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Sent Via E-mail

Roberts.dawn@flsenate.gov
Dawn Roberts
Florida Senate, General Counsel
302 The Capitol
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: Senator Frank Artiles

Dear Ms. Roberts:

Thank you for speaking with me this morning.

Senator Artiles has retained this office to represent him in connection with a complaint filed by Senator Perry E. Thurston, Jr. Please address any further communications or documents concerning Senator Thurston's complaint to the undersigned.

We understand from published reports that Senator Lizbeth Benacquisto "found probable cause" to investigate Senator Artiles in connection with Senator Thurston's complaint. Neither we nor our client have been provided with any finding of Probable Cause by Senator Benacquisto pursuant to Senate Rule 1.43. Having now first reviewed Senator Thurston's complaint, my client takes issue and disputes many of the allegations made by Senator Thurston. Additionally, based upon the facts contained in Senator Thurston's sworn complaint, we assert that the Senate lacks jurisdiction over this complaint for multiple reasons.

We are also advised that you, as general counsel of the Senate have been appointed to act as Special Master and fact-finder in connection with Senator Thurston's complaint. We assert that

you have a conflict of interest due to your position as general counsel of the Florida Senate and thus must recuse yourself as Special Master immediately. In your duties as general counsel of the Senate, you have represented Senator Artiles, various witnesses, and the Senate generally, requiring you to recuse yourself as special master. We make this request respectfully. Lastly we understand that you have been directed to investigate and issue a report by close of business on Tuesday April 25, 2017. This short time period acts to violate the procedural and substantive due process rights of Senator Artiles guaranteed to him by the United States Constitution. Please provide us with the name of the new special master so that we may submit a list of the individuals we intend to depose on this matter. In addition to any witnesses interviewed by your or intended to be interviewed by you, please consider this letter as our request to depose the following individuals in connection with this complaint:

1. Senator Thurston
2. Senator Audrey Gibson
3. Senator Benacquisto
4. Senator Anitere Flores
5. Senator Oscar Braynon, II

Should this matter be sent to the Senate floor, my client intends to put on evidence of other similar speech by other Senators, including individuals who are members of the Rules Committee, in determining what the appropriate sanction should be, if any. In other words, the Senate should not be required to act in a vacuum. My client's speech should be evaluated *pari passu* to the speech of his Senate colleagues current and past.

In reviewing Senator Thurston's complaint, assuming *arguendo* that his sworn statement are true, which my client disputes in part, Senator Thurston complains about my client's statements which were made outside of the Florida Capitol. Certainly the accurate portions of the reported language are offensive, as Senator Artiles has repeatedly acknowledged in his apologies. However, as objectionable as they may be, these statements are protected under the First Amendment of the United States Constitution. I will be happy to provide you with numerous horn book citations on this point at your request.

As this is protected speech, President Negrón and Senator Benacquisto, while acting under color of state law, are violating my clients First Amendment Rights in violation of 42 U.S.C 1983 by seeking to sanction Senator Artiles. The President and Senator Benacquisto enjoy no absolute privilege in engaging in this action, only a qualified privilege. Mr. Artiles' complaint is not about the interpretation of the Senate Rules or Procedures. His complaint is about President Negrón and Senator Benacquisto ignoring the United States Constitution. Thus, this is not a separation of powers issue, and we believe a Court will agree if required to adjudicate a writ of prohibition. As we discussed, we are currently drafting a writ of prohibition alleging constitutional violations and conflicts of interest should this matter continue to proceed in this manner.

In H. Lee Moffitt, Etc., at al., Petitioners, v. Honorable Ben C. Willis, Etc., 459 So. 2d 1018, 1020-21 (Fla. 1984), the Florida Supreme Court stated that:

We are now presented with a case in which the trial judge has issued an order, in response to a motion to dismiss, **which states that the plaintiffs are entitled to a ruling as to the allegations relating to the first amendment of the United States Constitution and article I, section 4 of the Florida Constitution.** The defendants, the petitioners here, argue that the trial court lacks jurisdiction because *article II, section 3 of the Florida Constitution* mandates separation of powers. It is clear to us that if this case were to proceed to trial and then to appeal at the district court, it is most likely that some provision of the state or federal constitution would be construed. The case would then come within our jurisdiction to review. In keeping with our holding in *Sarasota County v. Boyer*, we have jurisdiction to issue a writ of prohibition in this instance
(Emphasis added).

The provision that each house "*shall* determine the rules of its proceedings," does not restrict the power given to the mere formulation of standing rules, or to the proceedings of the body in ordinary legislative matters; but, ***in the absence of constitutional restraints***, and when exercised by a majority of a constitutional quorum, such authority extends to the determination of the propriety and effect of any action as it is taken by the body as it proceeds in the exercise of any power, in the transaction of any business, or in the performance of any duty conferred upon it by the constitution
(Emphasis added).

Lastly, my client will be formally requesting the recusal of Senator Benacquisto, Senator Thurston, Senator Flores, and Senator Braynon from participating in any capacity in the review of Senator Thurston's complaint due to their public statements concerning the alleged conduct both prior to and after Senator Benacquisto's receipt of the complaint. These were statements of prejudgment, creating a conflict for these Senators to vote on this matter both in the Committee and on the floor of the Senate, should this matter make it to the floor.

Without waiving any of the objections set forth above or any others available to Senator Artiles, we would request that, as Senator Artiles counsel, we be provided notice of when you will take statements of witnesses so that we may attend, participate, and ask questions.

Sincerely,

Steven R. Andrews



CC: Senate President Joe Negron
Senator Lizbeth Benacquisto