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14 April 2014

The Honorable Rick Scott
Office of the Governor
The Capitol
400 South Monroe Street
Tallahassee, FL 32399-0001

Re: CS/HB 89 Threatened Use of Force- Veto Request

Dear Governor Scott:

We are writing to request that you veto CS/HB 89, which, in part, creates § 776.09, F.S., allowing a person found to have acted in “lawful self-defense” to effectively expunge any record of such finding made by either a prosecutor or a court. Specifically, the bill requires prosecutors to document any decision to dismiss an information, indictment, or other charging document, or any decision not to file charges, when lawful self-defense is apparent, and also requires judges who decide to dismiss a charge based on lawful self-defense to record their findings in either a memorandum or order. All of these records could then be expunged through application by the accused under § 943.0585, F.S., which provides the process by which criminal history records may be expunged. We believe this bill has grave implications for public oversight of our judicial and criminal justice systems, Governor, and is contrary to the public interest.

The Foundation historically has not objected to legislation expanding the opportunity for expunction of criminal history records when justifiable expunction does not unnecessarily eliminate the opportunity for public oversight. The expunction provision in CS/HB 89, in contrast, not only limits public oversight, but potentially could serve as a tool for obscuring law enforcement and prosecutorial misconduct, while also hindering the development of court precedence essential to understanding how and when the proposed use of force law applies.

For example, this legislation would allow someone, whether formally charged or not, to hide an arrest record, records relating to the investigation made by the prosecutor, and even the records justifying the

First Amendment Foundation
Veto Request: CS/HB 89
14 Apr 2014/Page 2

dismissal – thus potentially allowing for secret arrests and secret investigations. Furthermore, the public and the legal community would not be able to learn from important case law outlining a dismissal by the courts, even in order to claim lawful self-defense themselves. It is our opinion that expunction of these records isn't justified and is outweighed by the overarching public policy and vital importance of allowing access to these records.

For these reasons we respectfully request that you veto CS/HB 89. We appreciate your attention to our concerns, Governor Scott. If you have any questions or would like additional information, please don't hesitate to contact us.

Sincerely,

A handwritten signature in blue ink, appearing to be 'B.A.P.', with a large flourish above the first letter.

Barbara A. Petersen, President

cc: Jon Kaney, General Counsel, First Amendment Foundation
Sam Morley, General Counsel, Florida Press Association