

RECEIVED, 1/15/2019 3:09 PM, Kristina Samuels, First District Court of Appeal

**IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT**

---

Case No.: 1D18-0687

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

---

**REP. LARRY METZ, *et al.*,**

Appellants,

vs.

**MAT MEDIA, LLC, and CHARLES “PAT” ROBERTS,**

Appellee.

---

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

---

**ANSWER BRIEF OF APPELLEE**

---

**MESSER CAPARELLO, P.A.**

MARK HERRON

Florida Bar No. 0199737

mherron@lawfla.com

S. DENAY BROWN

Florida Bar No. 88571

dbrown@lawfla.com

P.O. Box 15579

Tallahassee, Florida 32317

Telephone: (850) 222-0720

Facsimile: (850) 224-4359

**JANSEN & DAVIS, P.A.**

R. TIMOTHY JANSEN

Florida Bar No. 691208

jansen@jansenanddavis.com

ADAM J. KOMISAR

Florida Bar No. 86047

akomisar@jansenanddavis.com

1206 N Duval St

Tallahassee, FL 32303-6115

Telephone: 850-224-1440

Facsimile: 850-224-0381

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF CITATIONS ..... ii-iii

STATEMENT OF THE CASE AND FACTS ..... 1

SUMMARY OF THE ARGUMENT ..... 16

ARGUMENT ..... 17

    I. Standard of Review..... 17

    II. The Legislature’s Investigatory Powers are Limited and the  
Subpoenas Exceed Those Limited Powers ..... 18

    III. The Lower Tribunal is not Limited to a Facial Review of the  
Subpoenas ..... 25

    IV. The House is not Entitled to Judicial Enforcement Because  
Appellees’ Rights of Privacy are Implicated and the Entry of a Protective  
Order is not Appropriate ..... 28

CONCLUSION..... 32

CERTIFICATE OF SERVICE ..... 34

CERTIFICATE OF FONT COMPLIANCE ..... 34

## TABLE OF CITATIONS

### Cases:

<i>Aills v. Boemi</i> , 29 So. 3d 1105 (Fla. 2010) .....	17
<i>Check ‘n Go of Fla. v. State</i> , 790 So. 2d 454 (Fla. 5th DCA 2001) .....	25
<i>Chetu, Inc. v. KO Gaming, Inc.</i> , Case No. 4D18-1551, 2019 WL 140991, at *1 (Fla. 4th DCA, Jan. 9, 2019).....	30, 31
<i>Collier v. Baker</i> , 20 So. 2d 652 (Fla. 1945).....	24
<i>Doe v. State</i> , 634 So. 2d 613 (Fla. 1994).....	24
<i>Fagg Mill Work &amp; Lumber Co. v. Greer</i> , 102 Fla. 955 (Fla. 1931).....	27
<i>Friedman v. Heart Inst. of Port St. Lucie</i> , 863 So. 2d 189 (Fla. 2003) .....	30
<i>Gibson v. Fla. Legislative Investigation Comm.</i> , 108 So. 2d 729 (Fla. 1959) ..	18, 26
<i>Hagaman v. Andrews</i> , 232 So. 2d 1 (Fla. 1971).....	19, 23, 26
<i>Imparato v. Spicola</i> , 238 So. 2d 503 (Fla. 2d DCA 1970) .....	24
<i>Johnston v. Gallen</i> , 217 So. 316 (Fla. 1969) .....	19
<i>Letchworth v. Pannone</i> , 168 So. 3d 288 (Fla. 5th DCA 2015) .....	28, 31
<i>Mogul v. Mogul</i> , 730 So. 2d 1287 (Fla. 5th DCA 1999).....	28, 31
<i>Morgan v. State</i> , 309 So. 2d 552 (Fla. 2d DCA 1985) .....	24
<i>Muller v. Wal-Mart Stores, Inc.</i> , 164 So 3d 748 (Fla. 2d DCA 2015) .....	27
<i>Special v. West Boca Medical Center</i> , 160 So. 3d 1251 (Fla. 2018).....	27
<i>Watkins v. United States</i> , 354 U.S. 178 (1957).....	20

*Westco, Inc. v. Scott Lewis Gardening and Trimming, Inc.*,  
26 So. 3d 620 (4th DCA 2009) .....26

**Florida Statutes:**

Section 11.143, Florida Statutes .....9, 18  
Section 11.143(3)(c), Florida Statutes .....10  
Section 11.143(4)(b), Florida Statutes .....25, 29  
Section 288.1226(2), Florida Statutes .....1  
Section 812.081, Florida Statutes .....14  
Section 815.045, Florida Statutes .....14

**Other Authorities:**

Article I, Section 23, Florida Constitution.....28, 29, 31  
Article III, Section 5, Florida Constitution .....5, 9, 10, 29  
Rule 16.1, Rules of the Florida House of Representatives .....18

## **STATEMENT OF THE CASE AND FACTS**

### **Nature of the Case**

This appeal arises from the “Order on Final Evidentiary Hearing and Final Judgement” entered in the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida, on February 14, 2018 (the “Final Order”). (R. at 1951-97.) The Final Order quashed portions of two subpoenas which were issued by the Florida House of Representative’s Public Integrity and Ethics Committee (“PIE Committee”) to MAT Media, LLC (“MAT Media”) and Charles “Pat” Roberts (“Roberts”). (R. at 1951-97.)

### **The Facts**

MAT Media is a Florida limited liability company. (R. at 2250:18-20; SR. at 2349, ¶¶6-7; 2442, ¶¶6-7.) Roberts is the sole member and manager of MAT Media. (R. at 2250:18-20; SR. at 2349, ¶¶6-7; 2442, ¶¶6-7.) Because MAT Media is a single-member LLC, all of its activities are reflected on Mr. Roberts’ personal tax return. As a result, there are no independent federal tax returns for MAT Media. (R. at 2178:5-9; 2250:18-51:2.) MAT Media is not a state agency and, at all pertinent times, did not function as a state agency. (R. at. 1283, ¶F; 2090:21-25.)

Visit Florida is a nonprofit corporation established by Florida law to serve as a direct support organization of Enterprise Florida, Inc. (“Enterprise Florida”). (R. at 2077:10-24, 2097:10-99:25); *see* § 288.1226(2), Fla. Stat. Florida law requires

that Enterprise Florida contract with Visit Florida "to execute tourism promotion and marketing services, functions, and programs for the state." (SR. at 2350-51, ¶12; 2441, ¶12); §288.923(3), Fla. Stat.

In furtherance of its responsibility "to execute tourism promotion and marketing services, functions, and programs for the state," Visit Florida entered into a series of contracts with MAT Media between 2012 and 2016 under which MAT Media would create and produce video programming utilizing Florida-based content produced on location throughout Florida. (R. at 1282, ¶A; 1414-1487; 2090:21-25; SR. at 2352, ¶16; 2443, ¶16.) The video programming was to be hosted by Emeril Lagasse and would air on the Cooking Channel ("Emeril's Florida"). (R. at 1282, ¶A; 1414-1487; 2090:21-25; SR. at 2348-53, ¶¶2, 16, 18; 2441-43, ¶¶2, 16, 18.) Under the contracts, MAT Media would also create and produce a number of ancillary products in support of Emeril's Florida. (R. at 1282, ¶A; 1414-87; 2090:21-25; SR. at 2346, ¶2; 2441, ¶2.) MAT Media "retain[ed] all ownership and copyright of the original television episodes, web videos, web articles, and photos." (R. at 1282, ¶B; 1414-87; 2085:25-2087:18; 2090:21-25; 2129:18-2131:24.)

These contracts, which were completely approved by multiple levels within Visit Florida, were not reimbursable contracts, but were detailed deliverable contracts for products and services provided. (R. at 2084:9-85:14.) The contracts

required that, before payment was submitted by Visit Florida on any invoice, the invoice must include very detailed information from MAT Media in order to support the deliverables which MAT Media provided for such payment. (R. at 2087:19-89:17.)

Pursuant to its contracts with Visit Florida, MAT Media produced 62 episodes of the Emeril Florida show; 248 segments; 150 vignettes; 300 photos; 62 web articles; 468 airings on Scripps Networks (Cooking/ Food); 2,808 30-second spots on Scripps Networks; and 2,340 5-second billboards on Scripps Networks, in addition to other social and digital media products. (R. at. 1282-83, ¶C; 2090:21-25.) All programming and ancillary products required under the contracts between Visit Florida and MAT Media were delivered and accepted by Visit Florida. (R. at. 1283, ¶D; 2090:21-25.) Neither party to those contracts have alleged that any of the contracts have been breached in any way. (R. at. 1283, ¶D; 2090:21-25.)

The major sponsor for Emeril's Florida show for all 5 seasons was Visit Florida. (R. at. 1283, ¶E; 2090:21-25.) In addition to Visit Florida, several Florida Convention and Visitor Bureaus, or Tourist Development Councils sponsored various seasons throughout the 5 years. (R. at. 1283, ¶E; 2090:21-25; 2092:22-93:10; 2114:4-15:15.) In addition to these sponsors, the Florida Restaurant & Lodging Association and Fresh From Florida were partners with Visit Florida in promoting the state. (R. at. 1283, ¶E; 2090:21-25; 2114:4-15:15.) There was no

revenue generated from any private tourism corporation or other entities during the 5 years run of the show. (R. at. 1283, ¶E; 2090:21-25.)

The PIE Committee is a standing committee of the Florida House of Representatives. (SR. at 2349-2350, ¶8; 2442, ¶8.) The PIE Committee has jurisdiction to exercise oversight in matters referred to it by the Speaker of the House. (SR. at 2349-2350, ¶8; 2442, ¶8.) Appellants Larry Metz, Thomas J. Leek, David Richardson, Jason Brodeur, Cord Byrd, Robert Cortes, Kimberly Daniels, Tracie Davis, Jason Fischer, Julio Gonzalez, Amy Mercado, Daniel Perez, Kathleen Peters, Sharon Pritchett, Jake Raburn, Emily Slosberg, and Jennifer Mae Sullivan collectively constitute the members of the PIE Committee. (R. at 90, ¶3.) Appellant Richard Corcoran is the Speaker of the Florida House of Representatives (“Speaker Corcoran”). (SR. at 2348, ¶4; 2442, ¶4.) Appellant Larry Metz is the Chair of the PIE Committee, having been appointed to that position by the Speaker. (SR. at 2353-54, ¶20; 2444, ¶20.)

The PIE Committee met on October 12, 2017. (SR. at 2353-54, ¶20.) At that meeting, it approved issuance of subpoenas duces tecum to MAT Media and Roberts compelling the production of certain documents alleged to be pertinent to an investigation of Visit Florida contracts (“PIE Committee Subpoenas”). (R. at 1580-86.) The PIE Committee subpoenas issued on October 12, 2017 were issued when the Legislature was not in session. As explained in detail in the Statement of

Case and Facts, below, MAT Media and Roberts brought challenges to the PIE Committee Subpoenas consistent with applicable constitutional and statutory provisions that provide for judicial review and enforcement of the subpoenas when the Legislature is not in session.

The 60-day regular 2018 legislative session convened on January 9, 2018 and ended on March 11, 2018. On January 11, 2018, having not yet received responses to the PIE Committee Subpoenas, the PIE Committee issued a report on its investigation of MAT Media and Roberts and recommended that the House issue “in session” subpoenas to MAT Media and Roberts (“PIE Committee Report”). (R. at 1592-94.) The PIE Committee Report noted that constitutional and statutory provisions provide that:

[e]ach house, when in session, may compel attendance of witnesses and production of documents and other evidence upon any matter under investigation before it or any of its committees, and may punish by fine not exceeding one thousand dollars or imprisonment not exceeding ninety days, or both, any person not a member who has been guilty of disorderly or contemptuous conduct in its presence or has refused to obey its lawful summons or to answer lawful questions,

and stated that:

Now having convened in Regular Session the House has authority pursuant to Section 5, Article III of the Florida Constitution, to compel production of documents upon any matter under investigation and may directly punish any refusal to obey its lawful orders. Recognizing that this constitutional power only exists while the House is in

session, the Committee requests the House to issue subpoenas to Mat Media, LLC, and to Charles Pat Roberts, compelling the production of all documents previously subpoenaed by the Public Integrity & Ethics Committee, returnable by 5:00 p.m., Tuesday, January 16, 2018. The Committee also recommends that the House declare that each calendar day of noncompliance after the return date of such subpoenas may constitute a separate act of contempt of the House punishable to the Constitutional limit.

(R. at 1592-94.) The PIE Committee Report also recommended that the House declare that each calendar day of noncompliance in responding to such subpoenas constitutes a separate act of contempt of the House punishable to the Constitutional limit. (R. at 1592-94.)

On January 11, 2018, the Florida House of Representatives approved the PIE Committee Report and issued subpoenas duces tecum to MAT Media and Roberts (“Legislative Subpoenas”). (R. at 1587-91.) The subpoenas were served on MAT Media and Roberts on January 11, 2018. (R. at 1240.) The nature and scope of the investigation allegedly being conducted in relation to the PIE Committee Subpoenas and Legislative Subpoenas was described during the January 11, 2018, debate on issuance of the Legislative Subpoenas as:

investigating certain Visit Florida contracts related to the production of television programs, and we are trying to find out what the integrity of the contracts are, and the quality of their procurement.

(R. at 114; 428:11-17.)

The Legislative Subpoenas and PIE Committee Subpoenas seek the same information and are substantially identical. In substance, both the Legislative Subpoenas and PIE Committee Subpoenas issued to MAT Media require production of the following documents:

1. All contracts and agreements between MAT Media, LLC and Scripps Network Interactive related to Emeril's Florida for years 2012-2017.
2. All contracts between MAT Media, LLC and Cooking Channel related to Emeril's Florida for years 2012-2017.
3. All contracts between MAT Media, LLC and Food Network related to Emeril's Florida for years 2012-2017.
4. All contracts between MAT Media, LLC and Martha Stewart Living Omni Media, Inc. related to Emeril's Florida for years 2012-2017.
5. All contracts between MAT Media, LLC and MSLO Emeril's Acquisition, LLC related to Emeril's Florida for years 2012-2017.
6. All contracts between MAT Media, LLC and Emeril Lagasse related to Emeril's Florida for years 2012-2017.
7. All contracts between MAT Media, LLC and Emeril Brands related to Emeril's Florida for years 2012-2017.
8. All contracts between MAT Media, LLC and the restaurants featured in Emeril's Florida for years 2012-2017.
9. All contracts between MAT Media, LLC and any other entity, including but not limited to contracts for advertising or sponsorship, regarding Emeril's Florida for years 2012-2017.

10. All contracts between MAT Media, LLC and Florida Office of Film and Entertainment for the production and airing of Emeril's Florida for years 2012-2017.

11. All documents reflecting all rebates and incentives received from Florida Office of Film and Entertainment for the production and airing of Emeril's Florida for years 2012-2017.

12. All documents reflecting all tax rebates and incentives received related to the production and airing of Emeril's Florida for years 2012-2017.

13. All contracts between MAT Media, LLC and any Florida Convention and Visitor Bureau (CVB), Tourist Development Council (TDC), and/or Visit Florida Strategic Partners, including Busch Gardens, Disney, SeaWorld or Universal Studios, concerning co-op participation under contract with Visit Florida for years 2012-2017.

14. All necessary licenses, agreements, and consents obtained authorizing MAT Media, LLC to contract with Emeril Lagasse, Martha Stewart Living Omni Media and the Cooking Channel, along with all costs incurred as a result.

15. All documents reflecting all revenues received by MAT Media, LLC in connection with the production and airing of Emeril's Florida for years 2012-2017, including but not limited to revenues received from the sale of media buys and/or revenues received from featured restaurants and resorts/hotels.

16. All documents reflecting all expenses incurred by MAT Media, LLC in connection with the production and airing of Emeril's Florida for years 2012-2017.

17. All documents evincing performance required by contracts with Visit Florida related to Emeril's Florida including but not limited to receipts, invoices, bills, subcontracts, and media placement agreements.

18. All journals, ledgers, books and records concerning the production and airing of Emeril's Florida for years 2012-2017.

19. Federal tax returns for MAT Media, LLC for 2012-2016.

(R. at 1580-83; 1587-89.)

With regard to Roberts, both the Legislative Subpoenas and PIE Committee Subpoenas require production of the foregoing documents as well as an additional request identified as #20: “[a]ll income received by Charles Patrick Roberts in connection with the production and airing of Emeril's Florida for 2012-2017.” (R. at 1584-86; 1590-91.)

The PIE Committee Subpoenas specify that if either MAT Media or Roberts “fail to appear as specified, or fail to furnish the records instead of appearing as provided above, you may be in contempt of the House of Representatives and may be punished according to article III, section 5 of the Florida Constitution, section 11.143 of the Florida Statutes, and applicable Rules of the House of Representatives.” (R. at 1580-86.) The Legislative Subpoenas specify that if either MAT Media or Roberts “fail to appear as specified, or fail to furnish the records instead of appearing as provided above, you may be held in in contempt of the

House of Representatives and may be punished according to article III, section 5 of the Florida Constitution, section 11.143(3)(c) of the Florida Statutes, and applicable Rules of the Florida House of Representatives. Said punishment may include imprisonment for up to ninety days and a fine of up to \$1,000 per failure to comply.” (R. at 1587-91.) On January 16, 2018, MAT Media and Roberts submitted a response to the Legislative Subpoenas. (R. at 917-1050.) That response addressed and provided applicable documents responsive to all requests except those contained in paragraphs 1-4, 18, 19, and 20 of the subpoenas. (R. at 917-1050.)

### **The Proceedings Below**

On November 3, 2017, MAT Media and Roberts filed a “Complaint for Declaratory Judgment, Injunctive and Supplemental Relief” against Appellants (the “MAT Media Complaint”). (R. at 6-15.) The MAT Media Complaint sought, among other things, an order quashing the PIE Committee Subpoenas and a declaration that the PIE Committee Subpoenas exceeded the PIE Committee’s powers of investigation as granted by the State Constitution, the Rules of the Florida House of Representation, and the Florida Statutes. That case was identified as Case No. 2017-CA-002284 and was assigned to the Honorable Karen Gievers, Circuit Judge. (R. at 6.) On December 13, 2017, Appellants filed a Motion to Dismiss the MAT Media Complaint for lack of subject matter jurisdiction which

was subsequently rendered moot by the filing of an Amended Complaint on January 23, 2018. (R. at 39-50; 89-253; 256-65.) Appellants also moved to dismiss the Amended Complaint for lack of subject matter jurisdiction on February 7, 2018. (R. at 1268-73.)

On November 15, 2017, Speaker Corcoran, on behalf of the PIE Committee, sued MAT Media and Roberts to enforce the PIE Committee Subpoenas and to compel production of the documents sought in those subpoenas (the “Legislative Complaint”). (R. at 2347-437.) That case was identified as Case No. 2017-CA-002368 and was assigned to the Honorable James O. Shelfer, Circuit Judge. (SR. at 3.) On December 6, 2017 MAT Media and Roberts filed an Answer and Affirmative Defenses to the Legislative Complaint. (R. at 2441-55.) Speaker Corcoran subsequently moved for judgment on the pleadings in that action on December 22, 2017. (R. at 2456-69; 2498-503.) On January 12, 2018, MAT Media and Roberts moved to dismiss the Legislative Complaint on the basis that the issuance of the Legislative Subpoenas rendered the action moot. (R. at 2512-32.) Alternatively, MAT Media and Roberts sought to place the action in abeyance during the 2018 legislative session. (R. at 2512-32.)

Because these separate actions involved common questions of law and fact but were pending before two different judges, MAT Media and Roberts filed a notice of related cases and motion to consolidate the two cases on December 28,

2017. (R. at 51-54; 2470-73.) The actions were subsequently consolidated on January 23, 2018. (R. at 254-55; 2533-34.)

Prior to consolidation, MAT Media and Roberts had filed a “Motion for In Camera Review and Hearing on Claim that Documents Subpoenaed by the Public Integrity and Ethics Committee Constitute Trade Secrets or Protected by Right to Privacy” in both cases. (R. at 55-72; 2474-93.) Appellants opposed the Motion. (R. at 912-16.)

On January 30, 2018, the Motion for Judgment on the Pleadings, Motions for In Camera Review, and Motion to Dismiss the Legislative Complaint were heard. (R. at 256-68; 1205-18.) By the time of that hearing, the parties had stipulated that the only matters remaining in contention between the parties were the five items requested in paragraphs 1-4, 18, and 19 of the subpoenas. (R. at 1209, ¶ 8.) Without objection from the Appellants, the lower tribunal received at the hearing the contracts and documents requested in paragraphs 1-4 of the subpoenas for *in camera* review. (R. at 1209, ¶ 9.) The parties agreed that if the lower tribunal were to find that the documents were trade secrets after the *in camera* review, the documents would still be produced pursuant to the subpoena but an appropriate protective order would be entered to prevent further dissemination. (R. at 1209, ¶ 9.) At the hearing, the lower tribunal directed the

parties to submit an agreed protective order relative to the trade secrets within two days. (R. at 1210, ¶ 11.)

With regard to the tax returns and financial records requested in paragraphs 18 and 19 of the subpoenas, these documents were not produced for *in camera* review because there are no separate financial records or tax returns for MAT Media. (R. at 1210, ¶ 10; 2178:5-9; 2250:18-51:2.) Rather, because it is an LLC, that information flows through to Roberts' individual tax return and Roberts keeps the financial records for MAT Media with his personal records, including the check book. (R. at 1210, ¶ 10; 2178:5-9; 2250:18-51:2.)

On February 5, 2018, the lower tribunal entered an Order on Case Management Conference which addressed the matters heard at the January 30, 2018 hearing. (R. at 1205-18.) In that Order, the lower tribunal required MAT Media to produce the five "trade secret agreements" to Appellants pursuant to the Legislative Subpoenas. (R. at 1214, ¶ 1.) Appellants were ordered to "maintain the confidentiality of the 'trade secret agreements' and their contents" and to not disclose "the documents or information contained therein" without further order of the lower tribunal. (R. at 1214, ¶ 2.) Further, it was ordered that if Appellants were to "receive a request for the 'trade secret agreements' as public records" they were not to "release any information without first giving MAT Media ten days' notice of the request and the opportunity to seek a court order." (R. at 1214, ¶ 3.) If those ten

days passed after notice and MAT Media did “not file a request to maintain the trade secret confidentiality of the agreements pursuant to sections 812.081 and 815.045 and other pertinent provisions of Florida law, the [Appellants] may release the information as they determine appropriate.” (R. at 1214, ¶ 3.) The five “trade secret agreements” were produced to the Appellants on February 7, 2018 and are not at issue in this proceeding.

With regard to the items sought in paragraphs 18 and 19 of the Legislative Subpoenas, the lower tribunal gave MAT Media and Roberts until February 6, 2018 to provide the documents for *in camera* review. (R. at 1215-16, ¶ 4.) If the documents were not produced by that deadline, they were to be turned over to Appellants, subject to the confidentiality agreement and ten-day notice provision. (R. at 1215-16, ¶ 4.) The remainder of the pending matters were denied or determined to be moot. (R. at 1216-17, ¶ 5-6.)

Subsequently, after the filing an Emergency Motion for Reconsideration by MAT Media and Roberts and a response thereto by Appellants, the lower tribunal held a case management conference and thereafter set the matter for a Final Evidentiary Hearing on February 9, 2018, to address any still pending matters in the consolidated cases. (R. at 1219-57.) Per the order setting the Final Evidentiary Hearing, MAT Media was to produce the documents responsive to paragraphs 18 and 19 of the subpoenas at the hearing for *in camera* review. (R. at 1250.)

The Final Evidentiary Hearing commenced on February 9, 2018. The primary issue remaining to be resolved at the time of the February 9, 2018, hearing was whether Appellants were entitled to production of the MAT Media financial records and tax returns subpoenaed. At the Final Evidentiary Hearing, the lower tribunal heard the testimony of two witnesses and received 13 exhibits into evidence. (R. at 1414-1950; 2065-208.) The lower tribunal entered its Order on Final Evidentiary Hearing and Final Judgement on February 14, 2018 (“Final Order”). In pertinent part, the Final Order found that:

10. The nature and scope of the investigation undertaken by the House and the [PIE Committee] described during the January 11, 2018 debate on issuance of the House subpoenas as:

... investigating certain Visit Florida contracts related to the production of television programs, and we are trying to find out what the integrity of the contracts are [sic], and the quality of their procurement.

...

14. The greater weight of the evidence clearly establishes that none of the information in the financial records or tax returns would shed light on the back and forth negotiations that led to the Visit Florida/Mat Media contracts. See Mr. Phipps’ testimony, paragraph 35. In camera review of confidential Court exhibits 1 [MAT Media schedule C reports], 2 [redacted MAT Media ledger relating to Emeril’s Florida project] and 3 [MAT Media complete ledger, unredacted, relating to all of the MAT Media projects, not just Emeril’s Florida] revealed nothing appropriately pertinent to “the integrity” of the Visit Florida contract or the “quality” of the procurement programs. The 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. Requiring protection of the records would be approval of the very sort of governmental intrusion prohibited by Article I, section 23, Florida's Right of Privacy.

15. As to the PIE Committee and House Subpoenas directed to Mr. Roberts, there is no basis for the subpoena's request in paragraph 20 for income received by Mr. Roberts in connection with production and airing of Emeril's Florida for 2012-2017. Any funds Mr. Roberts received from MAT Media were personal funds derived from MAT Media, not taxpayer funds... Here, VF had no contract with Mr. Roberts, and paid him no taxpayer funds. Any taxpayer funds paid to MAT Media relating to the Emeril's Florida contract are reflected in the contracts the House Litigants have. Documentation as to how MAT Media spent its money is irrelevant and not germane to the House's investigation, as evidenced by the PIE Committee bill, with accompanying staff analysis moving forward in the process.

(R. at 1986-89, ¶¶ 10, 14-15.) Accordingly, the Final Order granted MAT Media and Roberts' requests for declaratory relief, quashed the Legislative Subpoenas, quashed paragraphs 18 and 19 of the PIE Committee Subpoena to MAT Media, and quashed paragraphs 18, 19, and 20 of the PIE Committee Subpoena to Roberts.

(R. at 1995-96, ¶¶ 1-6.) This Appeal followed. (R. at 1998-2047.)

### **SUMMARY OF THE ARGUMENT**

The Legislature's investigation related solely to the establishment of the contracts at issue, the "use of taxpayer dollars," and Visit Florida's return on investment in such contracts. The documents sought via the subpoenas, however,

are the private records of a private individual and entity which relate solely to how the private individual and entity spent their income after fulfillment of the contracts. Accordingly, the documents do not provide any relevant information relating to the establishment of the contracts at issue, the “use of taxpayer dollars,” or Visit Florida’s return on investment. The documents sought in the subpoenas, therefore, are not pertinent to a legitimate legislative investigation.

The documents sought in the subpoenas are also protected by Roberts and MAT Media’s right of privacy and Appellants have failed to meet their duty to establish otherwise. As a result, because the subpoenas do not seek documents pertinent to a legitimate legislative investigation and such documents are protected by Appellees’ right of privacy, Appellants are not entitled to judicial enforcement of the subpoenas.

Lastly, the lower tribunal was required to conduct an *in camera* inspection of the documents at issue and did not err in so doing. For the foregoing reasons, the Final Order quashing the subpoenas should be affirmed.

## **ARGUMENT**

### **I. STANDARD OF REVIEW.**

The standard of review is *de novo*. *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*.”).

**II. THE LEGISLATURE’S INVESTIGATORY POWERS ARE LIMITED AND THE SUBPOENAS EXCEED THOSE LIMITED POWERS.**

The Legislative Subpoenas are alleged to be issued pursuant to the Legislature’s power to conduct investigations under Article III, Section 5 of the Florida Constitution. This section provides as follows:

**SECTION 5. Investigations; witnesses.**—Each house, when in session, may compel attendance of witnesses and production of documents and other evidence upon any matter under investigation before it or any of its committees, and may punish by fine not exceeding one thousand dollars or imprisonment not exceeding ninety days, or both, any person not a member who has been guilty of disorderly or contemptuous conduct in its presence or has refused to obey its lawful summons or to answer lawful questions. Such powers, except the power to punish, may be conferred by law upon committees when the legislature is not in session. Punishment of contempt of an interim legislative committee shall be by judicial proceedings as prescribed by law.

Art. III, §5, Fla. Const. This constitutional provision has been implemented through Rules of the Florida House of Representatives and Florida Statutes. *See* R. 16.1, R. of the Fla. House of Representatives; § 11.143, Fla. Stat.

While the power to investigate is a necessary adjunct to the power to legislate, the Legislature’s power to investigate is not unlimited. In exercising the power to investigate, “[m]oderation, restraint and caution should be the rule in exercising it. If not circumscribed by reasonable limitations, it is one which could lead to abuses with attendant encroachments on individual liberties.” *Gibson v.*

*Fla. Legislative Investigation Comm.*, 108 So. 2d 729, 737 (Fla. 1959). As recognized by the Florida Supreme Court, this power “is not an unbridled one” and thus “must be used circumscribed by reasonable limitations and should never be used to ‘hunt witches.’” *Johnston v. Gallen*, 217 So. 316, 321 (Fla. 1969). Stated another way:

We cannot simply assume, however, that every legislative investigation is justified by a public need that overbalances any private rights affected. To do so would be to abrogate the responsibility placed by the Constitution upon the Judiciary to insure that the Legislature does not unjustifiably encroach upon an individual's right to privacy nor abridge his liberty, his speech, or assembly, nor engage upon unwarranted witch hunts.

*Hagaman v. Andrews*, 232 So. 2d 1, 7-8 (Fla. 1971). The legislative power to investigate “should never be exercised merely for the sake of disclosure to the detriment of the citizen under interrogation” and “[l]egitimate legislative action is the ultimate objective and the prime justification for the inquiry.” *Gibson*, 108 So. 2d at 737. Accordingly, any inquiry must be pertinent to the subject of the applicable legislative inquiry. *Id.*; see *Hagaman*, 232 So. 2d at 7-8. Where the pertinency of an inquiry is questioned, it is the “it is the duty of the investigative body to point out the manner in which the propounded question is pertinent to the subject of the inquiry.” *Gibson*, 108 So. 2d at 746.

In defining the scope of the legislative power to investigate in the *Gibson* case, the Florida Supreme Court referred to the decision of the Supreme Court of the United States in *Watkins v. United States*, 354 U.S. 178 (1957). In *Watkins*, the Court stated:

The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste. But, broad as is this power of inquiry, it is not unlimited. There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress.... Nor is the Congress a law enforcement or trial agency. These are functions of the executive and judicial departments of government. No inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress. Investigations conducted solely for the personal aggrandizement of the investigators or to 'punish' those investigated are indefensible.

354 U.S. at 186. Moreover, there is "no congressional power to expose for sake of exposure. The public is, of entitled to be informed concerning the workings of its government. That cannot be inflated into a general power to expose where the predominant result can only be an invasion of the private rights of individuals." *Id.* at 200.

The Legislative Subpoenas were issued for the claimed purpose of “investigating certain Visit Florida contracts related to the production of television programs” in an attempt to “find out what the integrity of the contracts are, and the quality of their procurement.” (R. at 114; 428:11-17.) Thus, by their own words, the Legislature’s investigation sought information relating to the establishment of the contracts themselves, but not their ultimate performance or anything thereafter. Appellants have also loosely alleged that their investigation relates to the “use of taxpayer dollars” and, for the first time in their Initial Brief, now also claim that the information is being sought to determine Visit Florida’s return on investment in the contracts at issue.

The requests at issue in this proceeding seek “[a]ll journals, ledgers, books and records concerning the production and airing of Emeril's Florida for years 2012-2017,” “[f]ederal tax returns for MAT Media, LLC for 2012-2016,” and, with regard to Roberts, “[a]ll income received by Charles Patrick Roberts in connection with the production and airing of Emeril's Florida for 2012-2017.” (R. at 1580-83; 1587-89.) The only information which could reasonably be gleaned from the documents produced in response to these requests would be information relating to how MAT Media and Roberts ultimately utilized the funds received under the contracts. (R. at 1580-85; 1587-91.) How MAT Media chose to spend MAT Media’s money after successful completion of contracts under which neither party

has alleged a breach is irrelevant and is not even remotely germane to an investigation regarding the “integrity” and “procurement” of the contracts at issue.

Additionally, the requested documents do not provide any insight as to the “spending of taxpayer dollars” as all information regarding how tax dollars were spent can be found in the contracts and invoices between MAT Media and Visit Florida. As set forth above, the contracts and invoices between MAT Media and Visit Florida provide great detail about the deliverables provided by MAT Media and the payments made in return by Visit Florida. (R. at 2087:19-89:17.) Accordingly, the deliverables on which “taxpayer dollars” were spent are clearly reflected in and evidenced by those contracts and invoices themselves<sup>1</sup>. Any inquiry into how MAT Media and Roberts spent their private income after fulfillment of the contracts will not provide any further, relevant insight into the use of “taxpayer dollars.”

Lastly, the documents sought in the subpoenas would not provide insight into or offer any change in Visit Florida’s return on investment in the contracts at issue. The amount of Visit Florida’s investment is clearly established by the face of the contracts and the accompanying invoices. Any information regarding Visit Florida’s return on that investment would necessarily be obtained by analyzing the income or benefits garnered by Visit Florida from the deliverables, not by

---

<sup>1</sup> Importantly, it is undisputed that these deliverables were actually provided and neither party alleges that the contracts were breached.

analyzing Appellees' use of their income from the contracts themselves. Accordingly, as with the inquiry into the spending of "taxpayer dollars," determining how MAT Media and Roberts spent their private money after fulfilling all of their contractual obligations will not aid in any way with determining Visit Florida's return on investment. Moreover, information regarding Visit Florida's return on investment in the contracts at issue was previously established by third parties and has been readily available to Appellants. (R. at 2159:2-60:2.)

As a result, because the documents sought by the subpoenas do not relate to the "integrity" or "procurement" of the contracts, would not provide insight into the spending of "taxpayer dollars," and would not assist in establishing Visit Florida's "return on investment," they are not pertinent to a legitimate legislative investigation and Appellants have failed to meet their duty to establish otherwise. *See Hagaman*, 232 So. 2d at 7-8; *Gibson*, 108 So. 2d at 737 (Where the pertinency of an inquiry is questioned, it is the "it is the duty of the investigative body to point out the manner in which the propounded question is pertinent to the subject of the inquiry.") The documents sought by the subpoenas seek "to expose for sake of exposure," not for any legitimate legislative purpose.

Appellants' attempts to liken the subpoenas at issue to those issued by the State Attorney or administrative agencies are of no regard as even in the context of

those subpoenas, the cases cited by Appellants establish that the inquiry must be pertinent to the matter being investigated. *See Morgan v. State*, 309 So. 2d 552, 553 (Fla 2d DCA 1985) (noting that state attorney may issue summonses without identifying a particular criminal violation, but “the subject matter of [the] interrogation must be confined to the violations of criminal law.” (emphasis added)); *Imparato v. Spicola*, 238 So. 2d 503, 506 (Fla. 2d DCA 1970) (Establishing that subpoenas issued by state attorney must relate to the investigation being conducted and cannot be “employed for a mere ‘fishing expedition’, or general inquisitorial examination of books, papers, or records, with a view to ascertaining whether something of value may not show up therefrom, or merely to gratify curiosity, or for the information of the public.”); *Collier v. Baker*, 20 So. 2d 652, 653 (Fla. 1945) (“We find nothing in the statute that attempts to limit the power of the state attorney to interrogate witnesses, except that the subject matter of the interrogation be confined to the question of the violation of any criminal law.” (emphasis added)); *Doe v. State*, 634 So. 2d 613, 615 (Fla. 1994) (“We note that the State clearly has a strong interest in gathering information relevant to an initial inquiry into suspected criminal activity, whether through use of the grand jury subpoena power or that of the statutorily empowered state attorney.” (emphasis added)); *Check ‘n Go of Fla. v. State*, 790 So. 2d 454, 459

(Fla. 5th DCA 2001) (Recognizing that “[t]he materials requested must be relevant to the authorized investigation.”).

Accordingly, because the documents sought in the subpoenas are not pertinent to a legitimate legislative investigation, Appellants are not entitled to judicial enforcement of the subpoenas and the Final Order quashing the subpoenas should be affirmed.

### **III. THE LOWER TRIBUNAL IS NOT LIMITED TO A FACIAL REVIEW OF THE SUBPOENAS.**

Appellants argue that the lower tribunal should have conducted only a facial review of the subpoenas and that any further inquiry into the substance of the subpoenas was error. This argument is without merit and, notably, Appellants do not cite to any authority which supports this proposition.

Section 11.143(4)(b), Florida Statutes, states:

If a witness fails to respond to the lawful subpoena of any such committee at a time when the Legislature is not in session or, having responded, fails to answer all lawful inquiries or to turn over evidence that has been subpoenaed, such committee may file a complaint before any circuit court of the state setting up such failure on the part of the witness. On the filing of such complaint, the court shall take jurisdiction of the witness and the subject matter of the complaint and 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. The failure of a witness to comply with such order of the court constitutes a direct and criminal contempt of court, and the court shall punish the witness accordingly.

This provision establishes a clear basis for judicial review of the subpoenas at issue, to the contrary of Appellants' arguments regarding separation of powers<sup>2</sup>. (App. Br. 34-35.) Moreover, this provision does not establish, directly or indirectly, a requirement that a judicial inquiry be limited to a facial review of the subpoenas. *See* §11.143(4)(b), Fla. Stat. Rather, to the contrary, this provision requires that the lower tribunal determine whether the inquiries at hand are "lawful." *Id.* As established above, that inquiry requires determining whether the requests are pertinent to a legislative investigation and limited in scope. *See supra* at 18-25. The primary cases cited by Appellants discuss this pertinency requirement and the necessary corresponding analysis and do not even remotely suggest or discuss any prohibition on an *in camera* review. *See Hagaman*, 232 So. 2d at 7-8; *Gibson*, 108 So. 2d at 737.

To the contrary of Appellants' assertions, it is well established that where, as here, a party claims that certain documents are confidential or private, the trial court must conduct an *in camera* review of requested production to determine whether such assertion is valid. *See Westco, Inc. v. Scott Lewis Gardening and Trimming, Inc.*, 26 So. 3d 620, 622 (4th DCA 2009) ("A trial court departs from

---

<sup>2</sup> With regard to Appellants' assertion that because "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[.]" Appellees note that the Legislature passed the Evidence Code which includes a definition of relevant evidence applicable to court proceedings at section 90.401, Florida Statutes. (App. Br. 35.)

the essential requirements of law in ordering production of confidential information without conducting an *in camera* review to determine whether the assertion of privilege is valid.”); *Muller v. Wal-Mart Stores, Inc.*, 164 So. 3d 748, 750 (Fla. 2d DCA 2015) (“When a party challenges a discovery order by asserting a constitutional right to privacy, the trial court must conduct an *in camera* review to determine whether the requested materials are relevant to the issues in the underlying action.”).

Nonetheless, even if Appellants were correct that only a facial review is permitted, a facial review of the relevant portions of the subpoenas at issue establishes that the sought information which was not pertinent to an ongoing legislative investigation. *See supra* at 18-25. The lower tribunal’s *in camera* review of those documents could not have changed that result and, thus, any error of the court in conducting such *in camera* review was harmless and does not warrant reversal. *Fagg Mill Work & Lumber Co. v. Greer*, 102 Fla. 955, 958 (Fla. 1931) (Holding that an order “will be affirmed, where alleged errors in pleading and procedure during the progress of the cause have not resulted in a miscarriage of justice, or where it is apparent that a reversal for the errors complained of would prove ineffectual and of no benefit to the party asking it, as where the court can see that the same result must inevitably be reached a second time...”); *Special v. West Boca Medical Center*, 160 So. 3d 1251, 1256 (Fla. 2018).

Accordingly, because the lower tribunal was not limited to a facial review of the subpoenas, it did not err in conducting an *in camera* review of the documents at issue and the Final Order quashing the subpoenas should be affirmed.

**IV. THE HOUSE IS NOT ENTITLED TO JUDICIAL ENFORCEMENT BECAUSE APPELLEES' RIGHTS OF PRIVACY ARE IMPLICATED AND THE ENTRY OF A PROTECTIVE ORDER IS NOT APPROPRIATE.**

In Florida, an individual's unique and powerful right to privacy is established in Article I, Section 23 of the State Constitution, which states as follows:

**SECTION 23. 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. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

Section 23 was added to the Florida Constitution to provide a state right of privacy, requiring the state to justify the reasonableness of intrusions upon personal privacy. This constitutional right of privacy applies to the financial information of private persons. *Letchworth v. Pannone*, 168 So. 3d 288 (Fla. 5th DCA 2015) (“The financial information of private persons is entitled to protection by this state's constitutional right of privacy.” (quoting *Mogul v. Mogul*, 730 So. 2d 1287, 1290 (Fla. 5th DCA 1999))).

This right is subordinate to conflicting provisions of the Florida Constitution through its clause “... except as otherwise provided herein.” *See* Art. I, § 23, Fla. Const. Article III, section 5 of the Florida Constitution, which states that “[e]ach house, when in session, may compel attendance of witnesses and production of documents and other evidence upon any matter under investigation before it or any of its committees” does not alter the constitutional right of privacy established by Article I, section 23, of the Florida Constitution since it does not provide the Legislature with the authority to subpoena confidential documents.

While the constitutional right of privacy may be subordinate to other parts of the Constitution, it is not subordinate to statutes. In 1968, the Legislature converted Article III, Section 5, of the Florida Constitution into statutory law. The resulting statute read as follows:

Each such committee, whenever required, may also compel by subpoena duces tecum the production of any books, letters, or other documentary evidence it desires to examine in reference to any matter before it.

*See* § 11.143(3)(b), Fla. Stat. (1968). Notably, this provision also did not include the authority to subpoena confidential documents. It was not until 1996 that the Legislature amended section 11.143(3)(b) to insert the words “including confidential information.” (Laws 1996, c. 96-318, § 12, eff. Oct. 1, 1996). Nonetheless, because the constitutional right of privacy is not subordinate to

statutes, the addition of this provision to the statute does not trump an individual's established, constitutional right to privacy as set forth above.

Although not identical, corporations in Florida enjoy a similar right of privacy which is overcome only where the sought-after information is relevant to a pending action. *See Chetu, Inc. v. KO Gaming, Inc.*, Case No. 4D18-1551, 2019 WL 140991, at \*1 (Fla. 4th DCA Jan. 9, 2019). This is so because “the disclosure of personal financial information may cause irreparable harm to a person forced to disclose it, in a case in which the information is not relevant.” *Id.* (quoting *Friedman v. Heart Inst. of Port St. Lucie*, 863 So. 2d 189, 194 (Fla. 2003)). These principals apply to corporations, as well as individuals. *Id.*

With regard to Roberts, Roberts had no contract with Visit Florida and he received no taxpayer funds. Nonetheless, the subpoenas seek production of his personal tax returns, journals, ledgers, book, records, and other documents reflecting “[a]ll income received by Charles Patrick Roberts in connection with the production and airing of Emeril's Florida for 2012-2017.” Disclosure of this information has no relevancy or pertinency to whether Visit Florida received a good return on its investment or the “integrity” of the contracts at issue. *See supra* p. 18-25. Accordingly, compelling the disclosure of these records under the circumstances would clearly violate his constitutional right of privacy as set forth

in Article I, Section 23 of the State Constitution<sup>3</sup>. *Letchworth*, 168 So. 3d at 288 (“The financial information of private persons is entitled to protection by this state's constitutional right of privacy.” (quoting *Mogul*, 730 So. 2d at 1290)); *see Muller*, 164 So. 3d at 750 (“The right of privacy set forth in article 1, section 23, of the Florida Constitution undoubtedly expresses a policy that compelled disclosure ... be limited to that which is necessary ... to determine contested issues.”).

With regard to MAT Media, the requested records at issue are “all journals, ledgers, books and records concerning the production and airing of Emeril's Florida for years 2012-2017” and “[f]ederal tax returns for MAT Media, LLC for 2012-2016<sup>4</sup>. The lower tribunal correctly determined that these documents “are neither germane nor pertinent to the scope of the investigation.” (R. at 1951-97); *supra* at 18-25. As a result, MAT Media enjoys a right of privacy with regard to these records and Appellants are not entitled to production of such documents. *See Chetu*, 2019 WL 140991, at \*1.

---

<sup>3</sup> Appellants have repeatedly asserted that they “[do] not seek Mr. Roberts’ personal records.” This assertion is contradicted by the plain language of the subpoenas, however, and Appellants have yet to withdraw the subpoenas directed to Roberts.

<sup>4</sup> The record has established that because MAT Media is a single-member LLC, all of its activities are reflected on Mr. Roberts’ personal tax return. As a result, there are no independent federal tax returns for MAT Media. (R. at 2178:5-9; 2250:18-51:2.) Accordingly, these are the personal records of Roberts and are also protected by the provisions of Article I, section 23, of the Florida Constitution as discussed herein.

Appellants appear to argue that the lower tribunal could have required the production of this “trade secret” information and safeguarded further distribution by crafting an appropriate protective order. (App. Br. 48.) The lower tribunal, however, did not determine that these documents were protected from disclosure because they were trade secrets. To the contrary, the lower tribunal determined that these documents were protected from disclosure because they were not relevant or pertinent to any legitimate legislative investigation and that, as a result, Appellees held a right of privacy with regard thereto. (R. at 1951-97.) Appellants cite no authority which would require or permit the production of the documents at issue under the protection of an appropriate protective order in these circumstances.

Because the requested records are not pertinent to a legitimate legislative investigation, MAT Media and Roberts have a right of privacy with regard to such documents and Appellants are not entitled to production of such documents. As a result, the Final Order quashing the relevant portions of the subpoenas should be affirmed.

### **CONCLUSION**

As established herein, the subpoenas sought information not pertinent to a legitimate legislative investigation. The subpoenas also sought information protected by Appellees’ right of privacy and Appellants failed to establish otherwise. The lower tribunal corrected conducted and in camera review of the

documents before determining their relevancy and protected status and, as a result, the Final Order quashing the subpoenas should be affirmed.

Respectfully submitted,

/s/ Mark Herron

---

Mark Herron  
Florida Bar No. 199737  
Email: [mherron@lawfla.com](mailto:mherron@lawfla.com)  
[clowell@lawfla.com](mailto:clowell@lawfla.com)  
S. Denay Brown  
Florida Bar Number 88571  
Email: [dbrown@lawfla.com](mailto:dbrown@lawfla.com)  
[tweiss@lawfla.com](mailto:tweiss@lawfla.com)  
MESSER CAPARELLO, P.A.  
Post Office Box 15579  
Tallahassee, FL 32317  
Telephone: (850) 222-0720  
Facsimile: (850) 558-0658

R. Timothy Jansen  
Florida Bar No. 691208  
Email: [jansen@jansenanddavis.com](mailto:jansen@jansenanddavis.com)  
Adam J. Komisar  
Florida Bar No. 86047  
Email: [akomisar@jansenanddavis.com](mailto:akomisar@jansenanddavis.com)  
JANSEN & DAVIS, P.A.  
1206 N Duval St  
Tallahassee, FL 32303-6115  
Telephone: 850-224-1440  
Facsimile: 850-224-0381  
*Counsel for Appellees*

