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The Amici are organizations with longstanding interests in preserving an open and transparent government and protecting the publicôs right to access public records, including public records held by private companies that provide services to Floridaôs incarcerated population. NTERlic Nd services s M

principles of liberty and equality embodied in the United States and Florida Constitutions.

The First Amendment Foundation (ñFoundationò) is a Florida nonprofit corporation founded in 1984 by the Florida Press Association, the Florida Society of Newspaper Editors, and the Florida Association of Broadcasters and represents more than 200 members. The Foundation was established to educate and advocate on behalf of the publicôs interest in freedom of the press, access to governmental records and meetings, and to provide training on Floridaôs open governme

procedural framework is not supported by Florida law and threatens to impede critical monitoring that organizations such as Amici conduct to ensure that the constitutional rights of incarcerated people are being respected. The procedural framework proposed by the Dismissal Order will add unwarranted and undue delay to the process of enforcing a public records request, increase the cost of enforcing a records request, and will interfere with the ability of requestors to obtain attorneysô fees from private contractors that fail to comply with the Public Records Act.

In sum, the Public Records Act is essential to maintaining a transparent government and protecting Florida citizensô constitutional rights and also protecting the rights of an oft-forgotten group ð incarcerated people. However, the Dismissal Order threatens to undermine the enforcement mechanism the Florida legislature enacted to protect the constitutional right to access public records.

As the United States Supreme Court has recognized, people in prison are dependent upon the government for their basic needs, including personal safety. Brown v. Plata, 563 U.S. 493, 510 (2011) (ñTo incarcerate, society takes from prisoners the means to provide for their own needs. Prisoners are dependent on the

State for food, clothing, and necessary medical care.ò). For decades, prisons have retained private companies to provide those basic needs, including medical care, to people in their care in an effort to reduce costs. The steady increase of privatization in the administration of medical care provided to incarcerated people, in turn, naturally calls for robust monitoring of prison conditions.

Over the last several decades, prison costs, including the costs of providing medical care to the prison population, have skyrocketed. The rise in medical care costs for incarcerated People can be traced back to the mid-1980s as the increasing American prison population and the lengthening of prison sentences resulted in the aging of the American prison populations. Dan Weiss, Privatization and Its Discontents: The Troubling Record of Privatized Prison Health Care, 86 U. COLO. L. REV. 725, 743 (2015). Notably, between ñ1986 to 1989, the percentage of people in prisons over the age of fifty more than doubled from 11.3 percent to 26 percent.ò Id. Accordingly, prison health care costs increased significantly and, between 2001 to 2008, spending on prison health care increased in the vast majority of states, including Florida. Id. As of 2005, approximately forty percent (40%) of all inmate care in the United States had been outsourced to for-profit companies. Id.

Prisons ð even prisons providing medical services through private contractors ð of course are required to provide incarcerated people with adequate

medical care pursuant to the Eight Amendment of the United States Constitution. Estelle v. Gamble, 429 U.S. 97, 103 (1976). Florida courts also have acknowledged the responsibility of the Florida Department of Corrections to protect the rights of incarcerated people and to provide adequate health services to state people. Crews v. Florida Pub. Employers Council 79, AFSCME, 113 So. 3d 1063, 1068 (Fla. 1st DCA 2013) (citing Estelle v. Gamble, 429 U.S. 97, 103 (1976)). Indeed, Florida law provides that each sheriff and chief correctional officer must adopt and employ model standards regarding the medical care provided to incarcerated people in county and municipal detention facilities. Ä 951.23(4)(a)1b, Fla. Stat.

Meanwhile, Florida has marched towards privatization of prison services and gone to great lengths to achieve increased privatization of the state prison system. The Florida Legislature has provided the Department of Corrections with broad statutory authority to retain private contractors to provide adequate health care to people in prisons. Crews, 113 So. 3d at 1068. Moreover, the Florida Legislature has facilitated arrangements between the Department of Corrections and private contractors through the use of various incentives, including providing contractors with exemptions from competitive bidding and extending sovereign immunity to health care providers that contract with the Department of Correction. See Ä 945.0259(4), Fla. Stat.; see also Ä 768.28(10), Fla. Stat.

Floridaôs efforts to retain private contractors to provide medical care to people in prisons has yielded partnerships with private companies accused of malpractice. In 2013, the state of Florida entered into a five-year, $1.2 billion contract with Corizon, a Tennessee company, to provide medical care to thousands of incarcerated people in Florida. See Dan Christensen, Florida Prison Officials Didnôt Ask, Companies Didnôt Tell About Hundreds of Malpractice Cases, BROWARD BULLDOG (Feb. 7, 2021, 5:00pm), http://www.browardbulldog.org/2013/10/florida-prison-officials-didnt-ask-companies-didnt-tell-about-hundreds-of-malpractice-cases/, http://perma.cc/V76U-HE5F. In the five (5) years prior to Corizonôs partnership, Corizon faced over 600 lawsuits stemming from allegations of malpractice. Id. In December 2012, the Florida Department of Corrections also entered into a $240 million contract with Wexford Health Sources, a Pennsylvania-based company, to provide medical services to incarcerated people in nine institutions throughout South Florida. Id. Between January 2008 through 2012, Wexford faced over 1,000 claims of malpractice from people in prisons. Id. The sheer number of lawsuits against private contractors providing prison services underscores the need for effective monitoring in prisons.[1]

[1] The proliferation of such medical services contracts are not limited to Floridaôs state prison system. Private contractors like Armor have entered into similar

In Brown, the United States Supreme Court recognized that the treatment of incarcerated people is a constitutional issue and the basic concept underlying the Eighth Amendment regarding the treatment of people in prisons is ñnothing less thanò human dignity. Brown, 563 U.S. at 510 (quoting Atkins v. Virginia, 536 U.S. 304, 311 (2002)). However, the task of effectively monitoring prisons and ensuring that prisons provide adequate medical care to incarcerated people is complicated by the very nature of prisons and the limited population within prisons. Typically, incarcerated people are the only individuals capable of evaluating the medical care provided, but often lack the resources or ability to challenge the systemic issues faced regarding the care received. As Justice Brennan once noted, people in prisons ñexist in a shadow world that only dimly enters our awareness.ò O'Lone v. Estate of Shabazz, 482 U.S. 342, 354-55 (1987) (Brennan, J., dissenting).

Thus, the burden of monitoring correctional facilities and protecting incarcerated peopleôs rights typically falls on organizations such as the Amici, the press, and organizations devoted to protecting incarcerated people, like Appellant.

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contracts with county jails throughout Florida and been the subject of lawsuits concerning the adequacy of medical care to people in prisons. Brittany Shamas, ñA Miami-Based Jail Healthcare Company Profits While Patients Die,ò Miami New-Times (Sept. 17, 2019), https://www.miaminewtimes.com/news/jail-health-care-company-armor-correctional-accused-of-multiple-inmate-deaths-11268351.

And these organizations rely heavily on public records law to obtain information regarding the operation of prisons. See Paul von Zielbauer, As Health Care in Jails Goes Private, 10 Days Can Be a Death Sentence, N.Y. Times, Feb. 27, 2005 (noting that the paper reviewed ñthousands of pages of public and internal company documents, state and city records, and every New York State report on deaths under [a private] companyôs careò). The Public Records Act therefore is critical to ensuring that Floridaôs state prison system and county jails ð and the private contractors that they retain ð are providing adequate health services to people in prisons. Mike Tartaglia, Private Prisons, Private Records, 94 B.U.L. Rev. 1689, 1723 (2014). The Dismissal Order threatens to stymie that important check on government authority as it relates to a population vulnerable to abuse.

Florida was the first state to apply its public records statute to a private company providing prison services. Mike Tartaglia, Private Prisons, Private Records, 94 B.U.L. Rev. 1689, 1727 (2014). As noted above, a Florida citizenôs right of access to records of state and local governments is protected by the Florida Constitution. See Art. I, Ä 24, FLA. CONST. This Constitutional right of access is codified by Florida Statutes. The Public Records Act provides:

Every person who has custody of a public record shall permit

Ä 119.07(1)(a), Fla. Stat. And th

In Prison Health Services, Inc., the court held that records in the possession of the private contractor relating to a settlement agreement with an inmate would typically be considered a public record if they were in the possession of the public agency and, therefore, are subject to the Public Records Act. Id.

Appellantôs initial brief compellingly presents the law pertinent to its request pursuant to the Public Records Act and the Amici do not repeat

If this Court adopts the procedural framework set forth in the Dismissal Order, the Amici and other requestors of public records in the possession of third-party contractors of public agencies will face an unreasonable burden and undue delay in obtaining public records and an obstacle to holding private contractors

Appellee and PBSO was an exception to the rule.[2] See Mike Tartaglia, Private Prisons, Private Records, 94 B.U.L. REV. 1689, 1725 (2014). If this Court upholds the Dismissal Order it will undermine the ability of the public to request public records from a private contractor based on the purported failure to comply with a non-existent requirement under the statute as a basis to withhold records, despite its contractual obligation to comply.

To discourage delay in the production of public records, the Public Records Act provides that a party may obtain attorneyôs fees if there is an unjustified delay in the production of public records. Ä 119.12, Fla. Stat. Florida has a reputation as the jurisdiction with the strongest policy regarding attorneyôs fees in public record litigation. Daxton R. ñChipò Stewart, Let the Sunshine in, or Else: An Examination of the ñTeethò of State and Federal Open Meetings and Open Records Laws, 15 COMM. L. & POLôY 265, 283 (2010). The Amici contend, and the Florida Supreme Court has recognized, that attorney fees are a critical component of encouraging litigation that protects and vindicates societal rights, including the rights of incarcerated people. See N.Y. Times Co. v. PHH Mental Health Servs.,

[2] Notably, the contractual provisions of the medical services contract between Appellee and PBSO demonstrate PBSOôs intent to require Appellee to comply with the Public Records Act. (R.175).

Inc., 616 So. 2d 27, 29 (Fla. 1993) (ñIf public a

that the attorneyôs fee provision of the Public Records Act ñshould . . . be liberally construed so as to best enforce the promotion of access to public records.ò Downs v. Austin, 559 So. 2d 246, 247 (Fla. 1st DCA 1990). Attorneysô fees have also been described as a ñpunitive remedyò meant to punish improper conduct of defendants and deter future improper conduct. Daxton R. ñChipò Stewart, Let the Sunshine in, or Else: An Examination of the ñTeethò of State and Federal Open Meetings and Open Records Laws, 15 COMM. L. & POLôY 265, 285ï86 (2010).

The Dismissal Order and its imposed procedural framework runs counter to the liberal construction of Section 119.12 of the Florida Statutes mandated in Downs and the ñpunitive remedyò that the Public Records Act sets forth because it creates an added procedural step to an attorneysô fees award. A ruling affirming the Dismissal Order will amount to the adoption of a fee-shifting provision that results in requestors incurring fees and costs stemming from third-party contractors that fail to comply with a public records request directed to the public agency (even when it was simultaneously directed to the third-party contractor, as was the case here).

Also, while Section 119.0701(4)(a) of the Florida Statutes permits the recovery of fees and costs from contractors, the Public Records Act does not compensate a person who seeks mandamus relief against a public agency that does not possess the requested public records. Thus, the Dismissal Order may

incentivize private contractors to refrain from complying with a records request since the requestors will now have to take an additional and costly procedural step to seek ð and obtain ð mandamus relief against a private contractor in possession of public records.

For the foregoing reasons, this Court should reverse the Dismissal Order and grant the petition for writ of mandamus.

I HEREBY CERTIFY that on March 8, 2021, a copy of the foregoing was electronically filed through the Florida Courts E-Filing Portal which will send electronic notification of the above filing to all registered users, and by U.S. Mail and E-Mail to all counsel of record.

/ /_____.
Brian C. Frontino, Esq.

I HEREBY CERTIFY that the foregoing comports with the font and spacing requirements of Florida Rules of Appellate Procedure.

/ /_____.
Brian C. Frontino, Esq.