

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

ALACHUA COUNTY, FLORIDA, et al.,

Plaintiffs,

v.

Case No. 10-CA-478

THE HONORABLE LARRY CRETUL,
Speaker of the House, State of Florida,
and THE HONORABLE JEFF
ATWATER, President of the Senate,
State of Florida,

Defendants.

DEFENDANTS MOTION TO DISMISS

Defendants, Cretul and Atwater, hereby move to dismiss this action and as grounds state:

1. This is an action challenging the constitutionality of an act of the Legislature.
2. Defendants, Cretul and Atwater, as members of the legislature are immune from such suit.

MEMORANDUM

Cases such as this one are not justiciable because of the immunity legislators enjoy from executive and judicial scrutiny of their legislative acts. *See, e.g., City of Pompano Beach v. Swerdlow Lightspeed Management Co., LLC.*, 942 So.2d 455,

456 -457 (Fla. 4th DCA 2006)(State and local officials are immune from civil suits for their acts done within the sphere of legislative activity.); *Walker v. President of the Senate*, 658 So.2d 1200, 1200 (Fla. 5th DCA 1995)(state legislators are immune from civil suits for their acts done within the sphere of legislative activity.); *Penthouse Inc. v. Saba*, 399 So. 2d 456, 458 (Fla. 2nd DCA 1981) (“If an exercise of legislative or judicial power is involved, the immunity is absolute”).

Legislators may not be compelled to defend their legislative decisions or actions in court. “[T]he central role of [parliamentary privilege under the separation of powers in our form of government is] to prevent intimidation of legislators by the Executive and accountability before a possibly hostile judiciary.” *Gravel v. U.S.*, 408 U.S. 606, 617 (1972) (citing *United States v. Johnson*, 383 U.S. 169, 181 (1966)). The “state legislative privilege [is] on a parity with the similar federal privilege.” *Johnson* at 180 (citing *Tenney v. Brandhove*, 341 U.S. at 377 (1951)). Legislators may not even be required to testify in such an action. *See City of Safety Harbor v. Birchfield*, 529 F.2d 1251 (5th Cir. 1976) (holding legislators and legislative staff enjoy a common law immunity and privilege from judicial compulsion with respect to legislative activities).

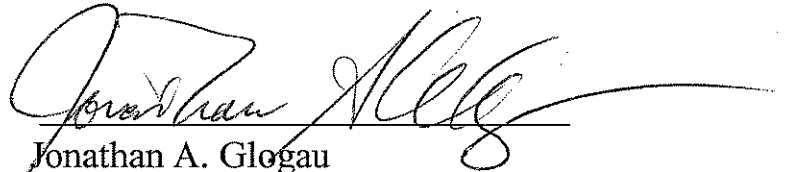
While legislators may voluntarily participate in litigation challenging the constitutionality of legislative acts, they enjoy ancient inviolable immunity from

compulsion to defend or to testify in such actions. Thus, the legislative leaders named in the Complaint have an absolute right to be DISMISSED.

WHEREFORE, Defendants respectfully request that this court issue an order DISMISSING this case.

Respectfully submitted this 11th Day of June, 2010.

BILL McCOLLUM
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "Jonathan A. Glogau", written over a horizontal line.

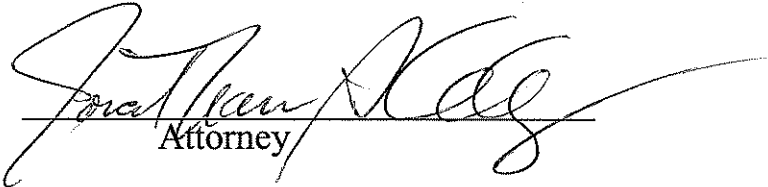
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was served by U.S. mail and e-mail this 11th Day of June, 2010, on:

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