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February 1, 2017

The Honorable Greg Steube

The Florida Senate

326 Senate Office Building

404 South Monroe Street

Tallahassee, FL 32399-1100

Re: SB 80, Public Records/Attorney Fees

Dear Senator Steube:

We are writing to express our opposition to your bill, HB 80, amending the attorney fee provision in s. 119.12, F.S., to make the award of reasonable attorney fees and costs permissive rather than mandatory in lawsuits seeking public records' access. This mandatory requirement is a tool for enforcing the Public Records statute, and has always been accorded a liberal construction. The constitutional scheme aims to preserve and protect public record access by reimbursing any Floridian for all legal expenses incurred in attempting to force compliance with ch. 119, F.S., and Article I, s. 24, of the Florida Constitution. In other words, the current mandatory fee provision allows those seeking access to public records to enforce their constitutional right of access through court action. Without a guarantee of reasonable attorney fees for successful suits challenging a wrongful denial of access, requestors will be less likely to challenge wrongful denials of public record requests.

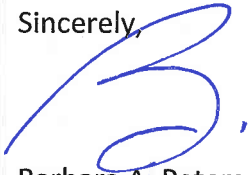
Even though Florida has one of the strongest public records laws in the nation, there is no enforcement mechanism in the law, forcing an aggrieved citizen to file a civil suit to guarantee compliance with the constitutional right to access public records. This, in itself, significantly bars public record access for most citizens. In making the attorney fee provision permissive, SB 80 reduces the mandatory attorney fee safeguard to a mere permissive redundancy, an insurmountable barrier to most, and erodes the public's ability to oversee their own government and hold it accountable for its actions.

The Florida Supreme Court recently explained the indispensable role of the mandatory fee provision in our constitutional scheme. [*Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120 (Fla. 2016)] By making the attorney fee provision permissive rather than mandatory, SB 80 effectively eviscerates the constitutional right of access to public records and we respectfully request that it be withdrawn from further consideration.

We're mindful of the harmful impact of those who are filing public record requests for the sole purpose of forcing settlement and collecting fees, Senator Steube. We worked hard with Senator Garcia, sponsor of last year's SB 1220, and the League of Cities to fashion a compromise that would preserve the right of access and protect government agencies from predatory public record requests. The bill didn't pass last year, but Senator Garcia has filed an identical bill – SB 246 – for consideration during the 2017 session and we urge your support for the legislation.

Thank you for your attention to our concerns, Senator.

Sincerely,



Barbara A. Petersen, President

Cc: The Honorable Joe Negron, President, The Florida Senate
The Honorable Oscar Branyon, Minority Leader, The Florida Senate
Jon Kaney, General Counsel, First Amendment Foundation
Samuel Morley, General Counsel, Florida Press Association
Gil Thelen, Executive Director, Florida Society of News Editors