IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT

CASE NO. 1D18-0687

REP. LARRY METZ, *et al.*,

Appellants,

v.

MAT MEDIA, LLC, and CHARLES "PAT' ROBERTS,

Appellees.

INITIAL BRIEF OF ALL APPELLANTS

On Appeal from the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida

L.T. Case Nos. 2017-CA-2284, 2017-CA-2368

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> Q. . . . When reaching that number and making an assessment of whether that was the best value for that product, how did you make that determination?
>
> A. By looking at the assets that were delivered and as marketers, which in any given meeting, we had, we would have over a hundred years of experience, decided that that was fair market value for it.
>
> Q. *So it really is just a group of individuals in the industry that just look at it and decide, yeah, that looks like a fair price. Is that what you're saying?*
>
> A. *Yes.*

R 2125 (emphasis supplied)

This was VISIT FLORIDA's former chief marketing officer on his subjective conclusion that the millions of dollars in taxpayer funds paid each year to his friend's single-member company—MAT Media, LLC—constituted a fair price for producing the *Emeril's Florida* television programming. *See* R 2076, 2103–04, 2105, 2107–2112, 2115, 2118; *see also* SR 2359, 2370, 2373, 2384, 2391, 2393, 2397, 2404, 2411, 2412, 2416, 2423, 2430. "[Y]ou try to assess, you know, through a lens *what's this really worth to me* in the long term," he said. R 2121 (emphasis supplied).

As part of its investigation into how VISIT FLORIDA's publicly funded contracts with MAT Media were valued, the Florida House of Representatives

subpoenaed MAT Media's records related to its *Emeril's Florida* contracts with VISIT FLORIDA. SR 2432–2437. This appeal addresses the trial court's refusal to enforce the House's lawful subpoenas to the extent they sought MAT Media's ledgers and other documents that reflected its costs tied to production of the publicly funded *Emeril's Florida* programming. R 1952, 1995–96.

The Facts

The pleadings, the testimony, and documents before the trial court established the following undisputed facts.

Preliminaries.

MAT Media, LLC, is a single-member Florida limited liability company that is managed and controlled by Charles "Pat" Roberts. R 2250; SR 2349 (Legis. Complaint, ¶¶ 6–7); SR 2442 (Answer, ¶¶ 6–7). It does not file its own tax return; instead, its business revenue and expenses appear on Schedule C of Mr. Roberts's individual tax return. R 2178, 2250–51. MAT Media received millions of dollars in public funds under contracts with VISIT FLORIDA to provide marketing and advertising services for the State of Florida, and Mr. Roberts profited from his business's receipt of those funds. SR 2349 (Legis. Complaint, ¶¶ 6–7); SR 2442 (Answer, ¶¶ 6–7).

VISIT FLORIDA is the trade name for the Florida Tourism Industry Marketing Corporation, a public-private nonprofit corporation created by statute in

1996 from the former Department of Commerce. R 2077, 2098–99; *see* § 288.1226(2), Fla. Stat.; Ch. 96-320, at 1504–1687, Laws of Fla. It is a direct service organization (a "DSO") that reports through Enterprise Florida to the Florida Department of Economic Opportunity ("DEO"). R 2077, 2097; *see* § 288.1226(6), Fla. Stat. By law, Enterprise Florida must contract with VISIT FLORIDA "to execute tourism promotion and marketing services, functions, and programs for the state." § 288.923(3), Fla. Stat.; SR 2350 (Legis. Complaint, ¶ 12); SR 2442 (Answer, ¶ 12); *see* §§ 288.122, 288.1201(1)(e), § 288.904(1), Fla. Stat.

Also by law, VISIT FLORIDA administers for Enterprise Florida the funds in the Tourism Promotional Trust Fund, and VISIT FLORIDA annually receives tens of millions in taxpayer dollars ($74 million in 2016) to conduct tourism marketing for the State of Florida and "attract people from anywhere outside Florida." R 2100; SR 2350–51 (Legis. Complaint, ¶ 12); SR 2442 (Answer, ¶ 12). VISIT FLORIDA's mission is to "[t]ake this money and draw people that are going to stay longer and spend more." R 2077, 2100–01. It is "The Official Tourism Marketing Corporation for the State of Florida." SR 2368 (bottom of the VISIT FLORIDA letterhead).

Paul Phipps served as VISIT FLORIDA's chief marketing officer from March 2013 to December 2016, when he was told the Governor's Office had eliminated his position. R 2076, 2095. He has over 30 years of marketing and contracting

experience, much of it in professional sports. R 2076–77. As VISIT FLORIDA's chief marketing officer, Mr. Phipps was "the deal guy." R 2103.

The *Emeril's Florida* Contracts.

According to Mr. Phipps, "culinary" is "one of the top three reasons people travel." R 2081. And Emeril Lagasse is an "influencer," an "iconic" chef who is one of the "top-ten celebrities in the United States as valued by Nielsen." R 2081, 2135–36, 2137. His authenticity, according to Mr. Phipps, came from being a Florida resident and a respected chef. R 2136–37. VISIT FLORIDA "never pursued anyone else because there wasn't anybody else that fit that criteria for us." R 2137. Emeril was "invaluable" to VISIT FLORIDA, and it "sole sourc[ed]" the contracts to MAT Media because it could "deliver Emeril." R 2135, 2138.

Over the course of several years, MAT Media executed a series of public contracts with VISIT FLORIDA. SR 2352 (Legis. Complaint, ¶ 16); SR 2443 (Answer, ¶ 16); SR 2358–2430 (MAT Media-Visit Florida Contracts, attached as Exh. A to Legis. Complaint). Over the course of five seasons, VISIT FLORIDA agreed to pay in excess of $10 million in taxpayer money to MAT Media for production and delivery of original television programming hosted by Emeril Lagasse and featuring Florida locations and cuisine. R 2144; SR 2348, 2352–53 (Legis. Complaint, ¶¶ 2, 16, 18); SR 2441, 2443 (Answer, ¶¶ 2, 16, 18); SR 2358–2430 (Exh. A to Legis. Complaint). Mr. Roberts signed the contracts on behalf of

MAT Media, was primarily responsible for MAT Media's performance under the contracts, and financially benefitted from those contracts. SR 2352 (Legis. Complaint, ¶ 16); SR 2443 (Answer, ¶ 16).

Under these *Emeril's Florida* contracts, MAT Media stood to enjoy multiple sources of taxpayer money. MAT Media's public dollar compensation would come not just from VISIT FLORIDA but also from local taxpayer-funded convention and visitor bureaus ("CVBs") and tourism development councils ("TDCs"). R 2114; SR 2352–53 (Legis. Complaint, ¶ 18); SR 2443 (Answer, ¶ 18). MAT Media also would be paid out public funds from the Florida Restaurant and Lodging Association ("FRLA"). R 2114–15. On top of this public compensation, MAT Media retained the right to sell sponsorships, or advertising, for the programming, and revenue from those sales went directly to MAT Media to keep. R 2143, 2144–45, 2148–49; SR 2352–53 (Legis. Complaint, ¶ 18); SR 2443 (Answer, ¶ 18).

Still, despite the millions in taxpayer dollars paid to MAT Media for *Emeril's Florida*, VISIT FLORIDA did not own the product it paid for; MAT Media retained ownership. R 2129–2130, 2131. MAT Media thus could resell the product to others for additional compensation. R 2130, 2131–32. And VISIT FLORIDA itself would have to pay MAT Media even more money if it wanted to use the product again in the future. R 2085–86, 2129–2130, 2132; *see* SR 2361, 2383, 2386, 2403, 2406, 2415, 2418. Indeed, when Mr. Roberts asked if MAT Media could syndicate the

programming, Mr. Phipps said he "didn't care." R 2108. As Mr. Phipps saw it, "[I]t was a media content development play for us. It wasn't . . . our show. We bought into the show." R 2149.

Mr. Phipps's first involvement with the *Emeril's Florida* contract with MAT Media was in 2013, when he negotiated a renewal for the third (or 2014–15) season. R 2103, 2104–05, 2109, 2120; *see* SR 2382–2391.[1] Friends since 2009, Messrs. Phipps and Roberts negotiated directly with each other over the "deal points" for that season. R 2103–04, 2104–05, 2116. Those discussions were "just verbal," which, according to Mr. Phipps, "was typical of these type of relationships where you would go back and forth." R 2155.

The Season Three contract the friends negotiated nearly doubled the compensation that VISIT FLORIDA previously had paid to MAT Media: to $3,400,000, which ostensibly incorporated the matched sponsorship funds coming from the taxpayer-funded TDCs and CVBs. SR 2383–84, 2391. With this contract, VISIT FLORIDA also started funneling taxpayer dollars from FRLA to MAT Media. R 2152–54.

VISIT FLORIDA soon thereafter decided it wanted to add Food Network airings, so "MAT Media then went and negotiated, came back and said, okay, we

[1] VISIT FLORIDA had signed *Emeril's Florida* contracts for the first two seasons prior to Mr. Phipps starting at VISIT FLORIDA as its chief marketing officer. R 2076, 2083, 2103, 2109–2110.

can do the third and fourth quarter on the Food Network with airs and reairs." R 2150. VISIT FLORIDA "turned around and paid MAT Media even more." R 2150. These increased payments—hundreds of thousands of dollars[2]—were based merely on Mr. Roberts's word about what it would cost, without further scrutiny by VISIT FLORIDA: "MAT Media came back to us and said this is . . . what it's going to cost to clear the Food Network, do you want to do it. And we looked at it and said, yeah, let's do it." R 2150–2151. In other words, VISIT FLORIDA and Mr. Phipps did not ask for any breakdown of the costs for adding the Food Network. According to Mr. Phipps, Mr. Roberts "said this is – you're the guys that want this. I went and negotiated this. [VISIT FLORIDA] felt it was a good value for the Food Network . . . and we said, fine, you know, we'll do that." R 2151. Mr. Phipps simply based this assessment of price on his "30-some years experience at this." R 2151.

At Mr. Roberts's behest, the two parties also added a provision that called for a kickback to VISIT FLORIDA of any of the approved $555,742 "tax rebate or incentives for the production and airing of Emeril's Florida Season 3" that MAT Media actually receives. SR 2393; *see also* R 2145–47. VISIT FLORIDA and MAT

[2] VISIT FLORIDA twice agreed to pay more to re-air the programming that already had been produced and aired on the Cooking Channel—initially, $200,000 in compensation to MAT Media; and later, another $300,000 for more re-airing of the episodes on the Food Network. SR 2393, 2398, 2395–97, 2400–01; *see also* R 2150–51.

Media would use *Emeril's Florida*—already necessarily shot in Florida and fully financed with public funds—to obtain tax rebate credits from the Office of Film and Entertainment's incentive program designed to encourage filming in Florida. R 2145–46. These rebates were "taxpayer dollars in reverse," and the arrangement was that MAT Media would apply for them, and the money would go to VISIT FLORIDA. R 2146.[3] MAT Media ultimately was awarded $394,036 in tax credits for Season Two and $475,687 in tax credits for Season Three of *Emeril's Florida*. R 1034–1050.[4]

VISIT FLORIDA and MAT Media subsequently signed contracts for two more seasons, at $2,200,000 to MAT Media per season for 13 original episodes in each of Seasons Four and Five . SR 2402–2411; SR 2414–2423. The parties added into the Season Four contract a requirement that VISIT FLORIDA pay MAT Media

[3] The purpose of the "entertainment industry financial incentive program," created within the Office of Film and Entertainment (a part of DEO), "is to encourage the use of this state as a site for filming, for the digital production of films, and to develop and sustain the workforce and infrastructure for film, digital media, and entertainment production." § 288.1254(2), Fla. Stat. (2014); *cf.* § 288.1254(1)(i), Fla. Stat. (2014) (defining "qualified expenditures" as those incurred in Florida "by a qualified production").

[4] The contracts for Seasons Four and Five allowed MAT Media to retain the right to keep all sponsorship and advertising revenue that it sold and all "tax credits/incentives" it received in connection with the programming for each season, up to an additional $1.2 million. SR 2403–04; SR 2415–16; *see also* R 2146–47. MAT Media would split with VISIT FLORIDA revenue it received above that threshold. SR 2403–04; SR 2415–16.

an additional $570,000 from advertising sold by VISIT FLORIDA for the Season Four programming. SR 2412. The parties amended the Season Five contract to increase MAT Media's compensation to $2,450,000, which included an additional $250,000 paid to MAT Media for advertising rights during that season. SR 2425.

How VISIT FLORIDA Assessed Costs and Value on the Sole Sourced Contracts with MAT Media.

Generally speaking, Mr. Phipps would review compensation under VISIT FLORIDA's contracts for reasonableness, but he had difficulty in doing that with the *Emeril's Florida* contracts because, even though the price might seem high, he needed "to look at it through a lens over the next five, six, seven years, what does that do for you." R 2107–08. VISIT FLORIDA was seeking "to get away from what's called a long format to really–they're called snackables. Really small segments that we could still build into a long format so if he wanted to syndicate he could." R 2129. Although "it was a little bit of a game . . . at the end of the day we felt we got fair value for what we contracted from them." R 2129.

Because Mr. Phipps and VISIT FLORIDA wanted to transition to a different type of product, Mr. Phipps just "knew through [his] experience that that was going to have an incremental cost to him because [he has] experience at it. 35 years of it." R 2118, 2126. The new contract negotiated between Mr. Phipps and his friend Mr. Roberts resulted in higher compensation for MAT Media from a variety of taxpayer-funded sources. R 2114–15. That was not necessarily a concern for Mr. Phipps. He

explained: "I didn't want to pay more, I just wanted . . . the product the way I wanted it," but "that would increase, in some cases, MAT Media's cost in doing that." R 2111, 2112. Mr. Phipps, though, did not inquire as to what those actual costs would be. R 2127–28.[5]

Ultimately, Mr. Phipps's reasonableness assessment of MAT Media's quoted pricing was subjective. He looked at the "assets that were being delivered and the way that we could disperse and use those assets to market the state." R 2120–21. Mr. Phipps made his own assessment, and he did "[n]ot necessarily" assess the costs of a vendor like MAT Media to determine whether a price is fair. R 2116. How did he value those assets? By assessing "*what's this really worth to me* in the long term if I have this. . . . I've got understanding of products in Florida that's important that has a longevity to me." R 2121 (emphasis supplied).

He determined whether his friend Mr. Roberts was quoting him too high a price for programming with Emeril "just based on experience. Based on what you would typically pay. At the same time, remember we have content being done by National Geographic . . . by Expedia . . . by Facebook, by Google . . . We had other things we were doing so we could make a value judgment." R 2139. Mr. Phipps

[5] According to Mr. Phipps, *prior to the first show being produced*, VISIT FLORIDA obtained an independent analysis of what the return on investment for the programming would be. R 2159–2160. However, Mr. Phipps never saw that analysis and did not use it in making his own value assessment. R 2161.

was just generally aware that the demands would drive up the costs (without determining what the actual costs ended up being): "I have knowledge of it. So when [Mr. Roberts] said, well, [] this going to drive my cost up . . . I understood what he was saying. . . . I understood because I had 30 years of experience at it." R 2128–29. It was this way for each of the contracts Mr. Phipps negotiated with Mr. Roberts. R 2132, 2133–34.

The absence of any hard financial data showing actual costs for any particular season sufficed as Mr. Phipps negotiated the payment of more taxpayer funds to his friend's company for each subsequent contract. R 2132, 2133–34. "If you don't understand the business, it's hard to explain." R 2127. There was "back and forth" between Mr. Phipps and Mr. Roberts over what could be delivered "within the dollars that he had [] in the contract," but there was no discussion about what MAT Media's costs were for the previous season. R 2127–28. "With MAT Media, they provided me an opportunity for something and it's a value proposition. We looked at it. . . . we felt that that was a good product for us and we did the contract. I never once wondered . . . how much he's making, because I didn't do that with others." R 2117.

To be sure, it was not just Mr. Phipps making that determination; VISIT FLORIDA "had brand managers that were involved in it. We had our marketing operations. We had our contract department. We had our CFO." R 2121. When

Mr. Roberts sent "over a draft of what he felt would be a new year"—a new season—all of these individuals "had inputs" and were involved in reviewing the proposal. R 2122. They simply "felt the value was way in excess of what we were paying. To us, that's why we did it." R 2118–19. Mr. Phipps approached contracts as wanting certain content and wanting "to pay a certain amount for it," but did not wonder how much the vendor was making off of the deal. R 2116–17.

At bottom, though, when considering the price to pay MAT Media on each of the *Emeril's Florida* contracts, it was this small group at VISIT FLORIDA "looking at the assets that were delivered and as marketers, which in any given meeting . . . we would have over a hundred years of experience, decided that that was fair market value for it." R 2125; *see also* R 2133–34. "So it really is just a group of individuals in the industry that just look at it and decide, yeah, that looks like a fair price." R 2125, 2134. "We looked at that and said what's the value of that to us. Well, it's – the value of it is the long-term benefit we get in affecting the attitudes and the consideration of Florida with consumers." R 2143.

The House's Investigation.

The House Public Integrity and Ethics Committee ("PIE Committee") is a duly constituted standing committee of the Florida House. SR 2349–2350 (Legis. Complaint, ¶ 8); SR 2442 (Answer, ¶ 8). The PIE Committee has jurisdiction to exercise oversight in matters referred to it by the Speaker, and the Speaker referred

to the committee the public contracts between MAT Media and VISIT FLORIDA for investigatory oversight and to determine how those contracts are valued and how public dollars are used to implement those contracts. SR 2349–2350 (Legis. Complaint, ¶ 8); SR 2442 (Answer, ¶ 8).

The PIE Committee began "investigating certain Visit Florida television production contracts to discover the integrity of such contracts and the quality of their procurement." R 114, 1593. This purpose appeared in the House Journal. *Fla. H.R. Jour.* 297 (Reg. Sess. 2018). The committee was looking for how MAT Media developed the prices it quoted to and negotiated with VISIT FLORIDA. R 98. Along the same lines, the committee also was considering (and ultimately advanced) a bill to establish a "Florida Accountability Office" to investigate "waste, fraud, abuse, gross mismanagement, and related misconduct in government." R 1599; *see also* R 1100–1198. The bill would have required, for public contracts in excess of $50,000, that the proposed contractor include a good faith estimate of gross profit to be earned under the contract and that the agency make a written determination that such estimates of gross profits were not excessive if they exceeded 15 percent of total receipts for the year. R 1622–24, 1634.

As part of the PIE Committee's investigation, it unanimously approved issuance of subpoenas duces tecum to MAT Media and Mr. Roberts to get records related to their performance under the public contracts between MAT Media and

VISIT FLORIDA. SR 2353–54 (Legis. Complaint, ¶ 20); SR 2444 (Answer, ¶ 20).[6] The subpoenas sought MAT Media's contracts with Scripps, the Cooking Channel, the Food Network, Martha Stewart Living Omnimedia, and Emeril and his business entities regarding the production of *Emeril's Florida*. R 1581–86. They also sought MAT Media's contracts with the CVBs, TDCs, VISIT FLORIDA's strategic partners, and other entities relating to advertising and sponsorships for the *Emeril's Florida* programming. R 1581–86. In addition, the subpoenas called for MAT Media's documents relating to rebates and incentives it had received from the Florida Office of Film and Entertainment in conjunction with the *Emeril's Florida* programming. R 1581–86.

Finally, the subpoenas asked for records and other documents, including MAT Media's journals and ledgers, that reflected all of MAT Media's expenses incurred in the production and airing of *Emeril's Florida*. R 1581–86. In all five of its season contracts with VISIT FLORIDA, MAT Media agreed "to maintain journals, ledgers, books and other records in good order and in sufficient detail to allow audit and post-audit activities." R 1419, 1437, 1444, 1464, 1476. So the House's request for the

[6] The Speaker approved those subpoenas, and the PIE Committee's chairman signed and issued the subpoenas, service of which MAT Media and Mr. Roberts agreed to accept. SR 2354 (Legis. Complaint, ¶¶ 20–21); SR 2444 (Answer, ¶¶ 20–21). The House later voted identical subpoenas to MAT Media and Mr. Roberts off the floor. R 1588–1591; *see also* R 94–97, 114–119, 2229. MAT Media and Mr. Roberts submitted their responses and objections to the House on January 16, 2018. R 269–405, 917–1050, 2229–2230.

last of these records matched what MAT Media was already maintaining for review and audit. The trial court's refusal to enforce the request is what led to this appeal.

MAT Media's Financial Records.

MAT Media has its own set of financial records. R 2166. It is these records that are at the heart of this litigation. Meanwhile, Mr. Roberts's records are completely separate from MAT Media's. R 2166. As such, anyone reviewing MAT Media's records would be unable to see Mr. Roberts's personal information. R 2166–67. Mr. Roberts's personal information is *not* at issue in this litigation.

Keith Jordan, the bookkeeper for both Mr. Roberts and MAT Media, would make deposits and issue checks on behalf of MAT Media to pay vendor invoices that came in. R 2165–66. There is a hard copy of every invoice paid, along with the check stub, and these records are kept in Mr. Roberts's office. R 2173–74.

Mr. Jordan inputs these outgoing expenses into the MAT Media "checkbook" in QuickBooks, a financial software used for accounting. R 2166, 2168. The software produces a searchable Excel spreadsheet database. R 2168, 2185. The software allows someone to search the database for certain terms, or certain expenses, during a particular date range. R 2168.

For a vendor invoice, Mr. Jordan inputs into the software the vendor name, the invoice number, and the expense type, and the software produces a digital check. R 2168–69. Expense types include production, office, postage, and travel. R 2169–

2170. That information goes into the QuickBooks spreadsheet database, so any information recorded to produce the check to a vendor can be searched. R 2169. For example, one could search for all of the payments that went to a particular vendor or for a type of expense or during a date range. R 2169. It would take minutes to print out a category of MAT Media's expenses, limited by date range. R 2180–81.

For the third and fourth seasons of *Emeril's Florida*, Mr. Jordan classified the expenses for that program by entering into a separate field the season number. R 2170, 2172. He did it only for *Emeril's Florida*, so one could run a financial statement for MAT Media's *Emeril's Florida* expenses by inputting "season three" or "season four." R 2172–73. Still, Mr. Jordan did not mark every expense in those seasons as related to *Emeril's Florida*, so that financial statement would not necessarily include all expenses for the season. R 2182–83. To identify every expense associated with *Emeril's Florida* in MAT Media's ledger, one still would need to go line by line, and cross-references invoices from that production, just as one would have to do for the first two seasons. R 2182, 2183.

Mr. Jordan also helped Mr. Roberts prepare MAT Media's tax rebate applications. R 2174. The application is based on a projection of future costs, so he provided Mr. Roberts a profit-loss statement showing all of MAT Media's costs for all of its operations for the prior year, "broken out by categories." R 2174, 2177. Mr. Roberts then "would go and figure out how much more or less it would be in

certain areas" of costs for the *Emeril's Florida* production, and Mr. Roberts would provide the information about estimated costs to be inputted into the application. R 2174–75, 2177. For example, MAT Media's application for a tax rebate for Season Two was based on a projection using Season One's expenses, prior to Season Two's production occurring. R 2183–84. An example of the cost information provided by MAT Media to DEO to get its application approved was in the documents ultimately provided to the House. R 1535, 1536, 1540–41, 1558, 1559, 1575–76. MAT Media acknowledged that this information would remain confidential for only a fixed period of time. R 1542; *see* § 288.075(6), Fla. Stat. (confidentiality, for a limited period of time, of certain information submitted as part of economic incentive program). After the production occurred, MAT Media's certified public accountant submitted an audit of all MAT Media's expenses for the production to the Film Office at DEO, and DEO would give final approval for the tax credits based on that audit. R 2184–85.

Course of Proceedings and Disposition in Trial Court

This appeal involves two suits over the House subpoenas to MAT Media and Mr. Roberts: One filed by MAT Media and Mr. Roberts against the PIE Committee's members and the Speaker (Case No. 2017-CA-2284); and one filed by the Speaker—on behalf of the PIE Committee—against MAT Media and Mr. Roberts (Case No. 2017-CA-2368).

Case No. 2017-CA-2284: MAT Media and Mr. Roberts Sue the House.

MAT Media and Mr. Roberts filed suit first. R 16–36 (Complaint); *see also* R 90–253 (Am. Complaint). The complaint named as defendants each of the members of the House Public Integrity and Ethics Committee plus the Speaker of the House. R 16–17. The suit asserted that the committee's subpoenas exceeded the scope of an appropriate legislative investigation and invaded Mr. Roberts's right to privacy. R 24, 26, 28 (Complaint, ¶¶ 28, 44–45); R 29. They also sought protection for what they claimed was trade secret information contained within any documents produced in response to the subpoenas. R 25 (Complaint, ¶¶ 34–35); R 29.

The House defendants challenged the trial court's jurisdiction to consider the complaint. R 39–50. The House defendants noted the broad constitutional authority of the House and its committees to conduct investigations (including the issuance of subpoenas) in aid of the exercise of legislative power. R 40–42. They in turn argued that the Florida Constitution's mandated separation of powers precluded the trial court from doing any more than facially reviewing the subpoenas to ensure that they fit within the broad scope of legislative inquiry. R 43–49. The MAT Media contracts with VISIT FLORIDA involved public expenditures and public procurement—control of which are core legislative functions—so, according to the motion, the committee subpoenas on their face were within the bounds of legislative power and inquiry. R 43–45.

MAT Media and Mr. Roberts then filed an amended complaint to add alleged facts and relief relating to the issuance of the House floor subpoenas. R 89–253. The House defendants once again filed a motion to dismiss that challenged the trial court's subject matter jurisdiction to quash legislative subpoenas. R 1268–1273.

Case No. 2017-CA-2368: The Speaker Sues MAT Media and Mr. Roberts.

The Speaker of the House separately sued MAT Media and Mr. Roberts on behalf of the PIE Committee. SR 2347–2437. The Speaker sought a court order compelling compliance with the committee subpoenas pursuant to Article III, section 5, of the Florida Constitution and section 11.143(4)(b), *Florida Statutes*. The premise of the complaint was as follows:

> The House continues to investigate, among other things, the use of public funds for tourism marketing. In particular, the House, through PIEC, seeks information about the implementation of tourism marketing contracts like the ones VISIT FLORIDA had with MAT Media and Mr. Roberts. These contracts typically obligate the expenditure of public funds in lump sums for certain deliverables but fail to reveal the vendors' expenses and side obligations and benefits in connection with their performance under the contracts. The House continues to consider development of policy changes to inject more transparency and accountability into the process.

SR 2348 (Legis. Complaint, ¶ 3).

The complaint asked the trial court to direct MAT Media and Mr. Roberts to "produce all the records in their possession that have been demanded in the attached subpoenas." SR 2355. MAT Media and Mr. Roberts answered. SR 2441–2455.

The Speaker moved for judgment on the pleadings. SR 2456–2469. The motion observed that MAT Media and Mr. Roberts had not disputed any facts material to the suit, and all but one paragraph of the subpoenas made "a specific reference to a particular aspect of the VISIT FLORIDA-Emeril's Florida contracts through which MAT Media received millions in taxpayer dollars." SR 2456–2458. Those facts plus a facial review of the subpoenas demonstrated the PIE Committee's legal entitlement to judicial enforcement of its subpoenas. SR 2456–2457.

The trial court then consolidated the case with the suit filed by MAT Media and Mr. Roberts. R 254–255; SR 2533–2534.

Proceedings on the Consolidated Cases.

MAT Media and Mr. Roberts claimed that all of the subpoenaed documents were trade secrets. R 61. They also claimed that the subpoenas invaded Mr. Roberts's right to privacy. R 65. In turn, they asked the trial court to conduct an *in camera* review to determine whether their responsive documents were subject to protection based on these claims. R 65.

Later, MAT Media and Mr. Roberts submitted their response to the House's subpoenas. R 269–405; R 917-1099; R 2229–2230. They indicated that there were no contracts or other documents responsive to paragraphs 6, 7, 8, 12, 13, and 15 of the subpoenas. R 921–22. MAT Media did not have its own tax return, so there was nothing responsive to paragraph 19 of its subpoena. R 280; R 2250.

MAT Media and Mr. Roberts also produced contracts and other documents responsive to paragraphs 9 and 11. R 922–23; R 926–1050. They originally claimed trade secret protection for the documents described in paragraph 10 (*i.e.*, contracts MAT Media had with the Florida Office of Film and Entertainment regarding *Emeril's Florida*), but they later produced those documents after the Office of Film and Entertainment released those documents. R 277–78; R 1051–1099; R 2249–2250. MAT Media and Mr. Roberts objected to producing documents responsive to paragraph 17 (*i.e.*, documents showing MAT Media's performance under its contracts with Visit Florida) because the House could obtain the documents directly from Visit Florida. R 279.

MAT Media withheld documents responsive to paragraphs 1, 2, 3, 4, 5, and 14 (*i.e.*, contracts between MAT Media, on the one hand, and Scripps, Cooking Channel, Food Network, and/or Martha Stewart Living Omnimedia, on the other, regarding production of *Emeril's Florida*) until the trial court could conduct an *in camera* review for trade secrets and enter a protective order. R 275–76, 278; R 2247–48. MAT Media submitted to the trial court these withheld documents for that review. R 2247–49, 2251. The House maintained that confidential or trade secret documents were still subject to production in response to the subpoenas. R 2221. The House explained that it would abide by the trial court's determination

that any of the subpoenaed records were trade secret and would keep them confidential while in the House's custody. R 2222–23; R 2248–49.

At the same time, MAT Media and Mr. Roberts simply refused to produce documents described by paragraph 18 in both subpoenas and those described by paragraphs 19 and 20 in the subpoena to Mr. Roberts. R 279–280; R 2250–51. They claimed that production of these documents would reveal MAT Media's trade secrets and invade Mr. Roberts's right to privacy. R 279–280; R 2250–51; 2298–2300. Mr. Roberts ostensibly premised his privacy claim regarding MAT Media records on his contention that he and the entity were the same: "Those documents are Mr. Roberts' personal checkbook. . . . MAT Media, LLC, is a single member LLC. It doesn't have a separate entity. It's basically Mr. Roberts is it. He is it. It is he." R 2250. As it turns out, though, MAT Media's ledger and financial documents were in fact separate. R 2166–67.

Following a hearing on January 30, 2018, the trial court ordered MAT Media to produce the Scripps, Martha Stewart Omnimedia, and Emeril contracts (responsive to paragraphs 1–5 and 14) that MAT Media had claimed were trade secrets, but the order made no mention of pertinence. R 1214. It also ordered the House Litigants to "maintain the confidentiality of the 'trade secret agreements' and their contents." R 1214; *see also* R 1956. In other words, there was to "be no

disclosure of the documents or information contained therein by the House Litigants without further order." R 1214.

Because MAT Media and Mr. Roberts had not submitted, for *in camera* review, the financial records sought by paragraphs 18 and 19 of the House subpoenas, the trial court determined it had "no basis to exclude the records from being produced to the House Litigants." R 1215. Again, without any mention about relevance, the trial court stated that unless MAT Media and Mr. Roberts submitted those records with a privilege log for *in camera* review, they had to be produced to the House "without judicial review, subject to the confidentiality provisions specified for the trade secret agreements." R 1216. The order also denied the House's motion for judgment on the pleadings. R 1216.

MAT Media and Mr. Roberts then asked that the trial court reconsider its order regarding documents responsive to paragraphs 18 and 19 and allow them to submit those documents "for an *in camera* inspection." R 1220. At a February 7, 2018, hearing on the motion to reconsider, R 1232, MAT Media and Mr. Roberts argued that they needed "more time within which to prepare a redacted copy . . . [to] take out those things that are nonresponsive to the subpoena," but that the trial court first should determine whether the House subpoenas were lawful in the first place, R 2296, 2297. MAT Media claimed that its ledger contained "confidential business information" that was "beyond the scope of the Legislature's power to investigate

this matter." R 2298. Both MAT Media and Mr. Roberts claimed that paragraphs 18 and 19 of the subpoenas invaded their "privacy interests." R 2299. They challenged the "lawfulness" of the House's subpoenas to the extent they sought those records. R 2300, 2304, 2307.

The House clarified that it was not seeking Mr. Roberts's personal tax returns. R 2072–75. At that point, the only portions of the House's subpoenas still at issue were those seeking MAT Media's journals, ledgers, and other records showing its expenses related to the production and airing of *Emeril's Florida* under its contracts with Visit Florida for the years 2012–2017. SR 2432–37 (¶¶ 16 and 18 in each subpoena); R 2072–75; R 2250–51; R 2304, 2307.[7] So the trial court instructed counsel for MAT Media and Mr. Roberts to have the documents responsive to paragraphs 18 and 19 of the subpoenas (i.e., MAT Media's ledger) available for the trial court to "go through the in-camera review . . . as part of the" evidentiary hearing. R 2327–28.

The evidentiary hearing ensued on February 9, 2018. R 1248–1250, 2065. Mr. Phipps and Mr. Jordan testified. R 2060. As set out in detail above, Mr. Phipps

[7] The trial court and counsel for MAT Media and Mr. Roberts identified paragraphs 18 and 19 as the only ones remaining in dispute. This was an oversight that House counsel did not correct. Nonetheless, the records sought by paragraph 16—receipts, invoices, hard copies showing expenses—are the backup for the financial information sought in paragraph 18, and presumably would be included in "records" requested in paragraph 18.

testified that he determined whether MAT Media's asking price was reasonable based on his own experience and not based on any understanding of MAT Media's actual costs. *See supra*, pp. 10–13. Mr. Jordan testified that MAT Media's financial records were completely separate from Mr. Roberts's, so one could access and review MAT Media's records without seeing any of Mr. Roberts's personal financial information. *See supra*, pp. 16–18. Mr. Jordan also testified that Mr. Roberts had possession of hard copies of the invoices reflecting MAT Media's expenses for its various projects.

The trial court quashed and refused to enforce the outstanding portions of the subpoena. R 1952, 1995–96. It conducted an *in camera* review of the MAT Media ledger sought by the House's subpoenas[8] and concluded they contained "nothing appropriately pertinent to 'the integrity' of the Visit Florida contracts or the 'quality' of the procurement programs." R 1988.

According to the trial court, "[t]he items are simply not germane or pertinent to the investigation, nor does the House's investigation power outweigh the privacy protection of Mr. Roberts and his company's information." R 1988. To require production of the remaining MAT Media records would be a "governmental intrusion prohibited by Article I, section 23 [of the Florida Constitution], Florida's Right of Privacy." R 1988. The trial court rejected the House's argument that

[8] These documents are in the record under seal. R 1707–1950, 2206–07.

Article I, section 23, of the Florida Constitution expressly, by its own terms, applied only to natural persons, and relied instead on *Citizens United v. FEC*, 558 U.S. 310 (2010) for the proposition "that corporations have similar rights to those of individuals." R 1993–94.

This timely appeal followed. R 1998–2047.

SUMMARY OF THE ARGUMENT

VISIT FLORIDA paid over $10 million in taxpayer funds to MAT Media to do *Emeril's Florida*. But it did not inquire into MAT Media's costs associated with producing that programming. Instead, it relied on its own marketing team's experience to make subjective assessments of reasonableness. The contracts, though, required MAT Media to retain its financial records for later audit by VISIT FLORIDA.

The House now seeks these documents as part of its broad power to investigate the use of public funds and the value returned to the State on those expenditures. MAT Media's records appear to be the only source of what the project's costs actually were. In turn, MAT Media is the only source of information for the House to use to assess VISIT FLORIDA's claim that it received multiples of value off the millions it paid to MAT Media.

The House requests that remain at issue are specifically directed to records containing the type of information already provided to the State and relating directly

to taxpayer funded contracts. The House's subpoenas are not far-reaching, sweeping, omnibus, or invasive. The records have already been identified, they are in the possession of MAT Media or Mr. Roberts, and they contain the type of information found in other documents produced the House or provided to the State. On their face, the House's subpoenas are well within both its investigatory authority and the bounds of permissible investigatory subpoenas.

Courts give much latitude to state attorneys and administrative agencies with respect to their investigatory subpoenas. Legislative subpoenas should not be treated any differently, and the trial court erred when it did. Quashing the House's subpoenas because it determined the records would not help with the House's investigation and because it questioned the House's motives, the trial court improperly substituted its judgment for that of the PIE Committee on how the legislative investigation should be conducted. In doing so, it improperly stepped into the legislative sphere.

The trial court also erred when it refused to enforce the House subpoenas because they purportedly violated MAT Media's privacy right, which corporations in fact do not possess. Moreover, MAT Media's involvement with the State in the production of *Emeril's Florida* and MAT Media's receipt of millions in taxpayer dollars obviates any constitutional challenge MAT Media otherwise would have to the subpoenas.

The trial court should have limited its *in camera* review to a determination of whether there were any trade secret documents within the MAT Media financial records. Those documents then could have been included in the trial court's prior order directing the production to the House of other trade secret documents of MAT Media. There being no constitutional impediment to enforcement of the subpoenas, the trial court should have directed production of the remainder of the responsive records.

ARGUMENT

AS PART OF ITS INVESTIGATION INTO THE RETURN ON INVESTMENT ON PUBLIC FUNDS SPENT FOR TOURISM MARKETING, THE HOUSE IS ENTITLED TO MAT MEDIA'S FINANCIAL RECORDS REFLECTING ITS EXPENSES INCURRED IN ITS TAXPAYER-FUNDED PRODUCTION OF FIVE SEASONS OF *EMERIL'S FLORIDA*.

The House's investigatory powers extend as far as the legislative power, which includes the power to make policy and appropriate state taxpayer dollars. Within this authority, the PIE Committee is investigating the return on VISIT FLORIDA's investment of tax dollars in the *Emeril's Florida* project. Doing so necessarily entails an inquiry into the pricing and valuation of the single-source marketing contracts with MAT Media.

The House subpoenas, on their face, fit within the scope of that stated legislative purpose and are not sweeping or omnibus in nature. MAT Media, a corporate entity, lacks the privacy right or other constitutional rights held by

individuals that could provide a basis to resist the subpoenas. The House subpoenas, then, are valid and judicially enforceable—regardless of the investigatory value a court might attach to the documents to be produced. And if there are trade secrets, then the trial court should have ordered their production under protection like it did with the other documents MAT Media claimed were trade secrets.

There are no disputed material facts here, so "the application of law to those facts is reviewed de novo." *Fortune v. Gulf Coast Tree Care Inc.*, 148 So. 3d 827, 828 (Fla. 1st DCA 2014); *see also Aills v. Boemi*, 29 So. 3d 1105, 1108 (Fla. 2010) ("Because this is a question of law arising from undisputed facts, the standard of review is de novo."); *Faller v. Faller*, 51 So. 3d 1235, 1236 (Fla. 2d DCA 2011) ("We review the trial court's application of law to undisputed facts de novo.").

A. The Legislature's Investigatory Powers Are Broad, and the PIE Committee's Inquiry into the Return on VISIT FLORIDA's Investment in the *Emeril's Florida* Programming Fit Squarely Within Those Powers.

All of the State's legislative power rests with the Legislature. *See* Art. III, § 1, Fla. Const. That plenary power includes the power to investigate and issue compulsory process like the subpoenas issued to the plaintiffs. *See* Art. III, § 5, Fla. Const. "This power [to investigate], deeply rooted in American and English institutions, is indeed co-extensive with the power to legislate." *Quinn v. United States*, 349 U.S. 155, 160 (1955).

The "power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function." *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927). "Implicit in the power to legislate is the authority to seek out and acquire needed information in the rightful exercise of that power." *Gibson v. Fla. Legislative Investigation Comm.*, 108 So. 2d 729, 737 (Fla. 1958). "The scope of the power of inquiry, in short, is *as penetrating and far-reaching* as the" constitutional power to enact and appropriate. *Barenblatt v. United States*, 360 U.S. 109, 111 (1959) (emphasis supplied). Indeed, an individual's private affairs are not off limits where the inquiry can be justified in terms of the legislative function and "the constitutional rights of witnesses will be respected." *Cf. Watkins v. United States*, 354 U.S. 178, 187–88 (1957); *see also Quinn*, 349 U.S. at 161 (noting limit on power to inquire into private affairs only when "unrelated to a valid legislative purpose").

"A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change." *McGrain*, 273 U.S. at 175. In other words, the Legislature needs broad access to do its work fully. So "where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it." *Id.* In turn, "[c]ompulsory process is a procedural incident to obtaining the information." *Gibson*, 108 So. 2d at 737.

The House's inquiry into VISIT FLORIDA's valuation of its contracts with MAT Media fits squarely within the scope of the legislative power to investigate. Public expenditures and the regulation of public procurement constitute core functions of the Legislature, as "[n]o money shall be drawn from the treasury except in pursuance of appropriation made by law." Art. VII, § 1(c), Fla. Const. The Legislature alone has the power to appropriate state funds. *See Graham v. Haridopolos*, 108 So. 3d 597, 604 (Fla. 2013); *Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 267 (Fla. 1991). "More importantly, only the legislature, as the voice of the people, may determine and weigh the multitude of needs and fiscal priorities of the State of Florida." *Chiles*, 589 So. 2d at 267.

The Legislature appropriates public funds to Enterprise Florida and its divisions, including the one that manages VISIT FLORIDA. *See* § 288.904(1)(a), Fla. Stat. (authorizing annual appropriations to Enterprise Florida, Inc. and each of its divisions); § 288.923, Fla. Stat. (creating Division of Tourism Marketing ("DTM") to contract with VISIT FLORIDA "to execute tourism promotion and marketing services, functions, and programs for the state"). As part of this exclusive exercise of its power, the Legislature also reviews Enterprise Florida's performance to determine "whether the public is receiving a positive return on its investment in Enterprise Florida and its divisions." § 288.904(4), Fla. Stat. Indeed, the legislative

power of inquiry contemplates efforts "to expose corruption, inefficiency or waste" in government. *Watkins*, 354 U.S. at 187.

The House, through its PIE Committee, chose to investigate how VISIT FLORIDA, under contract with the Enterprise Florida's DTM, handled the sole source *Emeril's Florida* contracts with MAT Media. The record evidence shows that VISIT FLORIDA valued the contracts based on its own staff's non-empirical assessments of future returns. VISIT FLORIDA did not consider the actual costs of producing *Emeril's Florida* programming as part of its assessment of what the return on investment was. But that information was available for the asking by VISIT FLORIDA because MAT Media had agreed in each season's contract "to maintain journals, ledgers, books and other records in good order and in sufficient detail to allow audit and post-audit activities." R 1419, 1437, 1444, 1464, 1476. The PIE Committee's subpoenas specifically request these same documents and backup information. R 1582 (Subpoena, ¶¶ 16–18) ("All journals, ledgers, books and records concerning the production and airing of Emeril's Florida for years 2012–2017," plus "documents reflecting all expenses" and "receipts, invoices, bills, subcontracts, and media placement agreements").

The PIE Committee needs access to these production costs, which are available only from MAT Media, to conduct an independent valuation of the return on VISIT FLORIDA's procurement of the *Emeril's Florida* programming through

MAT Media using taxpayer dollars. The committee's inquiry is within the scope of the legislative power to appropriate. And by their express terms, the subpoenas are pertinent to the stated purpose of that inquiry—VISIT FLORIDA's valuation of the production of *Emeril's Florida*. That this cost information may be private does not render it off limits, for the committee's request is tied to a legislative function. *Cf. Watkins*, 354 U.S. at 187; *see also Quinn*, 349 U.S. at 161 (noting limit on power to inquire into private affairs only when "unrelated to a valid legislative purpose").

B. The House Is Entitled to Judicial Enforcement of its Subpoenas Because They Facially Are Tied to a Proper House Investigation and Are Properly Tailored, and That Should Be the End of the Inquiry.

The trial court did not just review the face of the subpoenas to determine whether the documents sought had some nexus to the PIE Committee's announced investigation. Instead, before refusing to enforce the House's subpoenas, it conducted an *in camera* review of the *Emeril's Florida* cost information sought by the subpoenas and reached its own conclusion that nothing in the records would shed any light on the subject matter of the investigation. R 1987–88, 1990. In other words, it substituted its judgment for that of the House on the best way to conduct an investigation. This was error. Legislative investigations are entitled to the same deference that courts accord state attorneys and administrative agencies.

Section 11.143(3), Florida Statutes, effectuates the Legislature's constitutional and common law authority to investigate: "In order to carry out its

duties . . . [each committee], whenever required, may also compel by subpoena duces tecum the production of any books, letters, or other documentary evidence, *including any confidential information*, it desires to examine in reference to any matter before it." (emphasis supplied).

As discussed above, the PIE Committee's inquiry falls within the scope of legislative investigation. It is a standing committee of the House, established by resolution during the House's organization session. *See Fla. H.R. Jour.* 7, 12 (Org. Sess. 2016); House Rule 7.1(a)(7). So the committee had the authority to issue the subpoenas.

A legislative subpoena that is properly issued is in turn subject to enforcement by judicial order. Section 11.143(4)(b) provides this remedy for committees whose investigations may continue when the House is not in session:

> On the filing of such complaint, the court . . . shall direct the witness to respond to all lawful questions and to produce all documentary evidence in the possession of the witness which is lawfully demanded.

Because the legislative powers to investigate and issue subpoenas are broad, the judicial power to review the exercise of those powers must be limited. The Florida Constitution guards against encroachment by one branch of government onto the exclusive prerogative of another branch: "No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." Art. II, § 3, Fla. Const. This means "no branch may

encroach upon the powers of another." *Fla. Senate v. Fla. Pub. Employees Council 79, AFSCME*, 784 So. 2d 404, 408 (Fla. 2001) (quoting *Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 264 (Fla.1991)). This "'strict' separation of powers requirement . . . applies just as vigorously to the judicial branch as it does to the other two branches of government." *Citizens for Stronger Schools, Inc. v. Fla. State Bd. of Educ.*, 232 So.3d 1163, 1170 (Fla. 1st DCA 2017).

Just as the Legislature does not pass laws defining relevance for the courts, the courts should not pass judgment on what is pertinent to a House investigation. A facial review of the subpoenas should suffice. With that review, the trial court could determine whether the subpoenas fall within the broad scope of proper legislative inquiry. If "the legislative purpose is being served," then there is no further inquiry for the Court. *Hagaman v. Andrews*, 232 So. 2d 1, 8 (Fla. 1970); *see also Gibson*, 108 So. 2d at 737 ("Once a valid legislative objective is established then the power of inquiry with effective process to obtain it is an essential concomitant of the legislative authority to act.").

In other words, there was only one narrow question before the trial court: Whether the legislative subpoenas *on their face* exceeded the outer bounds of proper legislative inquiry. "The courts should not go beyond the narrow confines of determining that a committee's inquiry may fairly be deemed within its province."

Tenney v. Brandhove, 341 U.S. 367, 378 (1951) (requiring that a committee's overreach "be obvious" in scope).

The legislative subpoenas appear on their face to be within the outer bounds of legislative power, so the trial court's inquiry should have ended. *See Hagaman*, 232 So. 2d at 8 ("Unquestionably, the Committee has the power and the authority to issue a subpoena duces tecum for the production before it of any books, papers, documents and records germane to the subject of its investigation. There is no evidence before the Court on which we can ground a determination that the subpoena duces tecum was too broad or that the papers and documents [were not] pertinent to the subject of inquiry.").

Indeed, a legislative committee's intent behind its decision to issue subpoenas is part of the internal legislative process, "moving within its legislative domain," so inquiry into that intent or motives was beyond the jurisdiction of the trial court. *See Barenblatt*, 360 U.S. at 111; *see also United States v. Rumely*, 345 U.S. 41, 46 (1953) ("Experience admonishes us to tread warily in this domain" and "strongly counsel[s] abstention from adjudication unless no choice is left."). "Courts are not the place" to resolve controversies over motives behind legislative conduct. *Tenney*, 341 U.S. at 378; *see also AFSCME*, 784 So. 2d at 409 (noting that Florida courts "are without authority to review the internal workings of" the Legislature).

The breadth of the Legislature's investigatory authority resembles that of a state attorney to "summon witnesses from throughout the state . . . to testify before him or her as to any violation of the law upon which they may be interrogated." § 27.04, Fla. Stat. "[L]oosely referred to many times as a 'one-man grand jury' . . . [the state attorney] is the investigatory and accusatory arm of our judicial system of government." *Imparato v. Spicola*, 238 So. 2d 503, 506 (Fla. 2d DCA 1970); *see Collier v. Baker*, 20 So. 2d 652, 653 (Fla. 1945) (noting that state attorney "is a semijudicial officer" established by the Florida Constitution). She is "subject only to the limitations imposed . . . for the protection of individual rights and to safeguard against possible abuses of the farreaching powers so confided." *Imparato*, 238 So. 2d at 506.

As it does within its own branch, then, the courts should liberally construe the power to summon witnesses and gather documents when exercised by the other branches; otherwise, "the powers and duties . . . would be greatly circumscribed." *Collier*, 20 So. 2d at 653. Because "gathering information relevant to an initial inquiry" is "indispensable to the administration of justice," the courts grant the state attorney "reasonable latitude" so that she can "function effectively in that role." *Doe v. State*, 634 So. 2d 613, 615 (Fla. 1994) (internal quotation and citation omitted); *State v. Sievert*, 312 So. 2d 788, 791 (Fla. 2d DCA 1975) ("A State Attorney's power to investigate should not lightly be circumscribed by protective orders designed to

accommodate the conveniences of witnesses."); *id*. (observing that "the vigor of the State Attorney in the use of the processes of the court should be sustained in all instances except where the rights of others are impaired or denied").

Notably, the judiciary does not impose a materiality requirement on its own investigatory adjunct. *See Imparato*, 238 So. 2d at 507 (holding that like a grand jury, the state attorney officially "is immune from the requirement of showing materiality in compelling production of testimony and documentary evidence [he] desires"). This is so because "[a] requirement that the State establish the relevancy and materiality of the information it sought by way of an investigative subpoena would unreasonably impede the state attorney's ability to conduct investigations" and "obtain the information necessary to" do his job determining "whether criminal activity has occurred or is occurring." *State v. Investigation*, 802 So. 2d 1141, 1144 (Fla. 2d DCA 2001).

The trial court should have given the co-equal legislative branch this same level of deference, especially in light of the Florida Constitution's express recognition of the investigatory authority of legislative committees. *See* Art. III, § 5, Fla. Const. Behind a legislative subpoena is the broad power to get information. *Cf. Check 'n Go of Fla., Inc. v. State*, 790 So. 2d 454, 459 (Fla. 5th DCA 2001) (discussing administrative subpoena noting that breadth of agency's inquiry is "similar to that of a grand jury"). The purpose of the House's investigatory power

is to gather facts to determine whether policy changes are needed. As with the state attorney, this gathering of information is "indispensable" to the House's investigatory function. To require the House to explain in court how the documents that it seeks relate to the policy changes it might be considering, or to justify why certain documents might be pertinent (even when that might not be apparent to the court) would be to require the House to announce internal legislative thought processes before it has all of the facts. *Cf. Investigation*, 802 So. 2d at 1144 ("To require the State to prove that a crime occurred before it can issue an investigative subpoena puts the State in an impossible catch-22."). The courts typically avoid this intrusion into the province of another branch, and the trial court should have stopped short of looking behind the PIE Committee's subpoenas here.

The House subpoenas should have been subjected to only a facial review to determine whether their subject matter was confined to areas within the scope of legislative authority. *Cf. Morgan v. State*, 309 So. 2d 552, 553 (Fla. 2d DCA 1975) (noting that state attorney may issue summonses without identifying a particular criminal violation, but "the subject matter of [the] interrogation must be confined to violations of the criminal law"). In other words, the trial court needed only to assess whether the subpoenas were "limited in scope, relevant in purpose, and specific in directive." *Check 'n Go*, 790 So. 2d at 460 (internal quotation and citation omitted); *See v. City of Seattle*, 387 U.S. 541, 544 (1967) (noting settled law that "when an

administrative agency subpoenas corporate books or records, the Fourth Amendment requires that the subpoena be sufficiently limited in scope, relevant in purpose, and specific in directive *so that compliance will not be unreasonably burdensome*") (emphasis supplied).

Here, the PIE Committee possesses clear authority to issue subpoenas for documents related to public contracts. The investigation has a natural nexus to public business and the expenditure of taxpayer funds. On their face, the committee's subpoenas seek documents squarely within the committee's investigatory purview, that is, "relevant in purpose," and that should suffice. And the subpoenas are tailored to meet the scope of the PIE Committee's investigation—they expressly reference the public contracts the committee is investigating and identify documents that MAT Media agreed in those contracts to keep for audit. The House is entitled to have the remainder of its subpoenas enforced to the same extent that the courts enforce an investigatory subpoena from a state attorney or an administrative agency.

C. The House Is Entitled to Judicial Enforcement of Its Subpoenas Because No Constitutional Rights Are Implicated, and the Trial Court Easily Could Craft an Order that Protects Against Further Disclosure of Trade Secrets After the Documents Are Produced.

The trial court also based its refusal to enforce the subpoenas on its conclusion that they constituted an unconstitutional "governmental intrusion" into MAT Media's and Mr. Roberts's affairs. R 1988, 1993–94. This also was error.

To be sure, the House's investigatory power is not unlimited. "The Bill of Rights is applicable to investigations as to all forms of governmental action." *Watkins*, 354 U.S. at 188 (noting limits imposed by First, Fourth, and Fifth Amendments); *see also Quinn*, 349 U.S. at 161 (noting limitations on "power to investigate [] found in the specific individual guarantees of the Bill of Rights"); *cf. State v. Gibson*, 935 So. 2d 611, 613 (Fla. 3d DCA 2006) (noting "reasonable latitude" granted a state attorney, subject to "judicial limit . . . where constitutional constraints are implicated"). But the subpoenas do not implicate MAT Media's or Mr. Roberts's constitutional rights.[9]

As his bookkeeper testified, Mr. Roberts's personal financial records are completely separate from MAT Media's books. The House does not seek Mr. Roberts's personal records, so the subpoenas could not affect any right to privacy he may have in those records. He also has no personal rights in the business records of MAT Media. *Cf. State v. Wellington Precious Metals, Inc.*, 510 So. 2d 902, 904–905 (Fla. 1987) (explaining separation between an individual and corporation he owns and noting that "no individual has a privilege against self-incrimination in the contents of voluntarily created business records"); *see also Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 163 (2001) ("[T]he employee and the

[9] MAT Media and Mr. Roberts did not raise any First Amendment right as an issue, so there is no need to address that here.

corporation are different 'persons,' even where the employee is the corporation's sole owner."); *Braswell v. United States*, 487 U.S. 99, 110 (1988) (treating a records custodian's official action for the corporation as "an act of the corporation" rather than "a personal act").

The subpoenas likewise do not infringe on MAT Media's rights. First, contrary to the trial court's conclusion, MAT Media does not have a right to privacy. That right is limited to natural persons. *See* Art. I, § 23, Fla. Const. ("**Right of privacy.**—Every *natural person* has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein.") (emphasis supplied); *see also Alterra Healthcare Corp. v. Estate of Shelley*, 827 So. 2d 936, 941 (Fla. 2002) (noting that "constitutional right to privacy . . . is a personal one, inuring solely to individuals"); *Parnell v. St. Johns Cnty.*, 603 So. 2d 56, 57 (Fla. 5th DCA 1992) (noting that "right to privacy extends only to natural persons").

A corporation surely is not a natural person. *See Braswell v. United States*, 487 U.S. 99, 110 (1988) (acknowledging corporations as "artificial entities" that may "act only through their agents"); *Trustees of Dartmouth Coll. v. Woodward*, 17 U.S. 518, 636 (1819) ("A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law.") *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 163 (2001) ("The corporate owner/employee, a natural person, is

distinct from the corporation itself, a legally different entity with different rights and responsibilities due to its different legal status."). As a result, a corporation does not have a right to privacy. *See United States v. Morton Salt Co.*, 338 U.S. 632, 652–53 (1950) ("While they may and should have protection from unlawful demands made in the name of public investigation, corporations can claim no equality with individuals in the enjoyment of a right to privacy.") (internal citation omitted).[10]

More generally, because they are artificial creatures of law, corporations do not have constitutional protections to the same extent as natural persons. *Cf. Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 163 (2001) (explaining that incorporation "create[s] a distinct legal entity, with legal rights, obligations, powers, and privileges *different from* those of the natural individuals who created it, who own it, or whom it employs") (emphasis supplied); *Wilson v. United States*, 221 U.S. 361, 383–84 (1911) (making distinction between individual rights of a citizen and those of a corporation, which is "a creature of the state . . . incorporated for the benefit of the public"); *Morton Salt Co.*, 338 U.S. at 652 (explaining that

[10] Contrary to the trial court's suggestion, R 1993–94, *Citizens United* did not change this. *See Citizens United v. FEC*, 558 U.S. 310 (2010). Nowhere in that decision did the Supreme Court announce a legal conversion of a corporation to a natural person. Quite the opposite. *See id.* at 343 (rejecting "argument that political speech of corporations or other associations should be treated differently under the First Amendment simply because such associations are not natural persons") (internal quotations omitted); *see also id.* at 349 ("Political speech is indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation rather than an individual.") (internal quotations omitted).

corporations "are endowed with public attributes" and "derive the privilege of acting as artificial entities" such that they are subject to "an enhanced measure of regulation" and greater governmental scrutiny).

As such, corporations "have no fifth amendment rights." *Wellington*, 510 So. 2d at 904; *accord Federated Inst. for Patent & Trademark Registry v. State, Office of Atty. Gen.*, 979 So. 2d 1162, 1164 (Fla. 1st DCA 2008) (acknowledging case law holding that "corporations themselves of course possess no Fifth Amendment privilege") (citation, quotation, and brackets omitted).

Similarly, corporations lack the same rights possessed by natural persons under the Fourth Amendment. *See Essgee Co. of China v. United States*, 262 U.S. 151, 155 (1923) ("Such corporations do not enjoy the same immunity that individuals have, under the Fourth and Fifth Amendments, from being compelled by due and lawful process to produce them for examination by the state or Federal Government."); *State v. Showcase Products, Inc.*, 501 So. 2d 11, 13 (Fla. 4th DCA 1986) (noting limited nature of a corporation's Fourth Amendment rights); *G. M. Leasing Corp. v. U. S.*, 429 U.S. 338, 353 (1977) ("The Court, of course, has recognized that a business, by its special nature and voluntary existence, may open itself to intrusions that would not be permissible in a purely private context."); *Morton Salt Co.*, 338 U.S. at 652 (explaining that, with respect to the Fourth

Amendment, "neither incorporated nor unincorporated associations can plead an unqualified right to conduct their affairs in secret").

"Of course a governmental investigation into corporate matters may be of such a sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power. But it is sufficient if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant." *Morton Salt Co.*, 338 U.S. at 652; *cf. id.* (noting that "law-enforcing agencies have a legitimate right to satisfy themselves that corporate behavior is consistent with the law and the public interest" and may request information out of "nothing more than official curiosity").

The House subpoenas' requests for MAT Media's ledger and other documents reflecting its expenses on the *Emeril's Florida* project were not of a "sweeping" or "omnibus" or invasive nature that would implicate constitutional protections against "unreasonable" and "oppressive" subpoenas. *Imparato*, 238 So. 2d at 507, 509–511 (requiring that state attorney subpoenaed documents "be specifically described so that they may be identified and the information sought indicated"); *cf. Hagaman*, 232 So. 2d at 8 (holding that the legislative committee "unquestionably" had "the power and the authority" to subpoena records "germane to the subject of its investigation" and determining that subpoena was not "too broad" and sought documents that were pertinent to the inquiry).

MAT Media complied with other parts of the subpoena, including the paragraph requesting its contracts with outside vendors like Scripps, Omnimedia, and Emeril, once the trial court addressed MAT Media's trade secret concerns with a non-disclosure order. There is hardly any daylight between that ostensibly trade secret information and MAT Media's journals, ledgers, books, and other information reflecting its costs to produce the *Emeril's Florida* programming. In other words, MAT Media did not intend to keep its *Emeril's Florida* financial information completely private. For all five seasons, MAT Media agreed to make available for audit its financial records relating to that production. And MAT Media willingly provided similar—if not identical—information to the Department of Economic Opportunity in order to obtain sales tax rebates. And the records are readily identifiable and easily obtainable.

Moreover, the subpoenas were not part of a "witch hunt." *See Hagaman*, 232 So. 2d at 7–8 (noting that Legislature cannot "engage upon unwarranted witch hunts"); *Gibson v. Fla. Legislative Investigation Comm.*, 108 So. 2d at 737 (warning that legislative power of inquiry "should never be sadistically employed as a media [sic] to 'hunt witches"). A stated legislative purpose for an investigation prompting the subpoenas is enough to ward off such concerns. *Cf. Hagaman*, 232 So. 2d at 8 (noting that purpose of investigation "clearly stated"); *Gibson*, 108 So. 2d at 737 (finding that a public explanation of the reasons for and subject of the inquiry was

enough to inform the witnesses and ensure there was no abuse of power or effort to "embarrass . . . merely for the sake of arbitrary disclosure").

The PIE Committee published the purpose of its investigation. *See Fla. H.R. Jour.* 297 (Reg. Sess. 2018); R 1593 (PIE Committee Report on Investigation). It held a public hearing to discuss the nature of the investigation and the reasons for the subpoenas it was about to issue. *See* R 92–93 (Am. Complaint, ¶¶ 12–16); SR 2353–54 (Legis. Complaint, ¶ 20); SR 2444 (Answer, ¶ 20). And, as in *Gibson*, counsel publicly explained to the PIE Committee: "[S]ubpoenas are really [a] matter of course. . . . [T]hey happen all the time. . . . [I]t's not a negative." R 92; *see Gibson*, 108 So. 2d at 737 (highlighting that the legislative committee's counsel "publicly announced that no inferences adverse to any of the witnesses should be drawn merely from the fact that they were subpoenaed").

What's more, MAT Media accepted millions of dollars of taxpayer funds from various publicly funded entities and agreed to be part of the State's very-public tourism marketing campaign. In this respect, MAT Media has an even greater connection to the State than The Governor's Club did in the *Hagaman* case. *See Hagaman v. Andrews*, 232 So. 2d 1 (Fla. 1970). There the Supreme Court approved enforcement of a House committee subpoena to the bank of The Governor's Club, a private association that did not do any official business with the State. The subpoena required production of "records of deposits and

disbursements of money by" the club. *Id.* at 3. The Supreme Court approved this inquiry into a private organization's "sources of revenue and its expenditures of that revenue." *Hagaman*, 232 So. 2d at 7. According to the court, even though the club did not engage in official business with the State, the club was not so private as to be "beyond the scope of proper legislative investigation" because the record showed a "substantial connection between The Governor's Club and the activities of the Government of the State of Florida" in unofficial ways. *Id.* at 8.

Finally, MAT Media claims its cost information constitutes confidential trade secrets. But such a claim is not a basis for completely refusing to produce documents in response to a subpoena. Even less so if that information can be properly safeguarded by a protective order. *Cf. Seta Corp. of Boca, Inc. v. Fla. Dep't of Legal Affairs*, 756 So. 2d 1093, 1094 (Fla. 4th DCA 2000) (affirming order requiring production of financial and trade secret information to the State of Florida in response to a litigation request and noting significance that the State, "not a competitor, [was] seeking this information"). Indeed, the law requires production to the House notwithstanding confidential information being included in the documents. *See* § 11.0431(2)(a), Fla. Stat. (providing for exemption from public disclosure of legislative records containing confidential information); § 11.143(3)(b), Fla. Stat. (authorizing subpoenas duces tecum, even for documents that contain confidential information).

There is no reason the trial court could not have expanded its prior protective order to include the cost information the House requested. The trial court had indicated it would conduct an *in camera* review during the evidentiary hearing to determine whether the MAT Media ledger contained trade secret information. R 2327–28; *cf. James, Hoyer, Newcomer, Smiljanich, & Yanchunis, P.A. v. Rodale, Inc.*, 41 So. 3d 386, 388 (Fla. 1st DCA 2010) (explaining how trial court made "detailed factual findings" after evidentiary hearing and concluded that potential subscriber and purchaser lists were trade secrets); *Sea Coast Fire, Inc. v. Triangle Fire, Inc.*, 170 So. 3d 804, 808 (Fla. 3d DCA 2014) ("The burden is on the party resisting discovery to show that the information sought is a trade secret."). That did not happen.

Instead, the trial court reviewed the substance of the documents sought by the House and concluded that the House did not need them. But it was not the trial court's place to make that determination. The subpoenas were facially legal. If MAT Media's financial records contained trade secrets, the trial court could have protected against further disclosure once those records were provided to the House. The failure to enforce the House subpoenas on the legal grounds stated by the trial court was error.

CONCLUSION

The subpoenas—on their face falling squarely within the scope of legislative inquiry and not being sweeping, omnibus, or invasive in nature—should be enforced. The trial court's final order should be reversed. On remand, the trial court should enforce the House's subpoenas and order that MAT Media produce its financial records reflecting its *Emeril's Florida* costs, subject to appropriate protections for trade secrets.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of August, 2018, a true copy of the foregoing initial brief was furnished via e-mail to the following counsel at the addresses listed, constituting compliance with Florida Rule of Judicial Administration 2.516(b) and Florida Rule of Appellate Procedure 9.420(c):

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I HEREBY CERTIFY that the foregoing brief was generated by computer using Microsoft Word 2016 with Times New Roman 14-point font, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

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