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IN THE SUPREME COURT OF FLORIDA

CASE NOS. SC13-949, SC13-951

THE LEAGUE OF WOMEN VOTERS OF FLORIDA, *et al.*,

Petitioners,

vs.

THE FLORIDA HOUSE OF REPRESENTATIVES, *et al.*,

Respondents.

_____/

L.T. Case Nos.: 1D12-5280, 37 2012 CA 00412, 37 20112 CA 00490

RENE ROMO, *et al.*,

Petitioners,

vs.

THE FLORIDA HOUSE OF REPRESENTATIVES, *et al.*,

Respondents.

_____/

ON DISCRETIONARY REVIEW OF A DECISION OF THE DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

AMICI CURIAE BRIEF OF FORMER LEGISLATIVE PRESIDING OFFICERS IN SUPPORT OF RESPONDENTS

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STATEMENT OF IDENTITY AND INTEREST

The amici curiae are former Presidents of the Florida Senate and a former Speaker of the Florida House of Representatives, including President Ken Pruitt, Speaker James Harold Thompson, and President John M. McKay. These former presiding officers are interested in this matter as residents of Florida, and due to their former service as public servants and presiding officers of their respective legislative chambers.

SUMMARY OF THE ARGUMENT

The First District should be affirmed for three primary reasons. First, a dependable legislative privilege is critical to a proper separation of powers – the foundation upon which our system of government rests. Second, the threat of depositions or trial testimony will have a chilling effect not only upon legislators themselves, but also upon the residents of Florida. Finally, sworn testimony as to an individual legislator's intent is both unnecessary and improper evidence to determine legislative intent.

A dependable legislative privilege is critical to a proper separation of powers. Without the application of a legislative privilege, special interests will be able to use the judiciary itself, a co-equal branch of government, to influence, if not manipulate, the legislative process through intimidation.

The mere threat of depositions or trial testimony will have a chilling effect on both legislators and the residents of Florida who would otherwise seek redress. The threat of litigation and interrogation under oath will divert a substantial amount of time and energy away from study and debate, and will result in a less informed Legislature.

Just as important is the privacy of Florida's citizens. Without a dependable legislative privilege, the residents of Florida will not be assured that they can bring important, but sensitive and personal, concerns to their Representatives and Senators for fear that their identities and concerns will be revealed to the public at-large. The people of Florida should be free to seek redress from their legislators without fear that their personal conversations with their elected representative will be revealed to the public.

The sworn testimony of a legislator is not proper or reliable evidence with which to determine legislative intent. First, an individual legislator will at times find it difficult to pinpoint a single reason for his or her vote given the nature of the legislative process. Second, a legislator's intent cannot be reliably determined by debate or testimony because throughout American history, some legislators have adopted the tactic of attempting to manipulate legislative history to cloud the true meaning of legislation to further a political agenda. Third, legislative intent cannot be determined by polling 160 members of the legislature. Such a survey would

likely result in dozens of stated intents (if not 160, one for every legislator), which could not be accurately synthesized to determine the intent of the Legislature as a whole.

The sworn testimony of a legislator is not necessary for a review of legislative intent. Indeed, courts have successfully determined legislative intent without sworn testimony from individual legislators since our nation's infancy. No court has ever compelled a legislator to testify about why a vote was cast for or against any measure.

ARGUMENT

> "Sweet indeed is the name of liberty and the thing itself a value beyond all inestimable treasure . . . It is a great and special part of our duty and office, Mr. Speaker, to maintain freedom of consultation and speech."

Alexander J. Cella, *The Doctrine of Legislative Privilege of Freedom of Speech and Debate*, 2 Suffolk U. L. Rev. 1, 8 n.16 (1968), *reprinted in Constitutional Immunity of Members of Congress: Hearings Before the Joint Committee on Congressional Operations*, 93d Cong. 178 (1973). Peter Wentworth, a member of the British Parliament in 1575, was imprisoned in the Tower of London for refusing to testify before an inquiry Committee appointed by the Crown. Wentworth believed that as a Member of Parliament, he would freely testify in any inquiry made by a Committee appointed by Parliament; but, no other governing institution had the right to question him about his official acts. Wentworth correctly reasoned during the dawn of representative democracy that his official actions as a Member of Parliament were governed only by the legislative body.

This Court should affirm the First District for three primary reasons. First, the legislative privilege is critical to a proper separation of powers, upon which our system of government is built. Second, opening the door to depositions or trial testimony of legislators will have a chilling effect not only upon legislators themselves, but just as important, upon the privacy and confidence of Florida's

residents. Third, legislative depositions are simply unnecessary to determine legislative intent.

I. The Legislative Privilege is Critical to a Proper Separation of Powers

The legislative privilege in Florida is important to a proper separation of powers because without a legislative privilege, special interests will use the threat of litigation as a weapon to intimidate and manipulate the legislative decision-making process. In essence, without a legislative privilege, special interests will be able to use the judiciary itself, a co-equal branch of government, to exploit the legislative process and its outcomes.

Indeed, actual subpoenas, depositions, or litigation will be entirely unnecessary. Simply the threat of interrogating a legislator in the context of a legal proceeding will be more than enough to fundamentally change how the legislative process functions, and the results it produces. Rather than answering solely and directly to the People, their constituents, as our Constitution and system of government intend, legislators will now also be forced to weigh and consider the threat of examination under oath in a judicial proceeding before votes are even cast. There is no doubt that the force of a co-equal branch of government, wielded by special interests, will distort legislative results for their own gain. Such an encroachment by a co-equal branch of government is inconsistent with the vision of our Founding Fathers, and the express terms of Florida's Constitution.

II. Compelling Legislators to Testify in a Legal Proceeding will Have a Chilling Effect on the Legislative Process

Compelling legislators to testify concerning their official duties will have a chilling effect on the entire legislative process. First, legislators themselves will be open to intimidation with the judicial process before their votes are even cast. Second, and just as importantly, Florida's citizens will no longer be able to consult with or petition their Legislature without the threat of public exposure.

The threat of being forced to testify will have a chilling effect on legislators themselves. In today's age of technology and the rapid and wide-spread dissemination of information, the threat of compelled testimony concerning a legislator's official duties is more dangerous than ever before. Special interests and some in the media would almost certainly use the ability to depose legislators as a tool to generate media stories and to score political victories.

If legislators had the threat of examination in the context of a judicial proceeding hanging over them throughout the legislative process, they would be forced to divert a significant amount of time and effort away from studying and debating issues, to trying to anticipate whether seeking information from a given source, or even taking a meeting, will later be misconstrued or distorted during a deposition. As a result, they will not only have less time to spend on the People's business, but they will also ultimately have the benefit of less information and

fewer points of view. Such a result is not good for public policy, and it is certainly not what our Founding Fathers envisioned.

Importantly, without a dependable legislative privilege, Florida's citizens will not be assured that they can bring sensitive problems to their elected representatives. Between the introduction of legislation and the concluding vote, legislators weigh and balance numerous points of view. These viewpoints are not often expressed in "pro" and "con," black-and-white distinctions. Citizens often like one part of a bill, but not other parts. Some constituents want provisions added to a bill; while some want a clause or a phrase deleted. First Amendment rights are exercised across a broad spectrum of beliefs, based on every citizen's unique point of view. Individual citizens may be less inclined to discuss matters openly and directly with members of the House and Senate if they knew that their views, otherwise shared privately with a member, would be subject to litigation discovery or exposed in courtroom testimony.

Indeed, part of a legislator's solemn duty is to listen to his or her constituents – which often results in very difficult meetings concerning deeply personal or traumatic experiences. During these meetings, constituents open themselves up in confidence, on the hope and belief that their legislators will take action to correct some terrible wrong, but at the same time will protect their confidentiality from public scrutiny. These are the most difficult, and frankly emotional, meetings for

any legislator. At times, they involve victims of terrible crimes. Sometimes a child has been victimized, and the parents feel a duty to make sure that the same wrong never befalls another child, but they are also desperate to keep their own child's identity out of the public eye. Sometimes the issue involves a painful family dispute, and at other times it might be as simple as a business man or woman who just cannot make ends meet due to a glitch in Florida law.

Regardless of the individual situation, it is not for special interests, or even the public, to scrutinize these citizens who have sought out their legislators for help. The citizens of Florida deserve the right to petition their Legislature in peace, and in private, when they deem it necessary. Floridians should not be silenced simply because they fear that their personal and private problem will be revealed to the world on the witness stand or during a deposition taken by a special interest or a group with a political agenda. In short, the legislative privilege is important to the people of Florida, and this Court should protect both their right to petition the Legislature, and their right to do so in confidence and without inhibition.

III. Compelling the Testimony of Legislators is not a Suitable Method to Determine Legislative Intent.

The deposition of a legislator is not necessary to properly determine legislative intent for two reasons. First, an individual legislator's actual intent cannot be reliably determined by deposition. Second, even if actual intent could be

determined, the Legislature's intent cannot be determined by the actual intent of a single legislator – or even group of legislators. Third, even if the intent of every legislator could be accurately determined, the overall intent of the Legislature could not be discovered by synthesizing those individual intentions.

A. Legislative Intent Cannot be Reliably Determined by the Testimony of Individual Legislators.

The intent of an individual or group of legislators cannot be reliably determined for two reasons. First, it is at times difficult, if not impossible, for a legislator to isolate or clearly identify an intent or a single reason for a vote. Second, even if a legislator could always isolate and identify every reason for their vote on a specific bill, a legislator's statement as to their intent can be unreliable.

It is often difficult, if not impossible, for a legislator to accurately isolate or clearly identify an intent or reason for vote. Given the thousands of bills and amendments that a legislator must consider in a single legislative session, the reasons for voting for or against a specific proposal are often not clearly defined, prioritized, or ranked. For instance, sometimes a legislator simply does not have a strong opinion about a bill either way. Nevertheless, he or she must vote yes or no. There is no option to abstain in Florida's Legislature. Alternatively, a legislator will often focus on one portion of a bill that he or she finds particularly important. When that is the case, the legislator will sometimes base his or her vote on that

isolated portion of the bill or amendment, and a vote for or against the other parts of the bill may not have any significant identifiable reason at all.

Even if, however, legislators could accurately identify their reasons for a specific vote, this Court cannot reasonably rely upon a legislator's stated reason or intent. Throughout American history and politics, some legislators have purposefully attempted to distort legislative history to benefit their own political agendas. For instance, it is not uncommon for a legislator who opposes a bill to try to weaken or confuse the Legislature's true intent by distorting the bill's legislative history during debate or with their own public statements of intent. This tactic is often used to artificially create a constitutional challenge to the bill, or to soften the impact of what that individual legislator views as bad public policy.

Indeed, deposition testimony will not produce better evidence of legislative intent than the finished legislative product. Deposing 160 members of the Florida Legislature may well produce dozens, if not 160, intentions for a vote. Legislators may vote for or against a bill for infinite reasons. Philosophy, life experience, instinct, constituent interests, and other indefinable qualities all play a role. There is no single discoverable "truth" from which to divine legislative intent for the end product of a legislative body's labor – other than the end product itself. The point of the legislative process is to distill the diverse interests of hundreds of thousands of constituents in each legislative district and millions of Floridians into a single,

complete, synthesized bill. The final product is the best, and indeed only, evidence of legislative intent.

B. Sworn Testimony is Unnecessary to Determine Legislative Intent

Courts universally interpret legislative intent based on the legislature's final work product without regard to the opinions of an individual legislator or group of legislators. No judge or group of judges has compelled a legislator to testify about why a vote was cast for or against any measure.

Yet, no court has left a case undecided because those voting for or against a certain measure were not deposed or because they failed to testify at trial. A cursory review of Florida case law reveals a plethora of opinions of this state's District Courts and the Florida Supreme Court based upon the court's "interpretation" of the Legislature's intent. *See e.g., Heart of Adoptions, Inc. v. J.A.*, 963 So. 2d 189 (Fla. 2007); *State v. D.C.*, 114 So. 3d 440 (Fla. 5th DCA 2013); *City of Boynton Beach v. Janots*, 101 So. 3d 864 (Fla. 4th DCA 2012). These cases are centered on the basic and time-tested tools of statutory interpretation: the plain meaning of the statute; canons of statutory construction; reference to outside authorities such as dictionaries; legislative history; and consideration of the purpose of the act as manifested in official records. This Court should not create the new and untested precedent of compelling legislators to

be interrogated under oath concerning their official duties. Rather, this Court should affirm the First District below.

CONCLUSION

"Legislators represent people . . ." begins a famous passage by Chief Justice Earl Warren. *Reynolds v. Sims*, 377 U.S. 533, 623 (1964). And, if the Separation of Powers is to be preserved after more than 200 years of American history, it is to the people alone, and not to a co-equal branch of government, that legislators must answer for their actions. The Separation of Powers having proven itself vital to freedom and democracy, this Court should affirm the First District's decision below.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 12, 2013, a copy of this brief was served by e-mail to all counsel on the attached service list.

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I HEREBY CERTIFY that the foregoing brief has been typed using the Times New Roman 14-point font, and therefore complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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