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June 23, 2020

Douglas A. Wyler
Jacob Scholz & Wyler, LLC
961687 Gateway Blvd.
Suite 201-I
Fernandina Beach, FL 32034

Re: *CA Florida Holdings, LLC v. Dave Aronberg et al.*
Case No. 2019-CA-014681

Dear Mr. Wyler:

We are in receipt of your letter of June 8, 2020 with your proposed Fla. Stat. section 57.105 motion. In your letter and your proposed motion, you assert that CA Florida Holdings, LLC and the law firm of Greenberg Traurig, P.A. should be liable for the attorneys' fees to be incurred by State Attorney Aronberg after the date of your letter. Your letter cites to Fla. Stat. sections 57.105(1) (a) and (b) for support. As shown below, there is no basis for a Fla. Stat. section 57.105 motion, and we expect that if the State Attorney were to make such a motion, the court should deny it.

Your letter omits a citation to section 57.105(3). Subsection 57.105(3)(a) provides that sanctions may not be awarded where there is a "good faith argument for the extension, modification or reversal of existing law or the establishment of new law, as it is applied to the material facts, with a reasonable expectation of success." We have such a good faith argument.

Contrary to your analysis of Fla. Stat. section 905.27, there are actually three instances where a court may order the release of grand jury materials. As we argue, the court may order release "in furtherance of justice." There are few cases in Florida reviewing this provision and its scope. It is an open and valid question as to whether the court may order release of grand jury transcripts to the media, under both the statute and the First Amendment to the US Constitution in furtherance of justice. The statutory language you cite refers to instances where a person is seeking grand jury materials for use in a civil or in a criminal case. In these limited situations, the statute allows for such uses and for no other reason. However, the statute does not state, as you assert, that where the media seeks grand jury materials based upon its constitutional standing, which the Circuit Court acknowledged at the June 2, 2020 hearing includes The Palm Beach Post, that the statutory

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Palm Beach. Westchester County.

ID# J16 EV# J16
DATE ADMITTED: 9/6/2022

Joint Exhibit

J16

Case No. 2019-CA-014681

JOSEPH MARIA BUZZO, CLERK
CIRCUIT COURT

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use limitation you cite applies. No reported Florida case has addressed this issue and there is a good faith basis for our view of Fla. Stat. section 905.27

Your letter also argues that sanctions are applicable because the State Attorney has alleged that it does not possess the Jeffrey Epstein grand jury transcripts. This allegation is also contained in the State Attorney's Answer. Assuming that the State Attorney does not currently have physical possession of the Epstein grand jury materials, which has yet to be demonstrated, this does not end the matter. The State Attorney was named as a party not simply as a custodian of grand jury records. The State Attorney was named in his official capacity as his office has "as its *primary* interest the protection of its grand jury system." [Italics in original.] In re Grand Jury Proceedings, 832 F. 3d 554, 559 (11th Circuit 1987). In that case, the US petitioned a state judge to order the State Attorney to turn over grand jury transcripts. The State Attorney argued against their release citing to Fla. Stat. section 905.27. Later, a federal grand jury subpoenaed the Broward County State Attorney for delivery of state grand jury testimony. The Broward State Attorney advised the federal court that it would produce the transcripts, thereby demonstrating that while it may not have physical possession of the materials, he had legal authority to obtain and deliver them. It should also be noted that the State Attorney moved to quash the subpoena arguing that it was unlawful under Florida law and Fla. Stat. section 905.27. This case indicates that where one seeks grand jury materials, the relevant State Attorney is a necessary party in order to protect the grand jury that the Office of State Attorney supervised and to make arguments, if need be, against release of the grand jury materials. These are some of the same reasons why the State Attorney was named in this case.

Also, assuming the State Attorney does not have physical possession of the grand jury materials, there is nothing in Florida law that prohibits the State Attorney from requesting that the Clerk provide copies to the State Attorney. Chapter 905, Fla. Stats. does not contain a prohibition against a State Attorney demand that the Clerk grant his office access to grand jury materials, even after a criminal case has concluded. Upon information and belief, the Clerk's office maintains a log that tracks release of grand jury materials to the State Attorney upon its request. Please confirm whether the State Attorney has accessed grand jury materials from the Clerk's office in other instances or that it has never done so. If the Clerk has such a log, then its contents should be discoverable, or subject to Florida Public records laws.

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For these reasons, we decline your Fla. Stat. section 57.105 demand that the case be dismissed against the Office of the State Attorney. We expect that your demand will be withdrawn.

Thank you,

Very truly yours,

/s/Stephen Mendelsohn

Stephen Mendelsohn

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