



ROBINSON KENNON & KENDRON, P.A.

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THOMAS J. KENNON††
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A. Title Page

SOLICITATION #: RFP 19-002 **SOLICITATION NAME: School Board Attorney** **Services**

PROPOSER NAME:

Robinson, Kennon & Kendron, P.A.

CONTACT INFORMATION:

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THOMAS J. KENNON††
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JOHN J. JOYCE

C. Letter of Transmittal

July 16, 2018

Hamilton County School Board
5683 Highway 129 South – Suite 1
Jasper, FL 32052

Re: RFP 19-002 School Board Attorney Services

Dear Members of the Hamilton County School Board:

Robinson, Kennon & Kendron, P.A. ("RKK") is pleased to make this proposal to provide legal services to the Hamilton County School Board ("the Board").

Our understanding of the work to be done

As you well know, a school board's legal needs have become more wide-ranging and complex over the years. Regulation, as well as the changing needs of the populations that the Board serves, can create a complicated legal landscape that is tough to navigate without experienced, accessible counsel.

We understand that the Board needs an experienced counselor that will partner with the Board to meet its goals. Robinson, Kennon & Kendron is a locally-based full service law firm with over 100 years of combined experience practicing law in Florida. Our firm prides itself in being able to identify issues before they become problems. Through our representation of administrative agencies, local governments, and businesses, we know that the best way for organizations to prevent legal issues is to create sound, clear policies and to adhere to them. Using that approach, we believe we can provide the with legal advice that not only addresses the problem in question, but potential problems that could be coming in the future.

We understand that the Board requires a wide range of legal knowledge, including constitutional law, contracts, agency law, public records, employment, and other areas. We also understand that the Board requires responsive counsel that is accountable and knowledgeable about the unique issues facing our community. Our firm combines the broad legal knowledge of a big firm that you would expect from a larger city, with the accountability you would expect from someone that lives and works in this community.

We understand that the Board's legal work needs to be completed with care, diligence, professionalism, and with budget in mind. Because of our abilities and experience, we believe that we can perform work that other attorneys may refer to expensive outside counsel. Keeping most legal matters "in-house" should not only reduce fees and costs, but improve communication and accountability.

Lastly, we understand that the Board requires exceptional legal analysis and representation. Since 1972, I have provided legal services to the citizens and business of North Central Florida. I was one of the first attorneys in the State to be board certified by the Florida Bar as a civil trial lawyer. During my career, I have been honored to represent the lawyers of the Third Judicial Circuit (which includes Hamilton County) on the Florida Bar Board of Governors. I have served on Florida Bar rules committees, served as the chairperson of the Disciplinary Procedures Committee, and am certified by the Florida Supreme Court as a circuit civil mediator. I have represented hundreds of clients and have conducted trials and hearings before state and federal courts. I bring this experience and the considerable experience of my partners and firm, outlined in the enclosed proposal, to our clients.

I firmly believe that Robinson Kennon & Kendron would provide excellent legal services to the Board, and submit the enclosed proposal for legal services for your consideration. Should you have any questions, comments, or concerns, please do not hesitate to contact me at the above telephone number.

Most sincerely,



Bruce W. Robinson

Managing Partner

Robinson, Kennon & Kendron, P.A.

Persons authorized to make representations of behalf of Proposer

Bruce Robinson
Managing Partner
386-755-1334

Florida Bar Numbers of all attorneys

Bruce Robinson	Thomas J. (Todd) Kennon	Kris Robinson
Florida Bar No. 143796	Florida Bar No. 844179	Florida Bar No. 247870
John Kendron	John J. (Joe) Joyce	Jennifer Biewend
Florida Bar No. 306850	Florida Bar No. 92796	Florida Bar No. 877441

D. Past Record and Experience

- (1) State whether the attorney or firm is local, regional, or national.

Robinson, Kennon & Kendron is based locally with its main office in Lake City and a satellite office in Live Oak, but the firm litigates and advises clients throughout the State of Florida in both state and federal courts.

- (2) Give the location of the office from which the work is to be done and the number of partners, managers, supervisors, seniors, and other professional staff employed at that office.

Our main office is located at 582 W. Duval Street, Lake City, Florida 32055. From time to time, we anticipate we may work on some school board business from our satellite office in Live Oak, located at 100 S. Ohio Avenue, Live Oak, Florida 32064.

We employ thirteen professionals at our firm: Six lawyers (five of which are partners), five paralegals/executive assistants, an office manager, and a receptionist.

- (3) Describe the attorney's or firm's experience in Florida school board attorney or similar law.

The firm has represented boards, including local government boards, and corporations. The firm has represented the Towns of White Springs and Fort White, as well as the Baker County Hospital Authority, and the Suwannee River Water Management District. We also have represented regional lenders, and the one of the largest mobile home manufacturers and retailers in the southeast.

- (4) Describe any disciplinary action taken against the attorney, firm, or individual associated with the firm by the Florida Bar.

We are pleased to say that no one in our firm has ever been disciplined by the Florida Bar. We pride ourselves on ethical conduct.

- (5) Give the names and addresses of at least three (3) school boards or other agencies for whom similar services have been performed within the last five (5) years and the date and the specific service rendered in each case.

**Baker County Hospital Authority
20 E. Macclenny Ave.
Macclenny, FL 32063
Board Attorney**

**Suwannee River Water Management District
9225 C.R. 49
Live Oak, FL 32060
Board Attorney**

- (6) Professional resume of lead attorney to be assigned to the School Board including past employment history.

Please see the attached resume of Bruce W. Robinson, managing partner.

- (7) Provide any additional information which demonstrates the firm and/or attorney meets or exceeds the qualifications and criteria under the eligibility section above.
See below.

Eligibility:

a. Minimum Qualifications

- (1) A law degree from an accredited law school.
- (2) Admitted to the Florida Bar
- (3) Five (5) years of experience in the practice of law

All Robinson, Kennon & Kendron attorneys meet these qualifications. Bruce Robinson, Todd Kennon, Joe Joyce, and Jennifer Biewend hold juris doctor degrees from the University of Florida, and Kris Robinson and John Kendron hold juris doctor degrees from Florida State University. All are admitted to the Florida Bar. Bruce Robinson has been practicing law since 1972. Todd Kennon has been practicing law since 1990. Kris Robinson and John Kendron have been practicing since 2000, and Joe Joyce has been practicing since 2011. Jennifer Biewend has been practicing law since 2004.

b. Preferred Qualifications

- (1) Admitted to, or eligible for admission to, the trial bar of the United States District Court for the Middle District of Florida and the Eleventh Circuit Court of Appeals.

Bruce Robinson, Kris Robinson, Joe Joyce, and Jennifer Biewend are currently admitted to the Middle District. John Kendron and Todd Kennon are eligible for admission as members in good standing of the Florida Bar. All are eligible for admission for the Eleventh Circuit Court of Appeals.

- (2) Experience in and knowledge of laws applicable to the primary practice area for which these services are being retained and laws applicable to K-12 school districts.

Experience in and knowledge of laws applicable hereto are discussed below in Section C below.

c. Preferred Performance Criteria: Demonstrated ability with the following:

- (1) General knowledge of school board policies; state, federal, and administrative laws relating to the area of School Board Attorney.

In addition to those areas outlined below, Bruce Robinson has chaired the Columbia County School Board's Committee on racial diversity in hiring.

- (2) General knowledge of judicial proceedings, rules of evidence and methods of legal research.

Robinson, Kennon & Kendron have extensive knowledge of judicial proceedings, rules of evidence and methods of research. Between the six lawyers at Robinson, Kennon & Kendron, we have tried many jury and bench trials, and been a part of too many evidentiary and motion hearings to accurately count. Our litigators actively litigate across the State for our clients.

Further, Bruce Robinson has sat on the Florida Bar Code and Rules of Evidence Committee, which makes recommendations on the rules of evidence. Mr. Robinson has also sat on the Florida Bar Civil Procedure Rules committee, which makes recommendations to the Supreme Court on Florida's procedural rules used in civil courts.

(3) General knowledge of local government law.

Through both representing local boards and those appearing before local boards, Robinson, Kennon & Kendron attorneys have developed knowledge with local government law. The firm, particularly Todd Kennon, has represented the Town of White Springs, and the Town of Fort White. Joe Joyce, Kris Robinson, Bruce Robinson, and Todd Kennon have all represented citizens before local government boards. Bruce Robinson has also represented the Baker County Hospital Authority. Our firm's attorneys have assisted clients in zoning changes, special use permits, and other issues involving local government law.

(4) Skills in conducting research on complex legal matters and preparing sound legal opinions.

Robinson, Kennon & Kendron attorneys have drafted complex legal memoranda and provided sound legal opinions to our clients. We employ Lexis Advance, a Lexis Nexis product, to aid our legal research, as well as subscribing to multiple legal periodicals and treatises. Further, we attend continuing legal education seminars and classes to keep abreast of the changes in the law and to learn from our colleagues at the bar.

For reference, attached is a writing sample, which is a publicly available Petition for Writ of Certiorari, Reply Brief, and Opinion from the First District Court of Appeal regarding an issue of immunity for a city councilperson. The First District accepted our argument, and used much of our precedent in rendering its opinion.

(5) Ability to interpret and apply legal principles and precedents in resolving complex legal problems.

See #4 above.

(6) Ability to communicate clearly and concisely, orally and in writing.

Robinson, Kennon & Kendron handles complex litigation at a high level, which requires exceptional communication skills. Through constant litigation throughout our respective careers, Robinson Kennon and Kendron attorneys have

- (7) Ability to participate in the preparation and presentation of civil litigation matters before County, State, and Federal Courts.

Robinson, Kennon & Kendron has tried numerous cases in small claims court, county court, circuit court, and federal district court.

- (8) Ability to participate in the preparation and presentation of civil litigation matters before Division of Administrative Hearings.

Robinson, Kennon & Kendron has tried cases before the Division of Administrative Hearings, representing the one of the largest builders and retailers of mobile homes in the Southeast United States, and the Suwannee River Water Management District.

- (9) Ability to establish and maintain effective working relationships with public officials, management, staff, subordinates, and the general public.

Through the firm's representation of lenders and governmental entities, as well as other corporations, our lawyers have established working relationships with points of contact through staff, as well as keeping management informed and prepared for managerial decisions.

- (10) Proven record of excellence in legal counseling and advising senior management or Boards.

See #14 below.

- (11) Proven experience in structuring, negotiating, and drafting documentation for complex transactions.

Robinson Kennon and Kendron has extensive experience in handling all stages of complex transactions for our clients. Bruce Robinson has drafted multi-million dollar contracts involving international corporations, stock purchase agreements, mergers, non-compete provisions, leases, and other types of complex transactions. Mr. Robinson has drafted contracts for government entities, private corporations, and individuals for one-time transactions and long-term relationships. In addition to the firm's extensive trial experience, we have negotiated creative settlements in complex litigation involving torts, real property, and business disputes. Further, Bruce Robinson and Todd Kennon are both experienced mediators. They have conducted hundreds of mediations, which has exposed them to many different negotiation practices and styles, improving their own skills along the way.

- (12) Knowledge of institutional/corporate governance issues and concerns.

RKK has participated in the formation of many corporations, drafting shareholder agreements, operating agreements, and similar documents. Through litigating issues involving institutions and corporate governance, RKK attorneys have learned many common pitfalls in institutional and corporate governance and structure, and how to avoid them through effective policy.

- (13) Experiences with Florida School Laws, including general knowledge of Florida Department of Education requirements and practices.

The firm has represented children with issues involving local school boards, including suspensions and disability accommodations.

(14) **Experience in, and familiarity with, a highly regulated industry/agency.**

RKK attorneys have worked with our corporate clients in highly regulated industries, such as mobile home manufacturing and retailing, the pawn industry, the assisted living facility industry, the Suwannee River Water Management District, the Baker County Hospital Authority, and local governments, such as the Towns of White Springs and Fort White.

(15) **Strong management, legal analysis, and writing skills.**

See #4 above.

(16) **Ability to work with professional employees and lawyers.**

Our firm has demonstrated an ability to work well with other professionals in related fields, as well as other lawyers. In an adversarial system, it is easy to demonize those on the other side of litigation. However, our firm strives at all times to be professional, courteous, and respectful of everyone we encounter.

Our ability is demonstrated in our reputation in our community and around the state, but also within the walls of our firm. With few exceptions, all of our staff have been with the firm on a long-term basis, and it is rare that we have any turnover among staff. The same lawyers that founded our firm remain with the firm, and our reputation attracted Mr. Joyce and Ms. Biewend to join our firm from their previous positions.

(17) **Understanding of the need for appropriate risk assessment and management on behalf of the Board.**

Our firm understands the need for risk assessment and management. Bruce Robinson and RKK attorneys have represented insurance companies, and assessed risk both in and outside of the context of litigation.

(18) **Broad breadth of legal experience and/or ability to surround oneself with counsel to handle complex cases in such areas as:**

Because of our broad diversity of legal experience, Robinson, Kennon & Kendron rarely has need to co-counsel with other firms to handle legal matters. From a client's perspective, this keeps hourly costs down by not having to have multiple firms working on a particular matter. However, in the event that employing another firm is advisable, RKK attorneys have connections with firms all over the State of Florida. Bruce Robinson, Kris Robinson, Joe Joyce, and Todd Kennon have all served on statewide boards. All have served as the Florida Bar Young Lawyers Division Governor for the Third Judicial Circuit, and Mr. Joyce is currently the Young Lawyers Division Governor. Bruce Robinson is currently the Third Circuit Governor on the Florida Bar Board of Governors, and has held the seat since 2014. Service on these statewide boards allow RKK attorneys to develop a statewide network for referring highly specialized cases.

➤ **Florida school laws**

See #13 above.

➤ **Contract law**

Robinson, Kennon & Kendron attorneys, Bruce Robinson in particular, have negotiated hundreds if not thousands of contracts for their clients. Our business clients frequently need updates and modifications to their contracts because of changes in their business or the law governing their work. Bruce Robinson has handled multi-million dollar contracts involving multinational corporations.

➤ **Constitutional law**

Robinson, Kennon & Kendron attorneys have handled a broad range of constitutional law issues. Kris Robinson, Joe Joyce, and Jennifer Biewend have handled first amendment issues in defamation claims. Kris Robinson has extensively litigated homestead issues pursuant to the Florida Constitution. Joe Joyce has successfully litigated fourth amendment search and seizure issues as a part of the firm's criminal defense practice. Through civil litigation, our litigators have protected their clients' rights to privacy in the discovery process under the Florida Constitution.

➤ **Civil Rights law**

Bruce Robinson has represented students in civil rights claims with public school boards. Mr. Robinson has also defended Section 1983 claims.

➤ **Local government agency laws**

Robinson, Kennon & Kendron attorneys have represented clients in front of local government boards concerning zoning, special use permits, variances, and other land use claims. Bruce Robinson has also served as counsel for the Suwannee River Water Management District.

➤ **Administrative procedures act**

Bruce Robinson and Kris Robinson have tried cases under Fla. Stat. Chapter 120, including, as mentioned above, representing the Suwannee River Water Management District.

➤ **Government contracts procurement process**

The firm, Todd Kennon especially, has experience with government contracts procurement processes through representing local governments.

➤ **Public records and Sunshine laws**

Attorneys Kris Robinson and Joe Joyce have litigated public records cases both at the trial and appellate levels. The opinions in two of these cases, decided by the First District Court of Appeal, have been cited as precedent by legal treatises, a law review article, and other courts around the state.

➤ **Labor/employment/collective bargaining**

Bruce Robinson, Jenna Biewend, and Kris Robinson have handled numerous labor and employment cases. Notably, the firm has dealt with issues involving the Florida Minimum Wage Act, the Fair Labor Standard Act, employment agreements including "golden parachutes" clauses, employee retirement.

➤ **Commercial**

Kris Robinson, Bruce Robinson, and Joe Joyce are all experienced commercial practitioners. The firm routinely handles business disputes, breaches of fiduciary duty, breaches of contract, lease disputes, and other commercial matters.

➤ Real estate/construction law

Our attorneys regularly advise clients in real estate matters and litigate those matters if necessary. The firm represents two regional lenders in foreclosures, as well as advising clients with regard to property liens, zoning, special use permits, title issues, and other real estate matters.

➤ Experience with regulatory compliance

Our attorneys deal with regulatory compliance as a part of their daily practice. We have dealt with regulatory issues concerning the Agency of Health Care Administration, the Suwannee River Management District, licensing issues for professionals, tax issues for business, business licensing issues, and dealing with the Department of Business and Professional Regulation, and the Office of Financial Regulation.

➤ Appellate Practice

We handle our appellate practice “in-house,” meaning that we do not generally outsource our appellate work to other firms. Our lawyers have argued before the First District Court of Appeal, obtaining writs of certiorari, per curiam affirmances, and favorable written opinions from that Court, dealing with a wide range of topics such as public records law, statute of limitations issues, real property issues, governmental immunity. In 2018, Bruce Robinson represented the Florida Bar in oral argument before the Florida Supreme Court.

A sampling of recent reported decisions in which the firm was counsel of record:

1. Koon v. Lafayette State Bank, 2018 Fla. App. LEXIS 9133 (Fla. 1st DCA 2018)(dismissing opposing party’s appeal on appellate procedural grounds).
2. Prins v. Farley, 208 So. 3d 1215 (Fla. 1st DCA 2017)(granting our client a writ of certiorari and reversing the trial court on a matter dealing with absolute privilege for a city council member).
3. Lake Shore Hospital Authority v. Lilker 168 So. 3d 332 (Fla. 1st DCA 2015)(affirming the trial court’s findings in our client’s favor on a public records matter).
4. Will v. City of High Springs and High Springs Land Development LLC, 2018 Fla. App. LEXIS 8987 (Fla. 1st DCA 2018)(per curiam affirmance of lower court accepting our argument that the statute of limitations ran on Plaintiff’s claim).
5. Lilker v. Suwannee County Transit Authority, 133 So. 3d 654 (Fla. 1st DCA 2014)(reversing the lower court, accepting our argument that the trial judge applied the improper legal standard in a public records case).

6. Waters v. Beechler, 50 So. 3d 36 (Fla. 1st DCA 2010)(appellate court affirmed the trial court granting our clients a new trial).
7. Matthews v. Henderson, 2009 Fla. App. LEXIS 17755 (Fla. 1st DCA 2009)(appellate court per curiam affirmed the trial court granting our motion for summary judgment).

E. Documents to be submitted

Signed Assurances and Attestation and Non-Collusion Affidavit are enclosed herewith.

F. Fee Structure

Robinson Kennon & Kendron typically charges between \$200-\$450 per hour, depending on the type and complexity of the matter, and the relationship with the client. Robinson, Kennon & Kendron would like to offer its legal services to the Board at the rate of \$150 per hour for all basic services as stated in RFP 19-002. To determine a retainer or advance fee, we would need to speak with the Board or its prior attorney concerning the normal number of hours expended for basic services. For litigation services, we would offer \$175 per hour.

HAMILTON COUNTY SCHOOL BOARD

RFP 19-002

ASSURANCES AND ATTESTATION

I, the undersigned, as the proposer or legally authorized representative of the proposer, do hereby agree that:

- I have read and understood all instructions and stipulations contained in this RFP; AND
- All information included in this proposal, to the best of my knowledge, is accurate and meets the requirements set forth in this RFP; AND
- If selected, I will negotiate a contract for services with the District in good faith and in conformity to this RFP; AND
- I will comply with all applicable laws and regulations pertaining to the provision of legal services for Florida school board attorneys; AND
- I will maintain and provide verification upon request of the insurance requirements as set forth in this RFP.

Signature: Bruce W. Robinson Date: 16 July 2018

Print Name: Bruce W. Robinson Title: Attorney

NON-COLLUSION AFFIDAVIT

State of Florida

County of Hamilton

Bruce W. Robinson

being first duly sworn, deposes and says that:

(1) He/she is the Owner, Partner, Officer, Representative, or Agent

of the Proposer that has submitted the attached Proposal;

(2) He/she is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;

(3) Such Proposal is genuine and is not a collusive or sham Proposal;

(4) Neither the said Proposer nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Proposer, firm, or person to submit a collusive or sham Proposal in connection with the Work for which the attached Proposal has been submitted; or to refrain from proposing in connection with such Work; or have in any manner, directly or indirectly, sought by agreement or collusion, or communication, or conference with any Proposer, firm or person to fix any overhead, profit, or cost elements of the Proposal price or the Proposal price of any other Proposer, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed Work;

(5) The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Proposer or any other of its agents' representatives, owners, employees or parties in interest, including this affiant.

Signed, sealed, and delivered in the presence of:

BY:

Bruce W. Robinson

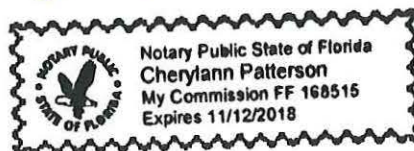
Printed Name:

Bruce W. Robinson

Title: Attorney

Dawn M. DeRoche
Dawn M. DeRoche
Jennifer Biewend

Cherylann Patterson



Sworn to and subscribed
before me this 16th day of
July, 2018.

BRUCE W. ROBINSON
ROBINSON, KENNON & KENDRON, P.A.
582 W. DUVAL STREET
POST OFFICE BOX 1178
LAKE CITY, FLORIDA 32056
TELEPHONE: 386-755-1334
FACSIMILE: 386-755-1336
bwr@rkktorneys.com

EMPLOYMENT:

1972 – 2005:

Brannon, Brown, Haley, Robinson & Bullock, P.A.

2005 – Present:

Robinson, Kennon & Kendron, P.A.: My current practice focuses on civil litigation involving commercial and personal injury litigation, as well as business law and corporate matters. I have also had experience in administrative law, including trials and appeals. Additionally, I mediate and arbitrate cases.

EDUCATION:

University of Florida College of Law; Gainesville, Florida, Juris Doctorate with Honors awarded December, 1971.

Florida State University; Bachelor of Arts, Tallahassee, Florida, 1966.

BAR ADMISSIONS:

Florida Bar, 1972

U.S. District Court Middle District of Florida, 1973

U.S. District Court Northern District of Florida, 1981

U.S. Court of Appeals 5th Circuit, 1981

U.S. Court of Appeals 11th Circuit, 1981

CERTIFICATIONS/SPECIALITIES:

Rated AV Preeminent by Martindale Hubbell, the highest rating a lawyer can receive.

Board Certified Civil Trial Attorney

Supreme Court Certified Circuit Civil Mediator

Certified Arbitrator

BAR ACTIVITIES:

Young Lawyers Division, Board of Governors, 1978-1979
Florida Bar Board of Governors, 1994-2000; 2014-present

Service on Florida Bar Committees:

- Civil Trial Certification Committee
- Civil Procedure Rules Committee
- Code & Rules of Evidence Committee
- Student Education and Admissions Committee

Third Judicial Circuit Grievance Committee and Past Chair
Liaison to the General Practice, Solo & Small Firm Section for the Florida Bar
Board of Governors

OTHER ACTIVITIES AND HONORS:

Omicron Delta Kappa (University Leadership Honorary Association)
Gold Key (University Leadership Honorary Association)
Lake City, Columbia County Chamber of Commerce Board of Directors –
1974-1977; 2005 to 2009.
President, Lake City, Columbia County Chamber of Commerce – 1978;
United States Marine Corps, Captain, 1966-1971
Navy Achievement Medal with Combat V
American Board of Trial Advocates (President, North Central Florida Chapter
2006)
American Inn of Court
Graded Bar Exams for the Florida Board of Bar Examiners
Former Senior Warden and Vestryman of St. James Episcopal Church
Epiphany School Board
Chair of Epiphany School Board
Kiwanis Club
Elks Club
VFW
American Legion
Military Officers Association of America
Mentoring Program for law students
Tradition of Excellence Award from Solo & Small Firm Section for the Florida Bar

**IN THE DISTRICT COURT OF APPEAL
FOR THE FIRST DISTRICT
STATE OF FLORIDA**

ADAM PRINS,

PETITIONER,

CASE NO.:

L. T. No. 2015-1-CA

VS.

ROBERT FARLEY

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

Comes now Petitioner, Adam Prins, and pursuant to Fla. R. App. P. 9.100 files this petition for the issuance of a writ of certiorari directed to the lower tribunal, which is the Circuit Court, Third Judicial Circuit, in and for Suwannee County, Florida. In the action below, Petitioner is the Defendant; Respondent Robert Farley is the Plaintiff. Counsel for each of the parties is listed on the Certificate of Service.

I. BASIS FOR INVOKING THE JURISDICTION OF THIS COURT

Petitioner files this Petition for a Writ of Certiorari based upon the denial of Petitioner's motion to dismiss the Respondent's Second Amended Complaint based on a claim of absolute privilege. Certiorari relief is an appropriate method of challenging the denial of a motion to dismiss based upon principle of immunity

from suit. Crowder v. Barbati, 987 So. 2d 166 (Fla. 4th DCA 2008), citing Jenne v. Maranto, 825 So. 2d 409 (Fla. 4th DCA 2002)(concluding an erroneous denial of immunity would cause irreparable injury incapable of being corrected on a final appeal). Any remedy that enforces immunity upon final appeal, after the case had been fully defended would be meaningless. Id., citing Mitchell v. Forsyth, 472 U.S. 511, 526-527, 105 S. Ct. 2806, 86 L. Ed. 2d 411 (1985). Accordingly, an erroneous denial cannot be remedied on plenary appeal.

II. FACTS UPON WHICH THE PETITIONER RELIES

1. On December 31, 2014, Respondent filed his complaint (Appendix at 1-5), alleging one count of tortious interference with a business relationship against Petitioner.
2. On August 21, 2015, Petitioner moved to dismiss the original complaint, asserting that Petitioner was not a stranger to the business relationship between the Respondent and the City of Live Oak, of which Petitioner was a member of the city council. Appendix at 6-8.
3. Respondent alleged that the City Council could fire the Respondent. Appendix at 3.
4. On December 28, 2015, the trial court dismissed the complaint with leave to amend. Appendix at 9.

5. On December 29, 2015, Respondent amended his complaint. Appendix at 10-15.
6. On December 30, 2015, Petitioner again moved to dismiss, asserting the same grounds as the first motion to dismiss, and absolute privilege. The motion requested a dismissal with prejudice. Appendix at 16-22.
7. The trial court granted the motion, but declined to dismiss with prejudice, and gave the Respondent twenty days to amend. Appendix at 23-24.
8. On March 28, 2016, Respondent filed his Second Amended Complaint, making essentially the same allegations as the Amended Complaint. Appendix at 25-30.
9. The material allegations in the Second Amended Complaint were:
 - a. Respondent "had, at all times pertinent hereto, a business relationship with the City of Live Oak, Florida." via his employment as City Manager for the City of Live Oak.
 - b. Petitioner was a member of the City Council for the City of Live Oak, Respondent's employer.
 - c. After meeting with the City's finance director, and during his campaign for elected office, Petitioner thought all upper level management at City Hall were extremely overpaid, and that he made

this position known during his campaign, campaigning to “get rid” of employees he felt were grossly overpaid.

- d. Petitioner, while a city councilman, told Respondent, while Respondent was the City Manager, that Petitioner disapproved of a conference trip that Respondent was scheduled to take given a recent flooding emergency.
- e. Petitioner expressed reservations about City Hall employees taking a day off during the flooding emergency, but relented.
- f. Petitioner intended to make a motion to have Respondent dismissed.
- g. Petitioner “initiated” a “directive” that another Councilman request Respondent’s resignation.
- h. Respondent was ultimately dismissed by the City Council, at the urging of Petitioner.
- i. Other City Councilmen felt that the Petitioner had misled them about why the Respondent should be fired.

Appendix at 25-30.

10. Accordingly, on March 29, 2016, Petitioner filed his Motion to Dismiss Second Amended Complaint with Prejudice, asserting the same grounds, including the absolute privilege. Appendix at 31-39.

11. The trial court denied the Petitioner's Motion to Dismiss Second Amended Complaint with Prejudice, stating that the absolute privilege was a defense to be raised at summary judgment or at trial. Appendix at 40.

III. NATURE OF THE RELIEF SOUGHT

Petitioner seeks the issuance of a writ of certiorari to the lower tribunal quashing the order denying the motion to dismiss the Second Amended Complaint, and directing the lower tribunal to dismiss the Second Amended Complaint with prejudice on the grounds of absolute privilege.

IV. ARGUMENT AND AUTHORITIES

In this matter, the trial court clearly departed from the essential requirements of the law in finding that absolute privilege, or immunity from the suit, was merely a defense, and not a bar to the action. Crowder v. Barbati, 987 So. 2d 166, 167 (Fla. 4th DCA 2008) (Immunity entitlement is an immunity from suit rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial). None of the actions or statements alleged by the Respondent constitute an act or statement outside the course and

scope of Petitioner's elected position as City Councilman, therefore the absolute privilege or immunity must apply and stand as a bar to suit.

1. PETITIONER IS ENTITLED TO ABSOLUTE IMMUNITY FOR
STATEMENTS MADE WITHIN THE COURSE AND SCOPE OF HIS
DUTIES

Respondent alleges that Petitioner was a City Councilman at the time of the incidents alleged in the Second Amended Complaint. See Second Amended Complaint at ¶ 4, Appendix at 25. Officials, such as Petitioner as a City Councilman, have absolute immunity to claims of defamation and tortious interference arising from statements made in connection with their office. Goetz v. Noble, 652 So. 2d 1203 (Fla. 4th DCA 1995). "The public interest requires that statements made by officials of all branches of government in connection with their official duties be absolutely privileged." Hauser v. Urchisin, 231 So. 2d 6, 8 (Fla. 1970); see also Crowder v. Barbati, 987 So. 2d 166 (Fla. 4th DCA 2008).

2. THE ACTIONS ALLEGED BY RESPONDENT IN THE SECOND
AMENDED COMPLAINT ARE WITHIN THE COURSE AND SCOPE
OF PETITIONER'S DUTIES

The controlling factor in deciding whether the absolute privilege applies is "whether the communication was within the scope of the officer's duties." Cassell

v. India, 964 So. 2d 190, 194 (Fla. 4th DCA 2007) citing City of Miami v. Wardlow, 403 So. 2d 414, 416 (Fla. 1981). Respondent alleges Petitioner "acted outside the course and scope of his business relationship with the City [of Live Oak]." See Second Amended Complaint at ¶ 14, Appendix at 28. However, the scope of an official's duties is to be liberally construed. Cassell v. India, 964 So. 2d 190, 194 (Fla. 4th DCA 2007) citing Goetz v. Noble, 652 So. 2d 1203, 1205 (Fla. 4th DCA 1995). The scope of duties is liberally defined as the "orbit of [the official's] duties and responsibilities. McNayr v. Kelly, 184 So. 2d 428, 430 (Fla. 1966). Because the balancing of interests favors the public official, it is considered better "to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation." Cassell v. India, 964 So. 2d 190, 194 (Fla. 4th DCA 2007), quoting Barr v. Matteo, 360 U.S. 564, 572, 79 S. Ct. 1335, 3 L. Ed. 2d 1434 (1959) (quoting Judge Learned Hand, writing for the court in Gregoire v. Biddle, 177 F.2d 579, 581 (2d Cir. 1949)).

In McNayr, the county manager was acting within the orbit of his duties and responsibilities in making the report to the Board of County Commissioners with regard to the sheriff. In another similar case, Hauser v. Urchisin, 231 So. 2d 6, 7 (Fla. 1970), a councilman made a comment regarding a recently terminated city employee: "First, Mr. Urchisin's respect for the truth is not famous. And second, I know he considers his services invaluable to the City, but the taxpayers might

consider them to be awfully, awfully expensive." The comments were found to be within the scope of the Councilman's authority and absolutely privileged.

Given the points of comparison in McNayr and Hauser, Petitioner's alleged actions on the face of the Second Amended Complaint cannot be considered "outside the orbit" of Petitioner's duties and responsibilities as a City Councilman. Respondent alleges that Petitioner spoke to the City Manager about emergency situations, intended to make a motion to have Respondent dismissed, and spoke to fellow councilmen about the propriety of not retaining the County Manager.

Petitioner's comments to the City Manager about emergency situations, expressing an opinion as to the propriety of one action versus another, are not actionable. However, to the extent that they are the basis for Respondent's cause of action, any statements made from an elected official to the city manager regarding emergency operations of the governmental entity are certainly within the "orbit" of Petitioner's duties.

Petitioner's intentions to make a motion to have Respondent dismissed are not actionable. However, to the extent that Petitioner's intentions are the basis for Respondent's cause of action, any statement of that intention is within the course and scope of Petitioner's duties. Petitioner has the right, just like any other elected

official (or citizen for that matter) to voice his concerns about the performance of city officials.

The Respondent affirmatively alleges that the City Council had the authority to fire Respondent. See Second Amended Complaint at ¶ 11, Appendix at 28. Therefore, without doubt, any comments related to the Respondent City Manager being dismissed are certainly within the orbit of Petitioner's duties as an elected member of the body that makes that decision. Petitioner's comments to other councilmen, even if false or malicious, are not actionable due to the absolute privilege or immunity. See Albritton v. Gandy, 531 So. 2d 381, 387 (Fla. 1st DCA 1988)(applying absolute immunity to defamation – "public officials are protected by absolute immunity no matter how false or malicious or badly motivated a statement may be as long as the statements or actions fall within the "scope of duty" of the public official").

Because the Complaint alleges only actions that were within the orbit of Petitioner's official duties, Florida Law is overwhelmingly clear that any comments made by Petitioner to his fellow councilmen are absolutely privileged from any tortious interference claim. See Goetz v. Noble, 652 So. 2d 1203, 1205 (Fla. 4th DCA 1995), citing Danford v. City of Rockledge, 387 So. 2d 967 (Fla. 5th DCA 1980) (holding that officials had absolute immunity a claim of tortious

interference with a contract arising from statements made in connection with their office).

WHEREFORE, Petitioner respectfully requests that this Honorable Court take jurisdiction over the Petition for Writ of Certiorari, issue the Writ of Certiorari, quash the lower Court's order denying the Petitioner's Motion to Dismiss with Prejudice, and direct the Circuit Court of Suwannee County, Florida to enter an order dismissing the Second Amended Complaint with prejudice, and for such other and further relief as the law may afford.

Respectfully submitted,

By: /s/ John J. Joyce
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Counsel for Petitioner, Adam Prins

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Writ of Certiorari was forwarded by electronic transmission and regular U.S. Mail to Marie Maddox, Marie A. Mattox, P.A. at marie@mattoxlaw.com, and by U.S. Mail to the Honorable David W. Fina, Circuit Judge, Third Judicial Circuit in and for Suwannee County, Florida, 200 S. Ohio Avenue, Live Oak, Florida 32064, this 29th day of July, 2016.

By: /s/ John J. Joyce

CERTIFICATE OF COMPLIANCE

I hereby certify that this notice was typed in 14 point Times New Roman font.

By: /s/ John J. Joyce

IN THE DISTRICT COURT OF APPEAL
FOR THE FIRST DISTRICT
STATE OF FLORIDA

ADAM PRINS,

PETITIONER,

CASE NO.: 16-3435

L. T. No. 2015-1-CA

VS.

ROBERT FARLEY

RESPONDENT.

PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO ORDER TO
SHOW CAUSE WHY THE PETITION FOR CERTIORARI SHOULD NOT
BE GRANTED

Petitioner, Adam Prins, respectfully submits this reply to Respondent, Robert Farley's response to this Court's Order to Show Cause issued on August 16, 2016, and states:

- I. PETITIONER HAS SHOWN HE WILL SUFFER IRREPARABLE HARM;
PETITIONER IS ENTITLED TO ABSOLUTE IMMUNITY BECAUSE
THE ACTS ALLEGED ARE WITHIN THE COURSE AND SCOPE OF A
PUBLIC OFFICIAL'S OFFICIAL DUTIES.

In his Response, Respondent concedes the point that "public officials are afforded absolute immunity for acts done within their official duties." Response, citing Hauser v. Urchisin, 231 So. 2d 6, 7-8 (Fla. 1970). Authority previously cited shows that a petition for certiorari is the proper remedy for a denial of absolute immunity because of the irreparable harm that results. See Petitioner's Petition,

Section I, citing Crowder v. Barbati, 987 So. 2d 166 (Fla. 4th DCA 2008), Jenne v. Maranto, 825 So. 2d 409 (Fla. 4th 2002). Accordingly, this Court must determine Petitioner's entitlement to immunity based upon the Respondent's factual allegations in the Second Amended Complaint.

Instead of an examination of the factual allegations contained within the complaint, the Respondent seeks to have this Court deny the Petition because Respondent's Second Amended Complaint alleges, as a conclusion of law, that Petitioner acted outside of the "course and scope" of Petitioner's "business relationship" with the City. See Appendix at 28. It is not Respondent's conclusion of law, but the factual allegations in the Second Amended Complaint which this Court should evaluate to conclude, as a matter of law, whether immunity applies.

In reviewing his Response, the crux of Respondent's basis for suit appears to be that Petitioner allegedly misled or lied to other councilpersons to gain a majority vote to terminate Respondent in a "devious plan." Response at 7. However, Respondent conflates the alleged falsity and intent of Petitioner's alleged speech or action with the *context* of the same speech or action. Albritton, a case cited for a different premise by Respondent, provides guidance on the relevancy of both falsity and intent when applying the immunity at issue: "... public officials are protected by absolute immunity no matter how false or malicious or badly motivated a statement may be as long as the statements or actions fall within the

"scope of duty" of the public official." Albritton v. Gandy, 531 So. 2d 381, 387 (Fla. 1st DCA 1988)(discussing public official absolute immunity in relation to defamation). In short, no matter the falsity or motivation alleged, the operative inquiry is only, based upon the facts alleged, whether the statements or actions took place within the course and scope of the Petitioner's duties.

The Second Amended Complaint's factual allegations must be viewed within the broad definition of "course and scope" of official duties. Danford v. Rockledge, 387 So. 2d 967, 968 (Fla. 5th DCA 1980). The scope of an official's duties is to be liberally construed. Cassell v. India, 964 So. 2d 190, 194 (Fla. 4th DCA 2007) citing Goetz v. Noble, 652 So. 2d 1203, 1205 (Fla. 4th DCA 1995). The definition of course and scope is so broad that the Florida Supreme Court described the course and scope of official duties in planetary scale; "orbit." McNayr v. Kelly, 184 So. 2d 428, 430 (Fla. 1966).

Respondent attempts to place his allegations against Petitioner outside of the course and scope by relying on Albritton v. Gandy. However, the Respondent's reliance on Albritton is not well-founded, and his analysis leaves out key facts upon which that case was decided. In Albritton, a county commissioner made statements and took actions related to the employment of an employee who was not within the commission's ambit to hire and fire. Albritton at 387. The county administrator was the party responsible for employment decisions for that

employee. Id. In short, the county commission in Albritton was a layer removed from having any authority as to the lower level employee. Accordingly, the Albritton Court found that the commissioner's actions and statements made in an effort to influence others were outside the course and scope of his official duties.

Here, unlike Albritton, the city council had the authority to hire and fire the employee the question. Petitioner was one of five council members who had a vote to either fire or retain the Respondent. Respondent concedes that Petitioner did not have *unilateral* authority to fire the Respondent, but he had a vote to do so. Whether Petitioner could unilaterally fire Respondent, or whether he was a voting member of the body that could fire Respondent is a distinction without a difference. The official duties of a member of the body that hires and fires an employee includes discussions and opinions of that employee, just as someone with unilateral authority. If Respondent is correct, a legislative body is entitled to absolute immunity for actions or statements made in connection with a person it has authority to hire and fire, but not the individuals comprising that body. Contrary to Respondent's position, the Florida Supreme Court has stated:

It is well settled in the state that words spoken or written by public servants in judicial and legislative activities are protected by absolute privilege from liability for defamation. However false or malicious or badly motivated the accusation may be, no action will lie therefor in the state. **Nor is it questioned that such absolute immunity in the state extends to county and municipal officials in**

legislative or quasi-legislative activities as well as to members of the state legislature and activities connected with state legislation. ...[E]xecutive officials of government are absolutely privileged as to defamatory publications made in connection with the performance of the duties and responsibilities of their office to the same extent as **such absolute immunity is afforded to members of the legislative and judicial branches of government.**

McNayr v. Kelly, 184 So. 2d 428, 428 (Fla. 1966)(emphasis added). Clearly, absolute immunity extends to individual legislators for statements and actions taken in connection as to a matter within the body's authority. Here, Respondent admits the city council, of which Petitioner was a member, could hire and fire the city manager. The city manager, Respondent, was fired. It is wholly contrary to the established law of absolute immunity to hold that a city councilperson could incur personal liability when speaking to other city councilpersons about the merit, or lack thereof, of the city manager when considering the city manager's retention. Such a holding would deter the public at large from public service.

II. THE TRIAL COURT DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF THE LAW IN FAILING TO APPLY ABSOLUTE IMMUNITY AND DISMISS THE ACTION.

The Respondent asserts that the trial court did not depart from essential requirements of the law in denying the motion to dismiss, because the trial court determined that there were "disputed issues of material fact involved." Response at

8.¹ However, because a motion to dismiss tests only the allegations of the complaint, there were no facts before the trial court other than the facts pled by Respondent in the Second Amended Complaint.

In Huszar v. Gross, 468 So. 2d 512 (Fla. 1st DCA 1985), the defendant asserted a privilege on a motion to dismiss. The trial court concluded that the privilege applied and dismissed the case. On appeal, the plaintiff/appellant contended that the privilege could not be properly asserted in a motion to dismiss because it requires factual determinations to be made. Id. The Court found, however, that it is “well established that when the facts and circumstances of a communication are revealed, the issue of whether a privilege has been established is a question of law for the court to decide.” Id., citing Abraham v. Baldwin, 52 Fla. 151, 42 So. 591 (1906). See also City of Stuart v. Monds, 10 So. 3d 1134 (Fla. 4th DCA 2009)(granting petition for certiorari as to lower court’s denial of a motion to dismiss counts for tortious interference with an advantageous business relationship, applying absolute immunity based upon allegations within the operative complaint).

¹ This is a misreading of the trial court’s order. The trial court stated “[t]here are issues of fact relating to the issue of absolute privilege which may be raised as a defense for adjudication at summary judgment or trial.” Appendix at 40. The “disputed issue of material fact” standard is appropriate at summary judgment, not a motion to dismiss.

Here, the trial court was required to make a conclusion of law as to whether immunity applied based upon the facts and circumstances in Respondent's Second Amended Complaint. As argued above, because the Complaint alleges only actions that were within the orbit of Petitioner's official duties, Florida law is overwhelmingly clear that any comments made by Petitioner to his fellow councilpersons are absolutely privileged from any tortious interference claim. See Goetz v. Noble, 652 So. 2d 1203, 1205 (Fla. 4th DCA 1995), citing Danford v. City of Rockledge, 387 So. 2d 967 (Fla. 5th DCA 1980) (holding that city councilpersons had absolute immunity on a claim of tortious interference with a contract arising from statements made in connection with their office). The public interest requires that statements made by officials of all branches of government in connection with their official duties be absolutely privileged. Hauser v. Urchisin, 231 So. 2d 6, 8 (Fla. 1970) (emphasis added). Having the Respondent's facts before it, as this Court does, the trial court departed from the essential requirements of the law by failing to apply absolute immunity based upon those facts, and by failing to bar the suit from going forward.

WHEREFORE, Petitioner respectfully requests that this Honorable Court take jurisdiction over the Petition for Writ of Certiorari, issue the Writ of Certiorari, quash the lower Court's order denying the Petitioner's Motion to Dismiss with Prejudice, and direct the Circuit Court of Suwannee County, Florida

to enter an order dismissing the Second Amended Complaint with prejudice, and
for such other and further relief as the law may afford.

Respectfully submitted,

By: /s/ John J. Joyce

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Counsel for Petitioner, Adam Prins

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Writ of Certiorari, filed on September 20, 2016 was forwarded by electronic transmission and regular U.S. Mail to Marie Maddox, Marie A. Mattox, P.A. at 310 E. Bradford Road Tallahassee, FL, 32303, and at marie@mattoxlaw.com, and by U.S. Mail to the Honorable David W. Fina, Circuit Judge, Third Judicial Circuit in and for Suwannee County, Florida, 200 S. Ohio Avenue, Live Oak, Florida 32064, this 22nd day of September, 2016.

By: /s/ John J. Joyce

CERTIFICATE OF COMPLIANCE

I hereby certify that this notice was typed in 14 point Times New Roman font.

By: /s/ John J. Joyce

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

ADAM PRINS,

Petitioner,

v.

ROBERT FARLEY,

Respondent.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D16-3435

Opinion filed January 17, 2017.

Petition for Writ of Certiorari – original jurisdiction.

John J. Joyce of Robinson, Kennon & Kendron, P.A., Lake City, for Petitioner.

Marie A. Mattox, Tallahassee, for Respondent.

B.L. THOMAS, J.

In this petition for writ of certiorari, the issue presented is whether Petitioner, an elected city council member, suffered irreparable harm that cannot be cured on post-judgment appeal, when the trial court denied a motion to dismiss a suit filed by Respondent against Petitioner, based on the dismissal of Petitioner from his position as city manager. We find that Petitioner would suffer irreparable harm from the trial

court's ruling allowing the suit to proceed. See Crowder v. Barbati, 987 So. 2d 166, 167 (Fla. 4th DCA 2008) (quashing order denying motion to dismiss where absolute privilege barred suit for defamation charge against sheriff). We therefore grant the writ of certiorari and quash the order below, which departed from the essential requirement of law, because the suit is barred by absolute privilege.

Petitioner campaigned for the Live Oak City Council and was elected, after asserting that the upper levels of city management were excessively compensated. Once elected, Petitioner criticized Respondent during a local flooding event. After conversations with other council members, the city council discharged Respondent from his position. Respondent then filed suit, alleging tortious interference by Petitioner in seeking Respondent's dismissal. Respondent alleged that Petitioner started a rumor among the city council that Respondent would be fired, and further asserted that Petitioner acted outside the scope of his official duty by misleading two council members to vote to discharge Respondent.

Petitioner filed a motion to dismiss the suit, arguing that because he acted within the scope of his official public duties, the legal cause of action was barred by absolute privilege. The trial court denied the motion to dismiss, citing issues of fact relating to the issue of absolute privilege, and ruling that Petitioner could raise the defense by a motion for summary judgment.

We note first that Respondent's complaint is, in essence, a retooled defamation

claim. Lock v. City of W. Melbourne, Fla., 2015 WL 1880732, *27 (M.D. Fla. April 24, 2015) (holding city council members absolutely immune from police chief's tortious-interference claim, because the claim was a retooled defamation action). And absolute immunity protects public officials for statements made "in connection with an employee's discharge . . . if the official has responsibility for discharging the employee." Id. at *29 (citing Barr v. Matteo, 360 U.S. 564, 574-75 (1959)); see also Hauser v. Urchisin, 231 So. 2d 6, 7-8 (Fla. 1970) (holding absolute immunity shielded city commissioner from lawsuit for defamatory statements made to press regarding former city prosecutor's dismissal); Goetz v. Noble, 652 So. 2d 1203, 1205 (Fla. 4th DCA 1995) (extending absolute immunity to bar suits against a government official alleging tortious interference with a contract for "statements made in connection with the performance of an official duty"). The Florida Supreme Court has previously reasoned that officials should be absolutely immune from suit in cases such as this, as it is "'better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation.'" McNayr v. Kelly, 184 So. 2d 428, 431 n.12 (Fla. 1966) (quoting Gregoire v. Biddle, 177 F.2d 579 (2d Cir. 1949)).

The United States Supreme Court has explained the policy underlying barring suits against elected officials who act within the scope of their authority:

‘In order to enable and encourage a representative of the public to discharge his public trust with firmness and success, it is indispensably necessary, that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of every one, however powerful, to whom the exercise of that liberty may occasion offense.’ II Works of James Wilson (Andrews ed. 1896) 38.

Tenney v. Brandhove, 341 U.S. 367, 376 (1951). According to the Court, the principle of legislators being “free from arrest or civil process for what they do or say in legislative proceedings” is grounded in the English Parliament’s centuries-long struggle for independence from the Crown. Id. at 372.

In order for the doctrine of absolute privilege to apply, however, the action taken must fall within the scope of the official’s duties. Albritton v. Gandy, 531 So. 2d 381, 387 (Fla. 1st DCA 1988). Although the scope of an official’s duties is liberally construed and extends to “discretionary duties that are associated with a given position,” the action must be related to the official’s duties. See Lock, 2015 WL 1880732 at *28 (quoting Stephens v. Geoghegan, 702 So. 2d 517, 523 (2d DCA 1997)); see also Tenney, 341 U.S. at 374 (noting the doctrine of absolute immunity should be liberally construed). In Albritton, a county commissioner had an emergency medical technician fired for refusing to endorse him during his campaign. 531 So. 2d at 387. This court held that the commissioner acted outside the scope of his official duties, because only the county administrator possessed the authority to dismiss the technician, not the county commission.

Here, Petitioner's comments, "[h]owever false or malicious," were protected by absolute privilege, because the city council was authorized to dismiss Respondent as city manager, and Petitioner's alleged statements were made in connection with the dismissal of Respondent. Lock, 2015 WL 1880732 at *28 (quoting Hauser, 231 So. 2d at 8). Because "the ultimate check" on public officials is the electoral process, it is the voters who must decide if Petitioner's actions were justified, not a civil jury. Bogan v. Scott-Harris, 523 U.S. 44, 52 (1998) (holding that absolute immunity also protects local officials from suit).

Thus, we GRANT Petitioner's petition for writ of certiorari and QUASH the trial court's order denying Petitioner's motion to dismiss.

RAY and OSTERHAUS, JJ., CONCUR.