

IN THE SUPREME COURT OF FLORIDA

KAREN IRVEN,

Plaintiff/Petitioner,

vs.

DEPARTMENT OF HEALTH AND
REHABILITATIVE SERVICES,

Defendant/Respondent.

Supreme Court
Case No.: 94,926

Second DCA
Case No.: 97-05373

**JOINT AMICUS CURIAE BRIEF OF THE FLORIDA COUNCIL OF THE
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL
EMPLOYEES, THE POLICE BENEVOLENT ASSOCIATION, FLORIDA
EDUCATION ASSOCIATION/UNITED AND FLORIDA TEACHING
PROFESSION-NATIONAL EDUCATION ASSOCIATION IN SUPPORT
OF PETITIONER'S APPEAL**

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SUMMARY OF ARGUMENT

The parties to this amicus curiae brief believe it is important for this Court to reverse the Second District's misinterpretation of the Florida Whistle-Blower's Act. This Court has previously ruled that courts should liberally construe this statute in favor of granting a public employee a remedy for a governmental agency's retaliation in response to that employee's disclosure of known or suspected agency wrongdoing. The Second District ignored this directive by strictly construing the statute in this instance.

Unless this Court reverses that ruling, public employees will be discouraged from disclosing known or suspected agency wrongdoing for fear of retaliation. Such a result will not only be detrimental to public employees but will also be harmful to all Florida citizens, who rely on public employees to disclose public agency wrongdoing.

ARGUMENT

Each of the four parties to this brief (collectively referred to as the "amicus parties") represent a substantial number of public employees. The Florida Council of the American Federation of State, County and Municipal Employees represents over 100,000 government employees; the Police Benevolent Association represents over 31,000 governmental employees; Florida Education Association/United represents over 55,000 governmental employees and Florida Teaching Profession-National Education Association represents over 62,000 governmental employees. The Court's resolution of this appeal, regarding the appropriate interpretation of the Florida Whistle-Blower Act, is critical to the constituents of each of the amicus parties. In addition, the amicus parties believe that the issues raised in Petitioner's appeal are of great importance to all Florida governmental employees, totaling in excess of 736,000, as well as to all Florida citizens as each citizen relies, to one extent or another, on the effectiveness and integrity of public agencies. U.S. Census Bureau 1998 Public Employment Data, State and Local Government – Florida <www.census.gov/govs/apcs/98stfl.txt>. Appendix 1.

Although, in the interest of brevity, the amicus parties will not repeat the arguments set forth in Petitioner's initial brief, the amicus parties adopt Petitioner's arguments. All governmental employees, as well as the public at large, will be severely harmed if the Court does not reverse the Second District's holding.

This Court has previously held that the Florida Whistle-Blower's Act, Sections 112.3187-112.31895, Florida Statutes, as a remedial statute, should be liberally construed in favor of granting public employees access to this legislatively-

created remedy. Martin County v. Edenfield, 609 So. 2d 27 (Fla. 1992). See also Hutchison v. Prudential Ins. Co. of America, Inc., 645 So. 2d 1047, 1050 (Fla. 3rd DCA 1994). (The Whistle-Blower's Act "must be liberally interpreted in order to accomplish its intended purpose."). This statute protects public employees from retaliation from their employer when they raise incidences of known or suspected wrongdoing.

By holding that the Whistle-Blower's Act should be strictly rather than liberally construed, the Second District disregarded this Court's holding in Martin County. If this ruling stands, the ultimate result will be to discourage public employees from raising known or suspected wrongdoing for fear of retaliation. Here, the Second District rendered an after-the-fact determination that Petitioner's disclosures of wrongdoing were neither protected nor correct. If such an after-the-fact standard were to remain the benchmark, then governmental employees will lose Whistle-Blower protection and few, if any, public employees will thereafter come forward to disclose wrongful conduct. Such a result will eviscerate the primary goal of this statute, which is to better protect the public by encouraging public employees to disclose known or suspected wrongdoing by public officials.

Furthermore, under the plain language of the Whistle-Blower's Act, public employees cannot be fired for reporting suspected violations of law or suspected misfeasance by government agencies or government officials. Therefore, it is inappropriate for an appellate court to conclude that an employee's disclosure of wrongdoing is not protected simply because no actual wrongdoing is proven after-the fact. Yet that is exactly what the Second District has done in the case below.

Accordingly, it is important for the Court to reiterate that the Whistle-Blower's Act is to be liberally construed, to otherwise properly interpret the Whistle-Blower's Act and, in the process, underscore the breadth of the protections afforded by this statute, so that all public employees can rely on such protection in the future. As a significant consequence, the general public will be able to continue to rely on public employees to disclose known or suspected wrongdoing by public officials.

CONCLUSION

For the reasons stated herein, and for the reasons set forth in Petitioner's initial brief, the amicus parties respectfully request that this Court overturn the Second District's holding, which misinterprets this Court's interpretation of the Whistle-Blower's Act and restricts the important protections afforded public employees, and ultimately the general public, by this important statute.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND TYPE SIZE

We certify that the foregoing has been mailed to **David H. McClain, Esquire**, McClain & Associates, P.A., 1000 N. Ashley Drive, Suite 105, Tampa, FL 33602 and **J. Kevin Carey, Esquire**, Carlton Fields, P.O. Box 3239, Tampa, FL 33601-3239 on this 5th day of October, 1999, and that the size and style of the print used herein is 14 point proportionally spaced Times New Roman type.

Attorney

