

IN THE FIRST DISTRICT
COURT OF APPEAL

CASE No. 1D-2819
L.T. Nos. 2018-CA-699, 2018-CA-882, 2018-CA-1509

STATE OF FLORIDA et al.,

Appellants,

v.

CITY OF WESTON et al.,

Appellees.

COMMISSIONER OF AGRICULTURE'S ANSWER BRIEF

ON APPEAL FROM THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY

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STATEMENT OF THE CASE AND FACTS

Commissioner Nikki Fried, the Florida Commissioner of Agriculture and Consumer Services (the “Commissioner”), incorporates and adopts the statement of the case and facts contained within the Answer Brief of the Appellee Counties, Municipalities, and Elected Officials.

The former officeholder was named as a defendant in the lower tribunal. Following her election to the position, the Commissioner was substituted as a defendant pursuant to Florida Rule of Civil Procedure 1.260(c)(1). In the lower court the Commissioner joined the Appellants’ motion for summary judgment for the limited purpose of arguing that that the Commissioner was an improper defendant. (R. 1048.) The lower tribunal denied the motion for summary judgment.

The Commissioner did not appeal or join in Appellants’ Notice of Appeal. (R. 2021.) Therefore, although she was a defendant in the court below, the Commissioner is now an appellee. *See Fla. R. App. P. 9.020(g)(1)-(2).*

SUMMARY OF THE ARGUMENT

The trial court correctly held that the Penalty Provisions violate the legislative immunity and governmental function immunity secured by the Florida and United States Constitutions.

STANDARD OF REVIEW

The standard of review is de novo. *Volusia City. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000).

ARGUMENT

I. THE FLORIDA CONSTITUTION INSULATES LOCAL ELECTED OFFICIALS AND LOCAL GOVERNMENTS FROM LIABILITY FOR THEIR DISCRETIONARY ACTS.

The act of governance requires independent judgment and discretion on the part of those individuals who are the decision makers. Immunity is a necessary shield for government and its officials when it exercises this discretion to promote the public good. *See Carter v. City of Stuart*, 468 So. 2d 955, 956-57 (Fla. 1985); *Fla. House of Representatives v. Expedia, Inc.*, 85 So. 3d 517, 522-24 (Fla. 1st DCA 2012). Without immunity from liability, officials would be tempted to vote for what is *safest* for them personally, rather than what is best for their community. *See Spallone v. United States*, 493 U.S. 265, 279 (1990) (“[A]ny restriction on a legislator’s freedom undermines the ‘public good’ by interfering with the rights of the people to representation in the democratic process.”).

Under the Florida Constitution’s express guarantee of separation of powers, the judiciary lacks the power to engage in a legislative function. *See City of Auburndale v. Adams Pack Ass’n*, 171 So. 2d 161, 163 (Fla. 1965) (holding that municipal annexation was an exclusively legislative function that cannot be exercised by a non-legislative body such as the judiciary); *Chiles v. Children A, B, C, D, E, and F*, 589 So. 2d 260, 264 (Fla. 1991) (stating the legislature could not delegate its legislative functions). Thus, courts may not require a legislator’s presence before the court “to explain why they voted a particular way or to describe their process of gathering information on a bill. Our state government could not maintain the proper ‘separation’ required by Article II, section 3, if the judicial branch could compel an inquiry into these aspects of the legislative process.” *Expedia*, 85 So. 3d at 524. Because this immunity stems from the constitutional separation of powers, it cannot be abrogated by the Legislature. *See Carter*, 468 So. 2d at 956-57; *Expedia*, 85 So. 3d at 524.

The legislative bodies of counties and municipalities exercise a legislative function, and their elected officials are local legislators. *See* Art. VIII, §§ 1(c), 2(b), Fla. Const. Counties, cities, and elected officials comprise local government and regularly make discretionary policy decisions to promote the public good. Indeed, the same rationales supporting legislative immunity at the state level have equal application at the local level:

The rationales for according absolute immunity to federal, state, and regional legislators apply with equal force to local legislators. Regardless of the level of government, the exercise of legislative discretion should not be inhibited by judicial interference or distorted by the fear of personal liability. Furthermore, the time and energy required to defend against a lawsuit are of concern at the local level, where the part-time citizen-legislator remains commonplace. And the threat of liability may significantly deter service in local government, where prestige and pecuniary rewards may pale in comparison to the threat of civil liability.

Bogan v. Scott-Harris, 523 U.S. 44, 52 (1998); *accord Commercial Carrier Corp. v. Indian River City.*, 371 So. 2d 1010, 1015-16 (Fla. 1979) (“Immunity was always deemed to have existed for legislative, quasi-legislative, judicial and quasi-judicial acts of municipalities.”); *Wong v. City of Miami*, 237 So. 2d 132, 134 (Fla. 1970) (“The sovereign authorities ought to be left free to exercise their discretion and choose the tactics deemed appropriate without worry over possible allegations of negligence.”).

Just as the judiciary may not intrude into the legislative process by compelling an “inquiry” into the legislative process at the state level, the judiciary similarly lacks the power to do so at the local level. *See Expedia*, 85 So. 3d at 524; *see also Trianon Park Condo. Ass’n v. City of Hialeah*, 468 So. 2d 912, 918 (Fla. 1985) (stating that requiring “the judicial branch to second guess the political and police power decisions of the other branches of government and would violate the separation of powers doctrine.”). If the Penalty Provisions of sections 790.33 and 790.335, Florida Statutes were upheld courts across the state would be required to intrude into

the legislative process in direct contravention of the State Constitution, as the statutes require the Courts to inquire as to the individual legislator's intent, to determine if there is a "knowing and willful violation" of the statute. § 790.33(3)(c), (e), Fla. Stat.; *see also* § 790.335(4)(c), Fla. Stat. ("with the knowledge or complicity of the management of the governmental entity"). Courts would be required to inquire into *why* local legislators "voted in a particular way or to describe their process of gathering information" for a local ordinance and "second guess" the discretionary act of local governments. *See Expedia*, 85 So. 3d at 524.

The Commissioner does not seek to overturn or violate the legislative preemption regarding local firearm regulation. However, as written, the Penalty Provisions of sections 790.33 and 790.335, Florida Statutes violate the doctrines of both legislative immunity and government function immunity, as well as the underlying principles of the separation of powers integral to the Florida Constitution.

Therefore, this Court should affirm.

CONCLUSION

This Court should affirm the decision of the trial court and hold that the penalties under Section 790.33 and 790.335 violate both legislative immunity and government function immunity.

Dated: December 24, 2019

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by U.S. Mail and by electronic service through the Florida Courts E- Filing Portal on December 24, 2019 to the individuals listed on the Service List below.

Respectfully submitted,
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I hereby certify that this brief was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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