



February 18, 2022

The House Judiciary Committee
417 House Office Building
402 S. Monroe Street
Tallahassee, FL 32399-1300

Re: HB 1363 Pub. Rec./Trust Proceedings

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The First Amendment Foundation writes to express its opposition to HB 1363. Trust proceedings can involve questions about the trustee's actions, including overreach, incompetence, and fraud. This bill would prevent public access to these court proceedings. HB 1363 is inconsistent with jurisprudence, separation of powers, and the strong presumption of access to court records.

Civil proceedings in Florida are public events and must follow the "well established common law right of access to court proceedings and records." *Barron v. Fla. Freedom Newspapers, Inc.*, 531 So. 2d 113, 116 (Fla. 1988). As the Eleventh Circuit Court of Appeal recently noted, "access to judicial proceedings is crucial to our tradition and history and continued public confidence in our system of justice." *Callahan v. United Network for Organ Sharing*, No. 20-13932, U.S. App. LEXIS 34201, at *2 (11th Cir. Nov. 17, 2021).

Parties to the litigation may seek to close court proceedings and seal records. The party seeking closure has the burden of proof to show why closure is necessary. Judges, with knowledge of the facts and law, have the discretion to decide the issue. However, if this bill becomes law, the legislature would *require* courts to seal records and withhold the names of parties in any trust proceeding involving a family trust company, regardless of the parties involved, subject and facts of the proceedings, or whether reasonable alternatives exist to accomplish the purpose of limiting access to records. Parties may be public figures and openly discussing the proceedings in the media or on social media, yet information and documents related to the case would be withheld from the public.

While the stated intent of the bill is to protect vulnerable adults who could be targeted and prevent the release of sensitive

information that could result in harm, it would withhold all documents related to certain trust proceedings without considering the nature of the information or parties involved. The bill is broader than necessary to achieve its stated purpose. Our judges are well-prepared to review and decide motions to seal filed by the parties involved. Moreover, the mandatory sealing and lack of discretion in withholding records is inconsistent with federal and state open government principles. Accordingly, FAF opposes HB 1364 and urges members of the Judiciary Committee to vote against its passage.

Thank you for your consideration. Please don't hesitate to contact the Foundation if you have any questions or concerns.

With best regards,

FIRST AMENDMENT FOUNDATION



Pamela C. Marsh
Executive Director

cc: The Honorable Chris Sprowls, Speaker, Florida House
Amy Hollyfield, Tampa Bay Times, Chair, First Amendment Foundation
Mr. Samuel Morley, General Counsel, Florida Press Association
Dana Banker, President, Florida Society of News Editors