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FIRST AMENDMENT FOUNDATION

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LEGISLATIVE ALERT

January 22, 2018



Open Government Legislation Designed to Protect Public Record Requestors is in DANGER!!!!

Representative Ray Rodrigues (R-Fort Myers) and Senator Keith Perry (R-Gainesville) have filed legislation – HB 273 and SB 750 – that would prohibit a government agency from responding to a public record request by filing a civil judicial action against the requestor.

HB 273 is on the House Special Order Calendar for Wednesday, January 24. But we've learned that the League of Cities and Association of Counties are opposed to the legislation. The Senate companion, SB 750, was temporarily postponed in the Senate Judiciary Committee last Thursday and may not be rescheduled unless a compromise is reached. That could mean that this EXCELLENT legislation that seeks to protect public record requestors could die.

It's more than a little ironic, don't you think, that these two organizations that fought hard last year for legislation to protect them from *predatory* public record requestors are now fighting just as hard for the right to take *predatory* action against those seeking access to public records?

This is how these civil lawsuits work: Jane makes a public record request to the city council. Rather than respond to Jane's request, the city council files a civil lawsuit against Jane claiming that she doesn't have a right of access to the records she requested. This means that Jane is forced into court to defend her constitutional right of access to the records she's requested. Not only does Jane have to bear the expense of hiring an attorney, but also the burden of proof is flipped from the agency to Jane. **THIS IS SIMPLY *WRONG*.**

This is how it is supposed to work: Jane makes a public record request to the city council. The city council responds to Jane, claiming that the records she's requested are exempt from public disclosure and cites the asserted exemption. If Jane disagrees with the city's assertion, she files a writ of mandamus in civil court against the city council. The court issues an order to show cause and the city responds by showing good cause. The court then schedules an evidentiary hearing to resolve any issues of fact and the court ultimately resolves the dispute.

These civil actions filed by government agencies put public record requestors – citizens and media – in the position of having to defend cases rather than selectively litigate them.

That's simply *WRONG*.

Please let Representative Rodrigues and Senator Perry know that you support their good bills.

Representative Rodrigues 850/717-5076

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Senator Keith Perry 850/487-5008

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If you have questions about SB 750 or its companion HB 273 or any of the other bills currently on our tracking list, please contact Barbara Petersen at 800/337-3518 or sunshine@floridafaf.org.