



04 December 2015

The Honorable Edwin Narain
The Florida House of Representatives
1402 The Capitol
402 South Monroe Street
Tallahassee, FL 32399-1300

Re: HB 475 Exemption/Identity of Witnesses to a Felony

Dear Representative Narain:

We are writing to express our opposition to House Bill 475, creating an exemption for identifying information of a witness to a felony. This legislation is not only unwarranted, Representative Narain, it offends our constitutional right of access to government information and is antithetical to our criminal justice system.

The proposed bill suffers from myriad problems, chief among them the statement of public necessity, which is entirely speculative. The bill is based on hypothetical concerns and provides no evidence of actual harm that has occurred. The required statement of public necessity must be factually specific; a possible harm or potential threat does not meet the constitutional standard for the creation of new exemptions. The statement also alleges witnesses “may be less likely” to report crimes if their information is made available; however, many anonymous crime-reporting agencies, like CrimeLine and Crime Stoppers, already exist to alleviate this concern.

Additionally, the bill is both impermissibly broad and unconstitutionally vague. Under Florida law, hundreds or crimes, if not more, are classified as felonies. For example, possession of forged notes or checks is a third degree felony, as is grand theft. [Sections 831.08 and 812.014, F.S.] A theft of \$300 dollars triggers the felony charge – it is difficult to understand why a person who witnesses the shoplifting of a designer sweater needs the protection of this exemption. This legislation makes no attempt to meaningfully distinguish among felonies, and would capture potentially thousands of criminal incidents and thousands of people as witnesses. The overly broad exemption this bill proposes flouts the constitutional requirements of Article I, s. 24 (c).

Moreover, the bill does not define who or what qualifies as a “witness.” Are we to assume a witness the person who filed a police report when the crime occurred? Is a “witness” a person present at the scene of the crime? Or is a “witness” the person called upon to testify at trial, whether or not the person was present at the time the crime occurred? And once that person testifies in an open courtroom, how is his or her identity to be shielded? Not knowing how

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December 4, 2015

“witness” is to be interpreted again implicates the impermissibly broad and vague language of this bill.

It is important to note that charges are subject to change throughout police investigations, as are pleadings throughout the course of prosecutions. Therefore it is more than possible that a person may witness a crime, which at the time of occurrence was labeled a lesser offense, but is then later raised to a felony. Would the identity of the witness then retroactively fall within the exemption? If so, the exemption would be futile as the witness’s information has thus far been freely available.

It is our opinion that this legislation is unnecessary in that it addresses a non-existent concern. Additionally, the language is indefensibly broad and vague, and the bill is not justified by an adequate statement of public necessity. The Florida Constitution requires any exceptions to the public’s right of access be narrowly tailored and no broader than necessary to achieve its stated purpose. This bill has no justifiable purpose, nor is it narrowly construed, as the law requires. For these reasons we respectfully request HB 475 be withdrawn from further consideration.

Thank you for considering our concerns, Representative Narain. If you have any questions or if we can assist you in any way, please do not hesitate to contact us.

Sincerely,



Barbara A. Petersen, President

Cc: The Honorable Steve Crisafulli, Speaker, Florida House of Representatives
Jon Kaney, General Counsel, First Amendment Foundation
Sam Morley, General Counsel, Florida Press Association