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Reply to: Tampa

January 5, 2016

VIA NEXT BUSINESS DAY DELIIVERY

Hon. Rene Garcia
The Florida Senate
404 South Monroe Street, SOB 310
Tallahassee, FL 32399-1100

Re: SB 1220 Public Records / Attorney Fees

Dear Senator Garcia:

I write in opposition to SB 1220.

Since 1986, I have dedicated much of my law practice to open government issues. Our law firm has represented businesses, media organizations and regular citizens who have been unlawfully denied access to government records. Often we have been able to convince agencies to comply with those requests. Some agencies do so because they realize their legal obligations under Chapter 119 and the Florida Constitution. But unfortunately that is not always the case. At times, the only reason agencies comply with their obligations is to avoid the risk of having to pay our clients' attorneys' fees. The ability of records requesters to recover their attorneys' fees is often crucial in convincing reluctant agencies to settle public records disputes. Settlement agreements often contain terms that benefit the public overall by requiring transparency training and other broader transparency benefits, in addition to resolving fee issues.

As a last resort, our firm at times sues government agencies in order to enforce Florida's constitutional and statutory public records access rights. When we can prove a request was denied unlawfully, we recover fees for enforcing Florida law.

Government agencies and those acting on behalf of agencies often have staff attorneys and outside counsel to fight public records requests. Government agencies routinely hire some of the largest firms in Florida to oppose requests. Regular citizens are ill-equipped to face this kind of opposition. Few businesses, in fact, can afford to litigate public records cases. Our firm sometimes handles these cases on a contingent basis and bears a significant risk in litigating often hard-fought battles against large firms that agencies pay by the hour to resist records requests. We carefully evaluate these cases and the issues raised prior to litigating. We make multiple attempts to resolve public records disputes prior to suing. Without the current attorneys' fee provision, Chapter 119 would lose much of its power, and even righteous litigation will not be pursued.

The proposed legislation would gut Florida's public records laws. We understand the perception that Chapter 119 is being abused in a small number of cases. Both government and The Florida Bar, however, are addressing the abuses issues, and the judicial system is capable of handling any abuses. For example, in December 2014 and January 2015, judges had no trouble denying relief in two cases deemed improper attempts to wrest attorneys' fees out of government service providers in the guise of Chapter 119 litigation. Access to government is a cherished right of the citizens of this State who, as you will remember, passed a constitutional right of access by a margin of over 90 percent in 1992. The proposed legislation frustrates the ability to enforce this constitutional right.

I respectfully ask that you withdraw your sponsorship of this bill. There are other options short of gutting the decades-old fee provision, one of which has been proposed by the First Amendment Foundation. If it would be helpful, I am available at your convenience to discuss these issues further.

Thank you for your kind consideration of my concerns.

Very truly yours,

THOMAS & LOCICERO PL



Carol Jean LoCicero

CJL/tmg