IN THE FLORIDA SUPREME COURT

CASE NO. SC03-410

DEPARTMENT OF CHILDREN AND FAMILIES,

Petitioner,
v.

SUN-SENTINEL, INC.,

Respondent.

AMICI CURIAE BRIEF IN SUPPORT OF RESPONDENT SUN-SENTINEL, INC.

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Amici Curiae certify that all parties to this appeal have consented to the filing of this brief.[1]

The First Amendment Foundation is a nonprofit foundation dedicated to safeguarding the free flow of information to all people in Florida. It was formed for the purpose of helping preserve and advance freedom of speech and access to government information as provided in the United States Constitution and the Florida Constitution.

The Tampa Tribune is a daily newspaper located in west-central Florida that circulates throughout the State.

WFLA-TV News Channel 8 is a television station that produces daily newscasts and other programming from studios in Tampa, Florida.

Orlando Sentinel Communications is the publisher of the *Orlando Sentinel*, a daily newspaper located in Central Florida that circulates throughout the State.

The New York Times Regional Newspapers include fourteen daily newspapers, of which twelve publish on Sunday, and one weekly newspaper. These newspapers include *The* (Lakeland) *Ledger*, *Sarasota Herald-Tribune*, (Ocala) *Star Banner*, and *The Gainesville Sun*.

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[1] Petitioner Department of Children and Families will be referred to as "DCF." Respondent Sun-Sentinel, Inc. will be referred to as "Sun-Sentinel." The Amici Curiae will be referred to as "Amici."

Florida Today is a daily newspaper published in Melbourne by Cape Publications, Inc., which circulates throughout the state.

The *News-Press* is a daily newspaper published in Fort Myers by Multimedia Holdings Corporation serving Southwest Florida.

The *Pensacola News Journal* is a daily newspaper published by Multimedia Holdings Corporation serving West Florida.

WTLV-TV is a NBC affiliate owned by Multimedia Holdings Corporation, broadcasting from Jacksonville.

WJXX-TV is an ABC affiliate owned by Gannett River States Publishing Corporation, broadcasting from Jacksonville.

WTSP-TV is a CBS affiliate owned by Pacific and Southern Company, Inc., broadcasting in the Tampa Bay area.

This case centers on the application of the home venue privilege to petitions for access to public records pursuant to Section 119.07(7). The statute provides the public with a mechanism to inspect DCF's otherwise confidential records. Generally the public uses this method when questions arise concerning the safety of children in DCF's care. Application of the home venue rule here would create an unnecessary impediment for citizens of this State and the other Amici without fulfilling any of the purposes that the home venue rule was designed to protect. In fact, in many cases a member of the public will not travel to Tallahassee to pursue

his or her right to receive public records pursuant to Section 119.07(7).

Amici will be directly affected by the outcome of this litigation. The First Amendment Foundation safeguards the rights of all Florida citizens to access to government information. The remaining Amici routinely request access to DCF records in the course of fulfilling their obligations to inform the public on important and newsworthy issues.

SUMMARY OF ARGUMENT

Section 119.07, Florida Statutes, which provides access to DCF's otherwise confidential records upon a finding of good cause, explicitly embraces Florida's unparalleled commitment to open government. Application of the home venue rule to petitions for access to public records brought pursuant to Section 119.07(7) would require all such issues to be litigated in Tallahassee. The resulting increase in time, effort and cost will prevent citizens from traveling to Tallahassee to learn about matters of public importance relating to the safety of Florida's children.

Moreover, application of the home venue rule simply is not warranted in light of the fact specific determination a court must make when records are requested pursuant to Section 119.07(7). The interests that must be balanced in a Section 119.07(7) good-cause analysis include the public interest in release of the records, the privacy interest of individuals named in the records and the best interest of the children that are the subject of the records. DCF's interest is secondary and its role in this type of litigation is passive. Thus, the real parties at interest are the children, their siblings and their parents – all present in the jurisdiction where the records are located, not Tallahassee. Considerations of justice, fairness and convenience mandate against strict application of the home venue privilege to the unique facts presented in Section 119.07(7) petitions.

ARGUMENT

I. THE HOME VENUE PRIVILEGE DOES NOT APPLY TO PETITIONS FOR ACCESS TO PUBLIC RECORDS BROUGHT PURSUANT TO SECTION 119.07(7), FLORIDA STATUTES.

Florida law has long recognized that records made or received in connection with public agency business are presumptively open to the public, unless a specifically stated exemption applies. See Fla. Const. art. I, § 24(c); Fla. Stat. §§ 119.011, 119.07 (2002). Ordinarily, DCF records concerning child abuse or neglect fall within such an exemption. See Fla. Stat. § 39.202. However, the Legislature has recognized an important limitation on DCF's ability to shield such records from scrutiny, which occurs when it is necessary for the public to evaluate and monitor DCF's activities. See Fla. Stat. § 119.07(7). Section 119.07(7) provides for access to DCF's otherwise confidential records upon the filing of a petition with the court, which in turn must conduct a good cause analysis. Id.

Application of the home venue privilege to petitions brought pursuant to Section 119.07(7) would require any person seeking such access to DCF's records to travel to Tallahassee to exercise his or her constitutional and statutory right to access to public records. This is true even though the children, siblings, parents – all interested parties – and the records are located within jurisdiction of the local court. This result creates an unnecessary barrier to access to public records and prejudices those who seek to advocate for the parents and children. Moreover, in

light of the unique characteristics of a Section 119.07(7) petition, application of the home venue rule simply is not warranted.

A. Application of the Home Venue Privilege to Section 119.07(7) Petitions Would Frustrate the Public's Statutory and Constitutional Right of Access to Public Records.

The constitutional and statutory right to public records is sweeping in its breadth and requires virtually unfettered public access to records in the custody of state agencies. See Fla. Stat. § 119.01 (2002); Fla. Const. art. I, § 24; see also Times Publ'g Co. v. City of St. Petersburg, 558 So. 2d 487, 492 (Fla. 2d DCA 1990); Lorei v. Smith, 464 So. 2d 1330, 1332 (Fla. 2d DCA 1985). The legislative objective underlying Chapter 119 "was to insure to the people of Florida the right freely to gain access to governmental records." Lorei, 464 So. 2d at 1332. An advised citizenry is the core of a democratic society, and Florida's commitment to government in the Sunshine furthers this laudable goal. Byron, Harless, Schaffer, Reid & Assocs. v. State ex rel. Schellenberg, 360 So. 2d 83, 97 (Fla. 1st DCA 1978), quashed on other grounds sub nom., Shevin v. Byron, Harless, Schaffer, Reid & Assocs., 379 So. 2d 633 (Fla. 1980).

Florida's fundamental commitment to an open government is explicitly recognized in Section 119.07(7)(a), which grants access to confidential DCF records upon a petition to a court and a finding of good cause. Therefore, if good cause exists, the citizens of the State of Florida have a constitutional and statutory

right to access to DCF's otherwise confidential records. Yet to exercise this fundamental right, DCF would require every citizen seeking access to travel to Tallahassee to establish good cause.

Placing such a burden on citizens of this State seeking to vindicate their constitutional right to access public records flies in the face of our commitment to open government, the Florida Constitution and Florida's Public Records Act. For example, citizens in Escambia, Monroe or Collier County would have to travel hundreds of miles simply to request records that may be available pursuant to Section 119.07(7). Likewise, in attempting to inform their reading and viewing audiences on newsworthy cases involving DCF, local newspapers and television stations throughout the State will have to do the same. Such a result would certainly chill the public's access to DCF's records and cannot be tolerated in our State. As Florida authorities have observed for generations, any rule or condition imposed upon the inspection of government records that restricts or circumvents the fundamental right of access to such records is invalid. See Davis v. Sarasota County Public Hospital Bd., 480 So. 2d 203, 205 (Fla. 2d DCA 1985); State ex rel. Davidson v. Couch, 158 So. 103, 105 (Fla. 1934); Fla. Att'y Gen. Op. 93-48 (1993); Fla. Att'y Gen. Op. 92-38 (1992).

"[T]he spirit, intent and purpose of the [Public Records Act] requires a liberal judicial construction in favor of the public and a construction which

frustrates all evasive devices." Florida Parole & Probation Comm'n v. Thomas, 364 So. 2d 480, 481 (Fla. 1st DCA 1978). Application of the home venue rule to Section 119.07(7) petitions clashes with the spirit, intent and purpose of the Public Records Act. The judicially created home venue rule should not be allowed to limit in any way the public's constitutional right of access to public records.

B. Application of the Home Venue Privilege is Not Warranted in Cases Involving Petitions For Access to Public Records Pursuant to Section 119.07(7).

The key to understanding the applicability of the home venue privilege is the context in which the issue is presented. Section 119.07(7) petitions do not present the typical case in which the privilege or one of its judicially recognized exceptions easily applies. In fact, the very atypical nature of these cases counsels against strict application of the privilege.

1. Section 119.07(7) Petitions.

Section 119.07(7) allows the release of DCF's records upon a finding of good cause, which includes a balancing of the public interest in the records, the privacy rights of those identified in the records, and the best interest of the children. The public interest recognized in Section 119.07(7) "is reflected in s. 119.01(1)," which provides that it is the policy of this State that all records shall be open. See Fla. Stat. § 119.07(7)(a). Moreover, the public interest specifically "includes the need for citizens to know of and adequately evaluate the actions of the Department

of Children and Family Services and the court system in providing vulnerable . . . children of this state the protection enumerated in ss. 39.001 and 415.101." Id. Therefore, the balancing analysis required by Section 119.07(7) is highly particularized to the unique facts present in any given case.

For example, in A.M.R. v. Department of Health & Rehabilitative Servs., Nos. 91-0325-CA-01, 90-1051-CJ, 1991 WL 253809 (Fla. 5th Cir. Ct. Sept, 20, 1991), the court was asked to conduct a good cause analysis pursuant to Section 119.07(7). (A copy of the decision is attached as Exhibit A.) The court noted that it previously unsealed the court file concerning the case and that it was quite familiar with the underlying lawsuit and the various interests at issue. Based upon the court's understanding of the facts and the underlying case it found the records to be of great interest and concern to the public and held that good cause existed for release of the records. See also M.R. v. Florida, 19 Media L. Rep. 1189 (Fla. 5th Cir. Ct. Aug. 5, 1991) ("The Court, being familiar with the background of the case and the court file, finds that the public's need to know in this case is of such a nature that the [newspaper] should have access to the redacted file.") (copy attached as Exhibit B).

In many Section 119.07(7) cases (as is true in this case) there already exists a pending court action touching upon the substance of the requested records (*i.e.*, dependency proceedings or criminal proceedings). In In re Interest of L.C., 24

Media L. Rep. 1863 (Fla. 12th Cir. Ct. Oct. 9, 1995), *The Tampa Tribune* requested access to the court's adoption file and to HRS' (now DCF) file. (A copy of the opinion is attached as Exhibit C.) Similarly, in In re the Interest of Rilya Wilson, Case No. 95-15958B D002 (Fla. 11th Cir. Ct. May 23, 2002), overruled by, Sun-Sentinel v. Fla. Dep't of Children & Families, 815 So. 2d 793 (Fla. 3d DCA 2002), several media organizations petitioned the juvenile court that already had jurisdiction over Rilya Wilson for access to DCF's file. (A copy of the opinion is attached as Exhibit D.) When such actions are pending, the presiding court already is familiar with the requested records and the unique facts presented by each individual case – far more familiar than a Tallahassee court starting fresh. These pre-existing actions are the logical venues for the highly particularized balancing analysis required by Section 119.07(7).

Moreover, regardless of whether a pending action exists to petition a court for DCF records, local courts are still best equipped to conduct a balancing analysis, which hinges on the unique facts of each case – facts that will have developed within the jurisdiction of the local court, not, in most cases, in Tallahassee. Indeed, Section 119.07(7) petitions normally are filed when there has been a failure within DCF that resulted in tragic consequences for a child in its care. For example, In re Interest of L.C., involved the death of Lucas Ciambrone. Lucas suffered horrendous abuse at the hands of his adoptive parents, which eventually

resulted in his death. His death brought great attention on the methods and procedures utilized by DCF (then HRS) that led to his adoption. Likewise, in In re the Interest of Rilya Wilson, Rilya was missing for over a year before DCF uncovered her disappearance, despite the fact that DCF supposedly was conducting routine visitation and supervision. Her case brought scrutiny of DCF's supervision and visitation procedures and the accuracy of DCF's records.[2]

The public interest in records is the ability to monitor and evaluate the functioning of DCF. The facts that compose the public interest – usually the very manner in which DCF handled the supervision of a child in its care – are localized and specific to each unique case. And those facts are most readily obtained for court review in the jurisdiction where DCF acted for the child.

The remaining interests to be balanced are even more localized than the public interest. A court must consider the best interests of the children that are the subject of the records. The supervision of the children and DCF's actions or failures that ultimately led to the filing of the Section 119.07(7) petition will have occurred within the jurisdiction of the local court. The children, the case worker

[2] Reporting on cases such as Lucas Ciambrone and Rilya Wilson is indispensable to public oversight of a troubled agency. See Sally Kestin, Report Reveals Abuse Before Boy's Death, Tampa Trib., Nov. 30, 1995, at 1 (copy attached at Exhibit F); John Pain, All Papers in Rilya File Released, Orlando Sentinel, May 25, 2002, at A22 (copy attached as Exhibit G). Such reporting undoubtedly will suffer under the home venue privilege.

assigned to supervise the child, any person asserting the child's best interests (guardian ad litem, parents), and the requested records (interview notes, abuse reports, visitation records) themselves are likewise localized. See In re L.I., 27 Media L. Rep. 2086 (Fla. 6th Cir. Ct. Feb. 5, 1999) (noting that child's parents objected to release of DCF's records) (copy attached as Exhibit E); A.M.R., 1991 WL 253809, at *1 (noting attorney ad litem representing child objected to release of certain DCF records).

The same is true for the privacy considerations that the court must balance. Individuals named in the records – the children's parents, relatives, school teachers, or friends – will reside within the jurisdiction of the local court. The local court will have a better understanding of the interplay and dynamics among the various local interests. Therefore, it makes sense for the local court to weigh the interests of citizens within its jurisdiction and conduct the highly fact-specific good cause analysis.

2. Home Venue Privilege.

Against this backdrop, this Court must determine whether the "home venue rule" applies to a petition brought pursuant to Section 119.07(7). The home venue rule is judicially created and was derived from the common law. See Department of Ins. v. Accelerated Benefits Corp., 817 So. 2d 1086, 1087 (Fla. 4th DCA 2002). The home venue rule provides that in a civil action brought against a state agency,

that agency is entitled to venue in the county where it maintains its principal headquarters. If the home venue privilege is applicable in the instant case, it would require all Section 119.07(7) petitions to be filed in Tallahassee. The home venue privilege, however, does not apply for several significant reasons.

a. Section 119.07(7) Petitions Are Not Lawsuits Against DCF and Do Not Require a Court to Render an Interpretation of DCF'S Rights And Duties.

For the home venue rule to apply, there must first be a lawsuit against a state agency. Additionally, the home venue rule applies "in an action brought primarily for the *purpose of seeking judicial interpretation or a declaration of the rights and duties* under rules and regulations promulgated by state agencies." See Florida Public Service Comm'n v. Triple "A" Enters., Inc., 387 So. 2d 940, 942 (Fla. 1980) (emphasis added).

A petition pursuant to Section 119.07(7) is not a lawsuit for access to public records unlawfully withheld. To the contrary, such petitions do not allege that DCF has done anything improper with regard to release of its records. By its nature, a Section 119.07(7) petition does not request any relief from DCF. Once a petition is filed, *the court* then "shall determine if good cause exists for public access to the records sought or a portion thereof." Fla. Stat. § 119.07(7)(a). In making this determination, DCF is neither defendant nor adversary. In fact, DCF often joins the petition for public access to its records. Simply put, the petition imposes no

obligations or duties upon DCF that justify application of home venue, but simply asks a court to find good cause for release of the records.

Therefore, not only is a petition not in the nature of a lawsuit against DCF, but it does not seek an "interpretation or declaration of [DCF's] rights and duties." Triple "A", 387 So. 2d at 942. Section 119.07(7)(a) provides that an individual or organization may seek access to DCF's records upon an order of good cause by a court. The only right or duty imposed by Section 119.07(7)(a) is upon courts to determine whether good cause exists. In fact, the statute does not charge DCF with *any* rights and duties. Thus, it is impossible for a Section 119.07(7) petition to seek a judicial interpretation of DCF's rights and duties. The home venue rule therefore should not apply in these actions.

b. Policy Considerations Underlying the Home Venue Privilege are Inapplicable to Section 119.07(7) Petitions.

The home venue privilege was designed to "promote[] orderly and uniform handling of state litigation and help[] to minimize expenditure of public funds and manpower." Carlile v. Game & Fresh Water Fish Comm'n, 354 So. 2d 362, 364 (Fla. 1977). The privilege in Florida, however, is judicially created. See Board of County Comm'rs of Madison County v. Grice, 438 So. 2d 392, 394 (Fla. 1983). Thus, when the purposes underlying the home venue rule are not furthered by its application, courts have carved out exceptions to the rule. Naturally, exceptions to the privilege are also judicially created.

For example, in Board of County Commissioners of Madison County v. Grice, this Court announced an exception to the home venue rule when the government agency was sued as a joint tortfeasor. Id. at 394-395. Application of the rule in such situations resulted in duplicative litigation, increased the expenditure of public funds and resources and burdened the court system. Id. In fashioning this exception to the rule, this Court noted that "[m]odern methods of communication and transportation have weakened the policy reasons supporting the privilege while current crowded court docket conditions have strengthened the policy reasons for avoiding duplicative litigation if possible." Id. at 394. Many of the same considerations that justified the joint tortfeasor exception are present in the instant case. There already exists an underlying criminal proceeding that touched upon the contents of the requested records.[3] The criminal court was familiar with the nature of the records, the parties involved and the various interests that must be balanced. Filing a separate action in Tallahassee would have resulted in duplicative litigation and increased the expenditure of public funds.

Moreover, even without a pre-existing action, many considerations still militate against application of the privilege. For example, in Levy County School

[3] The State of Florida brought a criminal prosecution against certain parents accusing them of neglect of minor children. The Sun-Sentinel filed a Section 119.07(7) petition in the criminal case seeking DCF's investigative files concerning these children. Naturally, these files touched upon the abuse and neglect that formed the basis of the criminal prosecution.

Board v. Bowdoin, 607 So. 2d 479, 481 (Fla. 1st DCA 1992), the court stated that when "a suit involves two defendants residing in different counties, one being a governmental entity, trial courts have the discretion to dispense with the home-venue privilege, 'guided by considerations of justice, fairness, and convenience under the circumstances of the case.'" Id. at 481 (quoting Grice, 438 So. 2d at 395). In a Section 119.07(7) petition, the real party interests involved are those seeking the records, the children subject to the records, and the individuals named in the records. Even DCF admits that its role in the balancing analysis essentially is passive. (DCF Initial Brief at 24.) Therefore, just as with the joint tortfeasor exception, in Section 119.07(7) petitions other primary interests must taken into account in determining whether the home venue rule should apply.

Consideration of justice, fairness and convenience of these additional interests dictate that the home venue privilege should not apply to Section 119.07(7) petitions. In Section 119.07(7) petitions, the requested records, important witnesses, and those with an actual interest in the action are generally within the jurisdiction of the local court. Cf. Department of Labor & Employment Security v. Lindquist, 698 So. 2d 299, 302 (Fla. 2d DCA 1997) (noting the home venue privilege promotes "a minimum expenditure of effort and public funds because the required records and the important witnesses are located in the county where the agency is headquartered"). Thus, litigating these local issues in Tallahassee –

thereby requiring the records in question be shipped to Tallahassee and that important witnesses, case workers, parents, etc., travel across the State – is simply more costly, time consuming and burdensome.

Under DCF's construction, the real party interests would have to travel to Tallahassee to assist the court in considering the importance to be accorded public scrutiny of the agency's actions and how release of the records might harm the children or infringe on individuals' privacy rights. Indeed, the requestor of the records, parents, guardian ad litems, any individual named in the records, including relatives, school teachers and friends, and even local DCF case workers, may be more reluctant to travel hundreds of miles to assist a Tallahassee court than they would be to attend proceedings at their local courthouse. The result would not only place an added burden on individuals with an actual interest in the outcome, but it would greatly increase the risk that certain individuals may not make the journey to Tallahassee. Thus, not only would the real party interests suffer, but the court system bay be deprived of vital evidence in making its determination.

Such a result also is needlessly burdensome on the Leon County court system and those involved in Section 119.07(7) petitions – especially as DCF has case workers and attorneys in districts throughout the State of Florida to handle local issues. Clearly, Section 119.07(7) petitions are more conveniently, efficiently and thoroughly litigated within the local jurisdictions.

Finally, the home venue privilege is not necessary in this context to promote uniformity and to avoid conflicting decisions. The scope of Section 119.07(7) is clear and specific: the records are confidential unless a court finds good cause for their release. Good cause is explicitly defined in the statute – it requires a balancing of the public interest in release of the records, the privacy of those named in the records, and the best interest of the child subject to the records. While the test outlined in Section 119.07(7) is uniform from case to case, the balancing analysis is highly particularized and depends, not on the venue where the matter is heard, but on the specific facts of each case.

Simply put, the only uniformity Section 119.07(7) cases require is application of the balancing test prescribed by the Legislature. Beyond that a uniform venue cannot bring "uniformity" to these decisions, as these cases are anything but uniform. Thus, the flaw in DCF's analysis is that rather than requiring "uniformity" by a single court, Section 119.07(7) petitions by their nature are inextricably intertwined with the local interests that form the basis of the balancing analysis and the venue in which those interests arise. Application of the home venue rule, however, would place the burden on a Leon County Circuit Court, potentially divorced from the underlying facts, to determine the weight to accord varying interests that have occurred within another circuit and whether good cause exists for release of DCF's records.

Whether the home venue privilege applies to the specific facts of a case is left to the sound discretion of the trial court. See Accelerated Benefits, 817 So. 2d at 1088. Not only was the trial court in the best position to conduct the Section 119.07(7) balancing analysis, but it was also in the best position to determine whether any of the policy reasons supporting the home venue privilege required its application. The trial court's decision was not an abuse of its discretion.

CONCLUSION

This Court should not allow the home venue privilege to restrict the public's access to government records. This is especially true because the policy considerations underlying the privilege are simply non-existent in the context of the unique facts presented by Section 119.07(7) petitions. The decision below should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to **Charles J. Crist, Jr. Esq., Christopher M. Kise, Esq.** and **Lynn C. Hearn, Esq.**, Office of the Attorney General, The Capitol, Suite PL-01, Tallahassee, Florida 32399-1050; **John R. Hargrove, Esq.** and **W. Kent Brown, Esq.**, Heinrich Gordon Hargrove Weihe & James, P.A., 500 East Broward Blvd., #1000, Fort Lauderdale, Florida 33394; **David S. Bralow, Esq.**, Tribune Company, 633 N. Orange Avenue, Orlando, Florida 32801, this ____ day of August, 2003.

_____
Attorney

CERTIFICATE OF TYPE, SIZE AND STYLE

Counsel for Amici certifies that this Initial Brief is typed in 14 point (proportionately spaced) Times New Roman.

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Attorney