

IN THE SUPREME COURT OF FLORIDA

NOS. 76,090 & 76,803

FILED

S/D J. WHITE

DEC 30 1991

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

DICK LOCKE,

Petitioner,

-vs-

PAUL M. HAWKES,

Respondent.

FLORIDA HOUSE OF REPRESENTATIVES,

Petitioner,

-vs-

JON I. GORDON, JUDGE, etc.,

Respondent.

SUPPLEMENTAL BRIEF OF PETITIONERS
DICK LOCKE AND FLORIDA HOUSE OF REPRESENTATIVES

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**SUPPLEMENTAL BRIEF OF PETITIONERS
DICK LOCKE AND FLORIDA HOUSE OF REPRESENTATIVES**

Pursuant to the Court's Order of December 3, 1991, the Petitioners, Dick Locke and Florida House of Representatives, file their Supplemental Brief.

For a period in excess of three years, these consolidated cases have been extensively briefed and argued at the trial court, at the Fifth District Court of Appeal, and before this Court. The issues that were central to a final disposition of the matter were fully and publicly debated. In due course, the Court rendered its decision on November 7, 1991.

It is unnecessary here to rebrief that which has already been extensively briefed. The Petitioners posit that the Court correctly determined that the judicial branch's in enforcement of a statute to control the internal procedures of the Legislature would constitute a violation of Article II, §3 of the Florida Constitution and that as a matter of statutory construction Chapter 119 does not apply to members of the Legislature.

As to the separation of powers doctrine, Petitioners emphasize that the constitutional source of the authority of the Legislature over its internal affairs is Article III, §4(a), and the constitutional source of the authority of the Judiciary over its internal affairs is Article V, §2(a). In contrast, there is no parallel grant of constitutional authority to the Executive branch. Rather, the regulation of Executive branch and local government functions are governed by law pursuant to Article III and Article IV of the Florida Constitution.

The Court may take judicial notice of action taken by the Petitioner, Florida House of Representatives, during the recent Special Session regarding the definition of "agency" as used in Section 119.011(2), Florida Statutes.¹

Consistent with the Court's November 7, 1991 opinion, House Bill 35-D (passed by the House but not taken up by the Senate) further clarifies that the term "agency" within the meaning of the Public Records Act includes all units of government within the Executive branch as well as all units of local government. The action of the House of Representatives on HB 35-D demonstrates the position of the Petitioners that any perceived ambiguity in the current statute may be cured by Legislative clarification. In short, if there is a question as to the proper scope of Chapter 119 vis-a-vis the Executive branch or local governments (as opposed to the Legislature or Judiciary), it is appropriate for the Legislature to remedy the issue by legislative action.

Respectfully submitted,



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¹ Attachment A is the engrossed version of House Bill 35-D; attachment B is The Journal of the House of Representatives for December 11, 1991 which shows (pages 13-14) final passage of House Bill 35-D by the House. The Senate did not take up the bill for consideration.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true copy of the foregoing has been served on **HONORABLE JON I. GORDON**, Eleventh Judicial Circuit Judge, Dade County Courthouse, 73 West Flagler Street, Miami, Florida 33130; **WALTER M. MEGINNISS**, Assistant Attorney General, and **LOUIS F. HUBENER**, Assistant Attorney General, Department of Legal Affairs, The Capitol - Suite 1502, Tallahassee, Florida 32399-1050; **PHILIP M. GERSON**, Esquire, 100 Chopin Plaza, Suite 1310, Miami Center, Miami, Florida 33131; **VALERIE W. EVANS**, Esquire, 1808 Kalurna Court, Orlando, Florida 32806; **CHARLES P. HORN**, Esquire, 5641 West Gulf to Lake Highway, Crystal River, Florida 32629; and **PARKER D. THOMSON**, Esquire, 1700 AmeriFirst Building, One Southeast Third Avenue, Miami, Florida 33131, by mail, this 30TH day of December 1991.



KEVIN X. CROWLEY