountability and Regulatory Reform 2015 Annual Rule Review. As you know, the governor's number one priority is to ensure that the people of Florida have the very best access to the job market by reducing the red tape that stands in the way of entrepreneurs, business leaders, and job seekers.

As part of that effort, the governor issued executive order 11-211 requiring each agency to submit an annual review of all existing rules, along with recommendations regarding which rules and regulations should be modified or repealed. The review must be submitted in writing by July 1 each year.

Please note, the annual rule review is not an administrative, recordkeeping, or housekeeping endeavor. The governor's express goal is the reduction of the size and scope of the Florida Administrative Code. The annual rule review serves to identify opportunities for that reduction.

1. What is the rulemaking authority for the rule?
  - a) Can this rule be repealed?
2. For each subsection of the rule, identify the specific statutory language that is being implemented by the rule:
3. Is there any obligation imposed or right created by the rule or subsection which is not directly imposed or created by the statute? Describe.
4. Does the rule provide the least intrusive interpretation of the statutory language?
5. If not, why is the increased level of regulation necessary to protect the health, safety, or welfare of the public?
6. Is the rulemaking authority expressed in mandatory language? (i.e. the agency shall adopt rules)
  - a) If the rulemaking authority were discretionary would the rule be necessary?
7. Is there any reason why the policies or procedures adopted by the rule could not or should not be adopted in statute?

8. Was the rule or any subsection of the rule adopted in response to an unpromulgated rule challenge?
9. Have any of the policies or procedures adopted by the rule been unused within the past two years? (e.g. audits, fees)
  - a) Describe.
10. Does the rule regulate entry into a profession, occupation, or other business enterprise?
11. Does the rule adversely affect the availability of professional, occupational, or other business services to the public?
12. Does the rule adversely affect job creation or retention?
13. Does the rule place any restriction or burden on attempting to find employment?
14. Does the rule impose a regulatory cost on individuals, businesses, or the agency implementing the rule? (e.g. insurance, bonding, reporting, surcharge, tax, training, education)
15. What would be the discernible harm to the public if the rule were repealed? (If none or negligible indicate so.)
16. What would be the discernible harm to the public if the implemented statutes were repealed? (If none or negligible indicate so.)
17. Is the rule the subject of any pending rulemaking activity (i.e. in development, subject of a notice of proposed rule) that has been ongoing for more than six months?
  - a) If yes, identify the circumstances delaying implementation of the intended amendment. (e.g. lack of statutory guidelines, difficult fact finding that is necessary to implement the rule, challenges by interested parties)
18. Division director or equivalent responsible for the agency program area addressed in this rule:
19. Agency or board general counsel:
20. Person responsible for completing this review:



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