

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CA FLORIDA HOLDINGS, LLC,
Publisher of the PALM BEACH POST,

Plaintiff,

v.

CASE NO.: 19-CA-014681

DAVE ARONBERG, as State Attorney of
Palm Beach County, Florida; SHARON R.
BOCK, as Clerk and Comptroller of Palm
Beach County, Florida.

Defendants.

MOTION TO SET CASE MANAGEMENT CONFERENCE

COMES NOW, the Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, by and through the undersigned counsel, and hereby files this Motion to Set Case Management Conference, and in support thereof states:

1. Despite conferring with each other, counsel for the Plaintiff and the undersigned counsel have reached an impasse regarding the scheduling of Defendant Aronberg's Motion for Summary Judgment and Motion for Attorneys' Fees.

2. Pursuant to § 57.105, Florida Statutes, on June 8, 2020, the undersigned counsel served Plaintiff with a demand to voluntarily dismiss/withdraw the First Amended Complaint, filed January 17, 2020, along with a Motion for Attorneys' Fees. **See, Exhibit "A"**.

3. Specifically, Defendant Aronberg's § 57.105 demand was served immediately after Chief Judge Krista Marx entered her Order Granting Defendants Motions to Dismiss Count II of Plaintiff's First Amended Complaint with Prejudice, ("Order"). **See, Exhibit "B"**.

4. Consequently, only Count I of Plaintiff's Amended Complaint remains, which seeks Declaratory Relief pursuant to § 86.011, Florida Statutes.

5. On June 23, 2020, Plaintiff's counsel sent a response refusing to withdraw the remainder of the Amended Complaint. **See, Exhibit "C"**.

6. § 57.105, Florida Statutes states the following:

A motion by a party seeking sanctions under this section must be served but may not be filed with or presented to the court unless, within 21 days after service of the motion, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.

§ 57.105(4), Florida Statutes.

7. Accordingly, after waiting the requisite "21 days after service of the motion" Defendant Aronberg's Motion for Attorneys' Fees was filed with this Court on July 1, 2020. **See, Exhibit "D"**.

8. Thereafter, on August 18, 2020, Defendant Aronberg filed his Motion for Summary Judgment. **See, Exhibit "E"**.

9. Although no substantive hearing has taken place since Judge Marx entered her Order and no prevailing party has been deemed, Plaintiff nonetheless insists on scheduling for hearing Defendant Aronberg's Motion for Attorneys' Fees prior to a hearing on Defendant Aronberg's Motion for Summary Judgment.

10. The undersigned counsel has discussed this matter with Plaintiff's counsel and strenuously objected to the scheduling of the Motion for Attorneys' Fees prior to a hearing on Defendant Aronberg's Motion for Summary Judgment.

11. Nonetheless, the parties are unable to reach an agreement as to which motion should be heard first and have no other option than to seek judicial intervention regarding the scheduling of the above-referenced motions to be heard.

WHEREFORE, Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, respectfully requests that this Honorable Court grant the instant Motion to Set

Case Management Conference in order to determine a proper path for the scheduling of the motions discussed herein to be heard by the Court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of September, 2020, a copy of the foregoing Motion to Set Case Management Conference has been electronically filed with the Florida E-File Portal for e-service on all parties of record herein.

JACOBS SCHOLZ & WYLER, LLC

/s/ Douglas A. Wyler

Arthur I. Jacobs, Esq.
Fla. Bar No.: 10249
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*General Counsel for the Florida
Prosecuting Attorney's Association*

EXHIBIT “A”

NOT A CERTIFIED COPY

EXHIBIT “A”

Subject: SERVICE OF COURT DOCUMENT; CASE NO. 2019-CA-014681; CA FLORIDA HOLDINGS, LLC V. DAVE ARONBERG ET AL.

Date: Monday, June 8, 2020 at 3:58:58 PM Eastern Daylight Time

From: Douglas Wyler

To: 'mendelsohns@gtlaw.com', smithl@gtlaw.com, flservice@gtlaw.com, BoyajianN@gtlaw.com, riveraal@gtlaw.com, GRYGIELM@gtlaw.com

Attachments: 2020-06-08 Aronberg 57.105 Demand and Motion for Attorneys' Fees.pdf

Please see attached and below in this matter.

Court:	Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida
Case No:	Case No. 2020-CA-014681
Plaintiff:	CA Florida Holdings, LLC
Defendant:	Dave Aronberg
Title of Documents Served:	<ul style="list-style-type: none">• Fla. Stat. § 57.105 Demand Letter• Defendant, Dave Aronberg's Motion for Attorneys' Fees
Sender's Name and Telephone Number:	Douglas Wyler (904) 261-3693

Sincerely,

Doug Wyler, Esq.
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JACOBS SCHOLZ & WYLER, LLC.

A LIMITED LIABILITY COMPANY OF PROFESSIONAL ASSOCIATIONS

THE LAW OFFICES OF
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RICHARD J. SCHOLZ, P.A.
RICHARD J. SCHOLZ

DOUGLAS A. WYLER, P.A.
DOUGLAS A. WYLER

June 8, 2020

VIA ELECTRONIC & U.S. MAIL

Stephen A. Mendelsohn, Esq.
Greenburg Traurig, P.A.
5100 Town Center Circle, Suite 400
Boca Raton, FL 33486

**RE: CA Florida Holdings, LLC v. Dave Aronberg et al.
Palm Beach County, Case No.: 2019-CA-014681**

Dear Mr. Mendelsohn:

As you are aware our firm represents the interests of Dave Aronberg, as State Attorney of Palm Beach County, Florida, in the above referenced matter. The purpose of this letter is to demand the voluntary dismissal of your First Amended Complaint, (the "Complaint"), dated January 17, 2020. This demand is made pursuant to section 57.105, Florida Statutes.

As you know, Section 57.105 provides:

- (1) Upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:
 - a. Was not supported by the material facts necessary to establish the claim or defense; or
 - b. Would not be supported by the application of then-existing law to those material facts.

Today, Judge Marx granted, with prejudice, Defendant Aronberg's Motion to Dismiss Count II of the Plaintiff's Complaint. Pursuant to the Court's ruling, the Plaintiff's only remaining cause of action consists of Count I, for Declaratory Relief. Accordingly, we believe that the Complaint filed herein and its sole remaining Count for Declaratory Relief is not supported by the material facts necessary to establish the claims asserted, and that your claims are not supported by the application of current law to said material facts.

First and foremost, the Complaint is not supported by the material facts necessary to establish the claims asserted because neither Defendant Aronberg, nor The Office of the State Attorney for the Fifteenth Judicial Circuit is in custody or control of the 2006 grand jury materials sought therein. Simply put, the declaratory relief sought by the Plaintiff, seeks records from my client that are impossible for him or his office to produce. Accordingly, Defendant Aronberg is not a proper party to this action because no matter what, he and his office do not have possession, custody, or control of the requested materials.

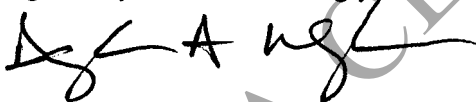
In addition to the foregoing material facts that negate the claims asserted in the Complaint, your claims are also not supported by the application of current law. Specifically, your action for declaratory relief fails based on the clear, unambiguous statutory language found in Section 905.27(2), Florida Statutes, which states:

When such disclosure is ordered by a court pursuant to subsection (1) for use in a civil case, it may be disclosed to all parties to the case and to their attorneys and by the latter to their legal associates and employees. However, the grand jury testimony afforded such persons by the court can only be used in the defense or prosecution of the civil or criminal case and for no other purpose whatsoever.

Moreover, even if the Plaintiff were to prevail in the declaratory action, Mr. Aronberg would be unable to comply with any court order granting disclosure of the requested documents because neither Mr. Aronberg nor The Office of the State Attorney for the Fifteenth Judicial Circuit have possession, custody, or control of the 2006 Epstein grand jury records.

Based on the foregoing, if the Complaint is not dismissed within 21 days of the service of this letter, the enclosed Motion for Attorney's Fees will be filed and we will seek as sanctions, from your client and your firm, recovery of the legal expenses incurred in defending this frivolous action.

Please govern yourself accordingly.

A handwritten signature in black ink, appearing to read 'D. A. Wyler', is written over a large, diagonal, semi-transparent watermark that says 'NOT A CERTIFIED COPY'.

Douglas A. Wyler, Esq.
For the Firm

Encl.: Defendant's Motion for Attorneys' Fees

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CA FLORIDA HOLDINGS, LLC,
Publisher of the PALM BEACH POST,

Plaintiff,

v.

CASE NO.: 19-CA-014681

DAVE ARONBERG, as State Attorney of
Palm Beach County, Florida; SHARON R.
BOCK, as Clerk and Comptroller of Palm
Beach County, Florida.

Defendants.

DEFENDANT, DAVE ARONBERG'S MOTION FOR ATTORNEYS' FEES

Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, by and through the undersigned attorneys, moves the Court, pursuant to Florida Statutes, Section 57.105, to award him reasonable attorneys' fees for the defense of Plaintiff's First Amended Complaint, (the "Complaint"), and as grounds therefor, would show that on June 8, 2020, Plaintiff was served a copy of this Motion, together with a letter from the undersigned attorney, in accordance with subsection (4) of the above Statute, demanding dismissal of the Complaint, at least 21 days prior to the filing of this Motion. In said letter, Defendant's attorney advised Plaintiff of the facts which establish that the Complaint is without support of the facts or the law.

WHEREFORE, Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, respectfully requests the Court enter an Order requiring Plaintiff and Plaintiff's attorneys to pay said Defendant's attorneys' fees incurred herein after service of this Motion.

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day ____, 2020, the foregoing was electronically filed via the Florida E-File Portal for electronic service on the parties of record herein.

JACOBS SCHOLZ & WYLER, LLC

/s/ Douglas A. Wyler

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Attorneys for Defendant

EXHIBIT “B”

NOT A CERTIFIED COPY

EXHIBIT “B”

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION AG
CASE NO. 50-2019-CA-014681-XXXX-MB

CA FLORIDA HOLDINGS LLC PUBLISHER OF THE PALM BEACH POST,
Plaintiff/Petitioner

vs.

DAVE ARONBERG,
SHARON R BOCK,
Defendant/Respondents.

**ORDER GRANTING DEFENDANTS MOTIONS TO DISMISS COUNT II OF
PLAINTIFF'S FIRST AMENDED COMPLAINT WITH PREJUDICE**

THIS CAUSE came before the Court on Dave Aronberg, as State Attorney of Palm Beach County's ("State Attorney") and Sharon R. Bock, as Clerk & Comptroller of Palm Beach County's, ("Clerk") respective Motions to Dismiss Count II of CA Florida Holdings, LLC, Publisher of the Palm Beach Post's ("The Post") First Amended Complaint (DE## 22, 24). This case is assigned to Division AG, which is currently presided over by the Honorable Donald Hafele. However, the undersigned, as Chief Judge of the Fifteenth Judicial Circuit, presided over the June 3, 2020 hearing on the State Attorney and Clerk's Motions as the Motions implicate records of the Palm Beach County grand jury, over which the Chief Judge presides. *See* § 905.01, Fla. Stat. (2019). After careful consideration of the pleadings and the arguments presented at the hearing, the Court grants the Motions for the following reasons.

Background

The Post is a media outlet which has heavily reported on the 2006 Palm Beach County criminal prosecution of Jeffrey Epstein. Through the instant civil lawsuit, The Post seeks "immediate access to the testimony, minutes, and other evidence presented in 2006 to the Palm Beach County grand jury" in Mr. Epstein's case and alleges that both the State Attorney and Clerk are "in possession and/or control of [those] documents." (DE # 17, First Amended Complaint at ¶¶ 3, 4, and 77). Specifically, The Post seeks declaratory judgment as to its rights to obtain the grand jury testimony in Mr. Epstein's case from the State Attorney and Clerk (Count I) as well as

judgment against the State Attorney and the Clerk pursuant to section 905.27, Florida Statutes, which sets forth the parameters of grand jury secrecy in Florida. (Count II). Both the State Attorney and the Clerk move to dismiss Count II of The Post's First Amended Complaint, arguing that that section 905.27 does not create a private cause of action. (DE## 22, 24). The Court agrees.

Analysis

"In reviewing a motion to dismiss for failure to state a cause of action, the court must accept the allegations of the complaint as true and construe them in the light most favorable to the plaintiff." *Almarante v. Art Institute of Fort Lauderdale, Inc.*, 921 So. 2d 703, 704-05 (Fla. 4th DCA 2006). The motion should only be granted if the moving party demonstrates that the plaintiff cannot provide any facts that would support a cause of action. *Id.* It follows that if the cause of action alleged is nonexistent under Florida law, dismissal is warranted. *Cummings v. Dawson*, 444 So. 2d 565, 566 (Fla. 1st DCA 1984) (affirming dismissal of cause of action not recognized by Florida law).

Section 905.27, Florida Statutes (2019), is titled "Testimony not to be disclosed, exceptions," and states:

- (1) A grand juror, state attorney, assistant state attorney, reporter, stenographer, interpreter, or any other person appearing before the grand jury shall not disclose the testimony of a witness examined before the grand jury or other evidence received by it except when required by a court to disclose the testimony for the purpose of:
 - a. Ascertaining whether it is consistent with the testimony given by the witness before the court;
 - b. Determining whether the witness is guilty of perjury; or
 - c. Furthering justice.
- (2) It is unlawful for any person knowingly to publish, broadcast, disclose, divulge, or communicate to any other person, or knowingly to cause or permit to be published, broadcast, disclosed, divulged, or communicated to any other person, in any manner whatsoever, any testimony of a witness examined before the grand jury, or the content, gist, or import thereof, except when such testimony is or has been disclosed in a court proceeding. When a court orders the disclosure of such testimony pursuant to subsection (1) for use in a criminal case, it may be disclosed to the prosecuting attorney of the court in which such criminal case is pending, and by the prosecuting attorney to his or her assistants, legal associates, and employees, and to the defendant and the defendant's

attorney, and by the latter to his or her legal associates and employees. When such disclosure is ordered by a court pursuant to subsection (1) for use in a civil case, it may be disclosed to all parties to the case and to their attorneys and by the latter to their legal associates and employees. However, the grand jury testimony afforded such persons by the court can only be used in the defense or prosecution of the civil or criminal case and for no other purpose whatsoever.

(3) Nothing in this section shall affect the attorney-client relationship. A client shall have the right to communicate to his or her attorney any testimony given by the client to the grand jury, any matters involving the client discussed in the client's presence before the grand jury, and any evidence involving the client received by or proffered to the grand jury in the client's presence.

(4) Persons convicted of violating this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083, or by fine not exceeding \$5,000, or both.

(5) A violation of this section shall constitute criminal contempt of court.

§ 905.27, Fla. Stat. (2019).

As the State Attorney and Clerk argue and The Post concedes, section 905.27 makes no express provision for a civil suit or civil liability. Nonetheless, The Post maintains that it is entitled to seek the grand jury records via a private cause of action pursuant to the “furthering justice” exception to grand jury secrecy contained in subsection 905.27(1)(c). Therefore, the limited question for this Court’s consideration is whether a cause of action under section 905.27 should be judicially implied. *See Murthy v. N. Sinha Corp.*, 644 So. 2d 983, 985 (Fla. 1994).

In advocating that it may maintain a cause of action against the State Attorney and Clerk under section 905.27, The Post urges the Court to examine three factors “(1) whether the plaintiff is one of the class for whose special benefit the statute was enacted; (2) whether there is any indication, either explicit or implicit, of a legislative intent to create or deny such a remedy; and (3) whether judicial implication is consistent with the underlying purposes of the legislative scheme.” (Plaintiff’s Opposition to Defendant, Dave Aronberg, As State Attorney of Palm Beach County, Florida’s Motion to Dismiss Count II of the First Amended Complaint at page 13 (citing *Fischer v. Metcalf*, 543 So. 2d 785 (Fla. 3d DCA 1989))). Within these three factors, The Post recognizes that there is no indication of legislative intent to create a cause of action, but leans heavily on the benefit factor, arguing that the “furthering justice” exception to

grand jury secrecy outlined in section 905.27(1)(c) was meant to benefit the public at large, for which the press acts as a surrogate. The Post's arguments are unpersuasive as to the discrete issue of whether a private cause of action lies in section 905.27.

To begin with, The Post's reliance on the benefit factor is misplaced. Per the Florida Supreme Court's 1994 opinion in *Murthy*, "the question of whether a statute establishes a duty to take precautions to protect or benefit a particular class of persons is no longer determinative on the question of whether a cause of action should be recognized." *Sorenson v. Prof'l Compounding Pharmacists of W. Pa., Inc.*, 191 So. 3d 929 (Fla. 2d DCA 2016) (citing *Murthy*, 644 So. 2d at 985). Instead, "whether a statutory cause of action should be judicially implied is a question of legislative intent." *Horowitz v. Plantation Gen. Hosp. Ltd. P'ship*, 959 So. 2d 176, 182 (Fla. 2007). See also *QBE Ins. Corp. v. Chalfonte Condo. Apartment Ass'n, Inc.*, 94 So. 3d 541, 551 (Fla. 2012) ("Since *Murthy*, we have reaffirmed the principle that whether a statutory cause of action should be judicially implied is a question of legislative intent."); *Universal Prop. & Cas. Ins. Co. v. Loftus*, 276 So. 3d 849, 851 (Fla. 4th DCA 2019).

As is always the case when a court undertakes a legislative intent analysis, the plain language of the statute is the starting, and often ending, point. See *Horowitz*, 959 So. 2d at 182. "When the statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent." *Loftus*, 276 So. 3d at 851 (Fla. 4th DCA 2019)) (quoting *Daniels v. Fla. Dep't of Health*, 898 So. 2d 61, 64 (Fla. 2005)). "However, a single part of a statute should not be read in isolation." *Id.* "Instead, 'all parts of a statute must be read together in order to achieve a consistent whole.'" *Id.* (quoting *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 455 (Fla. 1992)).

As The Post acknowledges, "there is a dearth of legislative history surrounding Section 905.27 and the *The Palm Beach Post* was unable to locate any documents capturing any legislative intent regarding the possibility of a private right of action." (Plaintiff's Opposition to Defendant, Dave Aronberg, As State Attorney of Palm Beach County, Florida's Motion to Dismiss Count II of the First Amended Complaint at page 14). While the lack of any legislative

history indicating an intent to create a private right of action is telling, it is not dispositive as the plain language of the section 905.27 is clear and unambiguous and, therefore, controls. *Horowitz*, 959 So. 2d at 182.

Examining the plain language of section 905.27 in its entirety, which requires the Court to look at more than just the “furthering justice” provision of section 905.27(1)(c) relied on by The Post, it is clear that the intent of the Legislature in passing section 905.27 was to limit, not facilitate, disclosure of grand jury records. In no uncertain terms, the Legislature provided that no “person appearing before the grand jury” may “disclose” testimony or evidence presented except when “required by a court” under certain limited circumstances. § 905.27(1), Fla. Stat. In solidifying that its intent was to prohibit disclosure without court permission, the Legislature provided that disclosure without a court order is a criminal offense. § 905.27(4), Fla. Stat. Therefore, to the extent section 905.27 could be read as imposing a duty on the State Attorney and Clerk, the duty imposed is one of secrecy, not disclosure.

In sum, there is nothing in the text of section 905.27 from which one can deduce that the Legislature contemplated a member of the media, or anyone else for that matter, having a private cause of action to compel the State Attorney and Clerk to disclose grand jury records. Indeed, to the contrary, section 905.27 prohibits the State Attorney and the Clerk (assuming that, as pleaded by The Post, they have the documents) from disclosing the documents without first being ordered to do so by the court.^[1] Reading section 905.27 as creating a private cause of action against the State Attorney and Clerk is, therefore, not only unsupported by the language of section 905.27, but is actually paradoxical to its plain language of the statute. As such, this Court lacks the power to construe the unambiguous language of section 905.27 in a way that would extend its express terms and create a cause of action where none exists. “To do so would be an abrogation of legislative power.” *Horowitz*, 959 So. 2d 176, 182 (*quoting Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)).

Conclusion

Based on the foregoing, the Court finds Count II of The Post’s First Amended Complaint must be dismissed with prejudice as it pursues a nonexistent cause of action under section

905.27. In arriving at this conclusion, the Court does not suggest The Post has no available mechanism to obtain a court order granting it access to the grand jury proceedings. The Court also does not render any opinion as to whether releasing these records is appropriate for the purpose of “furthering justice” within the meaning of section 905.27. Rather, the Court’s dismissal of Count II is necessitated by precedent and the simple fact that a civil lawsuit against the State Attorney and Clerk under section 905.27 is not the proper mechanism for The Post to pursue its goal.

Therefore, it is hereby

ORDERED AND ADJUDGED that Dave Aronberg, as State Attorney of Palm Beach County’s and Sharon R. Bock, as Clerk & Comptroller of Palm Beach County’s, respective Motions to Dismiss Count II of CA Florida Holdings, LLC, Publisher of the Palm Beach Post’s First Amended Complaint are **GRANTED** and Count II of Plaintiff’s first Amended Complaint is hereby **DISMISSED** with prejudice.

DONE AND ORDERED, in West Palm Beach, Palm Beach County, Florida this 8th day of June, 2020.

50-2019-CA-014681-XXXX-MB

06/08/2020

Krista Marx Chief Judge

50-2019-CA-014681-XXXX-MB 06/08/2020

Krista Marx
Chief Judge

[1] The Court notes that, if there was a court order directing the State Attorney or the Clerk to disclose records and the State Attorney or the Clerk refused, the remedy for disobeying a court order is contempt or, in some instances, a mandamus proceedings – not a civil lawsuit.

COPIES TO:

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EXHIBIT “C”

NOT A CERTIFIED COPY

EXHIBIT “C”

Stephen A. Mendelsohn
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June 23, 2020

Douglas A. Wyler
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961687 Gateway Blvd.
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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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Albany, Amsterdam, Atlanta, Austin, Berlin, Boca Raton, Boston, Chicago, Dallas, Delaware, Denver, Fort Lauderdale, Houston, Las Vegas, London, Los Angeles, Mexico City, Miami, Milan, Minneapolis, Nashville, New Jersey, New York, Northern Virginia, Orange County, Orlando, Philadelphia, Phoenix, Sacramento, San Francisco, Seoul, Shanghai, Silicon Valley, Tallahassee, Tampa, Tel Aviv, Tokyo, Warsaw, Washington, D.C., West Palm Beach, Westchester County.

Operates as: *Greenberg Traurig Germany, LLP, **A separate UK registered legal entity, *Greenberg Traurig, S.C., *Greenberg Traurig Santa Maria, **Greenberg Traurig LLP Foreign Legal Consultant Office, *A branch of Greenberg Traurig, P.A., Florida, USA, *GT Tokyo Horitsu Jimusho, **Greenberg Traurig Grzesiak sp. z o.o.

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.

Correspondence to Douglas A. Wyler
June 23, 2020
Page 3

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

SAM:ls

ACTIVE 51081659v1

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EXHIBIT “D”

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EXHIBIT “D”

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CA FLORIDA HOLDINGS, LLC,
Publisher of the PALM BEACH POST,

Plaintiff,

v.

CASE NO.: 19-CA-014681

DAVE ARONBERG, as State Attorney of
Palm Beach County, Florida; SHARON R.
BOCK, as Clerk and Comptroller of Palm
Beach County, Florida.

Defendants.

DEFENDANT, DAVE ARONBERG'S MOTION FOR ATTORNEYS' FEES

Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, by and through the undersigned attorneys, moves the Court, pursuant to Florida Statutes, Section 57.105, to award him reasonable attorneys' fees for the defense of Plaintiff's First Amended Complaint, (the "Complaint"), and as grounds therefor, would show that on June 8, 2020, Plaintiff was served a copy of this Motion, together with a letter from the undersigned attorney, in accordance with subsection (4) of the above Statute, demanding dismissal of the Complaint, at least 21 days prior to the filing of this Motion. In said letter, Defendant's attorney advised Plaintiff of the facts which establish that the Complaint is without support of the facts or the law.

WHEREFORE, Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, respectfully requests the Court enter an Order requiring Plaintiff and Plaintiff's attorneys to pay said Defendant's attorneys' fees incurred herein after service of this Motion.

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day July, 2020, the foregoing was electronically filed via the Florida E-File Portal for electronic service on the parties of record herein.

JACOBS SCHOLZ & WYLER, LLC

/s/ Douglas A. Wyler

Arthur I. Jacobs, Esquire
Fla. Bar No.: 108249
Richard J. Scholz, Esquire
Fla. Bar No.: 0021261
Douglas A. Wyler, Esquire
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(904) 261-3693
(904) 261-7879
jacobsscholzlaw@comcast.net

Attorneys for Defendant, Dave Aronberg

EXHIBIT “E”

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EXHIBIT “E”

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CA FLORIDA HOLDINGS, LLC,
Publisher of the PALM BEACH POST,

Plaintiff,

v.

CASE NO.: 19-CA-014681

DAVE ARONBERG, as State Attorney of
Palm Beach County, Florida; SHARON R.
BOCK, as Clerk and Comptroller of Palm
Beach County, Florida.

Defendants.

**DEFENDANT DAVE ARONBERG'S MOTION FOR SUMMARY FINAL JUDGMENT
AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

Defendant DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, (hereinafter "Aronberg"), by and through counsel below and pursuant to Rule 1.510 Florida Rules of Civil Procedure, moves for entry of summary final judgment in his favor as to the remaining claim for Declaratory Relief in Plaintiff's First Amended Complaint¹, and in support thereof states as follows:

STATEMENT OF THE UNDISPUTED FACTS

The following is a statement of facts material to this motion for summary judgment as to which there is no genuine issue:

1. Count I of Plaintiff's First Amended Complaint, (hereinafter "Complaint"), filed January 17, 2020, seeks Declaratory Relief pursuant to Section 86.011, Florida Statutes.

2. Specifically, Plaintiff's Count I seeks a court order "declaring that pursuant to Fla. Stat. Section 905.27(1)(c) and the Court's inherent authority, *The Palm Beach Post* may gain access to the testimony, minutes, and other evidence presented in 2006 to the Palm Beach County grand jury" that

¹ On June 8, 2020, this Court entered its Order Granting Defendants Motion to Dismiss Count II of the Plaintiff's First Amended Complaint with Prejudice.

was empaneled during the first Jeffrey Epstein, (hereinafter “Epstein”), sex abuse investigation, (hereinafter “Requested Materials”). Complaint pg. 20

3. Plaintiff seeks to use the Requested Materials “for the purpose of informing the public.”
Id.

4. Plaintiff seeks the above-referenced declaratory relief, including copies of the Requested Materials, from both Aronberg, as State Attorney of Palm Beach County, Florida, and Defendant, Sharon R. Bock, as Clerk and Comptroller of Palm Beach County, Florida, (hereinafter the “Clerk”).

5. Neither Aronberg nor the Office of the State Attorney for the Fifteenth Judicial Circuit, (“SAO”), is in control, custody, or possession of the Requested Materials. Aronberg Aff. ¶ 3, attached as Exhibit “A”.

6. The declaratory relief sought by the Plaintiff seeks materials that are impossible for Aronberg or the SAO to produce. Exhibit “A” ¶ 4.

7. Neither Aronberg nor the SAO has the legal authority to obtain and/or deliver the Requested Materials. Exhibit “A” ¶ 5.

8. The undisputed facts set forth above in paragraphs 6-7 have been repeatedly made evident by Aronberg to the Plaintiff and the public through not only the pleadings and correspondence in this matter, but also through an office press release and Aronberg’s public social media accounts. Exhibit “A” ¶ 6.

9. Neither Aronberg nor the SAO has the authority to demand that the Clerk grant the SAO access to grand jury materials after a criminal case has concluded. Exhibit “A” ¶ 7.

10. During Aronberg’s administration, neither he nor his office has accessed grand jury materials from the Clerk’s office in this or any other instance. Exhibit “A” ¶ 8.

11. As provided in section 905.17(1), Florida Statutes (2020), the Clerk has sole custody and possession of the Requested Materials, which can only be released by the Clerk pursuant to an order of the Court. Exhibit “A” ¶ 9.

MEMORANDUM OF LAW

I. Legal Standard Governing Motions For Summary Judgment

“The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 1.510, Fla. R. Civ. P. It is appropriate to resolve a declaratory action on summary judgment when, as here, the decree seeks a legal interpretation of a statute. *Rahimi v. Global Discoveries, Ltd., LLC*, 252 So. 3d 804 (Fla. 5th DCA 2018).

II. The Requested Materials Can Only Be Released By The Clerk Pursuant To A Court Order

Notably, neither Aronberg nor the SAO is in control, custody, or possession of the Requested Materials. Exhibit “A” ¶ 3. Nonetheless, pursuant to Section 905.27(1)(c), Florida Statutes and the Court’s inherent authority, Plaintiff seeks a court order declaring that Aronberg provide copies of the Requested Materials to *The Palm Beach Post* for the purpose of informing the public. Complaint pg. 20-21. Plaintiff is seeking declaratory relief alleging its entitlement to the Requested Materials pursuant to the “furthering justice” exception to grand jury secrecy. § 905.27, Fla. Stat. (2020).

Despite bringing its declaratory relief claim pursuant to Section 905.27, Florida Statutes, “a single part of a statute should not be read in isolation.” *Universal Prop. & Cas. Ins. Co. v. Loftus*, 276 So. 3d 849, 851 (Fla. 4th DCA 2019). “Instead, ‘all parts of a statute must be read together in order to achieve a consistent whole.’” *Id.* (quoting *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 455 (Fla. 1992)).

Section 905.17(1), Florida Statutes makes clear that grand jury records, like the Requested Materials in this matter, are to be maintained with the Clerk, and can only be released by the Clerk pursuant to a court order. To wit:

The stenographic records, notes, and transcriptions made by the court reporter or stenographer shall be filed with the clerk who shall keep them in a sealed container not subject to public inspection. *The notes, records, and transcriptions are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and shall be released by the clerk only on request by a grand jury for use by the grand jury or on order of the court pursuant to s. 905.27.*

Section 905.17(1), Florida Statutes (2020). (Emphasis added.)

Text, context, and purpose are the ordinary tools used for discerning statutory meaning, with the overarching principle being “that judges lack the power to construe an unambiguous statute in a way which would extend, modify, or limit its express terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power.” *Id.* Here, the plain language of section 905.17 is clear and unambiguous and, therefore, controls. *See Horowitz v. Plantation Gen. Hosp. Ltd. P’ship*, 959 So. 2d 176, 182 (Fla. 2007).

Accordingly, based on the clear, unambiguous statutory language set forth in section 905.17(1), only the Clerk, not the State Attorney, may release grand jury materials pursuant to an order of the court. Thus, it is apparent that Aronberg and the SAO lack the legal authority to obtain and deliver the Requested Materials. Exhibit “A” ¶ 5. Likewise, the declaratory relief sought by the Plaintiff seeks materials that are impossible for Aronberg or the SAO to produce. Exhibit “A” ¶ 4. Again, the Clerk has sole custody and possession of the Requested Materials. These facts have been repeatedly made evident by Aronberg to the Plaintiff and the public through not only the pleadings and correspondence in this matter, but also through an office press release and Aronberg’s public social media accounts. Exhibit “A” ¶ 6.

Although the above-referenced statutory authority illuminates the fact that only the Clerk may release grand jury records like the Requested Materials herein, it remains significant to note that neither

Aronberg nor the SAO has the authority to demand that the Clerk grant the SAO access to grand jury materials after a criminal case has concluded. Exhibit “A” ¶ 7. Hence, during Aronberg’s administration, neither he nor his office has accessed grand jury materials from the Clerk’s office in this or any other instance. Exhibit “A” ¶ 8.

III. Conclusion

The ultimate facts underlying the lawsuit are not in dispute. The Court is fully empowered to dispose of this matter based on application of the undisputed facts to the plain language of Section 905.17, Florida Statutes, which renders the Plaintiff’s action for declaratory relief an impossibility for Aronberg to perform and that must be denied as a matter of law.

WHEREFORE, Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, respectfully requests that this motion be granted and that summary final judgment be entered in his favor consistent with this motion, and hereby respectfully requests that this Court dismiss the Complaint with prejudice and grant such other relief, including attorney’s fees and costs, as this Court deems fit and proper under the circumstances.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of August, 2020, a copy of the foregoing has been electronically filed with the Florida E-File Portal for e-service on all parties of record herein.

JACOBS SCHOLZ & WYLER, LLC

/s/ Douglas A. Wyler

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*General Counsel for the Florida Prosecuting
Attorney's Association*

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EXHIBIT “A”

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EXHIBIT “A”

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CA FLORIDA HOLDINGS, LLC,
Publisher of the PALM BEACH POST,

Plaintiff,

v.

CASE NO.: 19-CA-014681

DAVE ARONBERG, as State Attorney of
Palm Beach County, Florida; SHARON R.
BOCK, as Clerk and Comptroller of Palm
Beach County, Florida.

Defendants.

AFFIDAVIT OF DAVID ARONBERG

STATE OF FLORIDA
COUNTY OF PALM BEACH

Before me, the undersigned authority personally appeared **DAVID ARONBERG**, being first duly sworn, states:

1. My name is David (Dave) Aronberg, and I am the State Attorney for the Fifteenth Judicial Circuit/Palm Beach County, Florida, since 2013, and a Defendant in the above-captioned matter.
2. Plaintiff is seeking declaratory relief, pursuant to Fla. Stat. 905.21(1)(c) and the Court's inherent authority, allowing Plaintiff access to the testimony, minutes, and other evidence presented in 2006 to the Palm Beach County grand jury, (the "Requested Materials"), and to use those materials for the purpose of informing the public.
3. Despite Plaintiff's above-described action for declaratory relief, neither myself nor the Office of the State Attorney for the Fifteenth Judicial Circuit, ("SAO"), is in control, custody, or possession of the Requested Materials.
4. As such, the declaratory relief sought by the Plaintiff seeks materials that are impossible for me or my office to produce.
5. To be clear, neither myself nor the SAO has the legal authority to obtain and deliver the Requested Materials.
6. I have repeatedly made these facts evident to the Plaintiff and the public through not only the pleadings and correspondence in this matter, but also through an office press release and my public social media accounts.

7. Despite the contentions of Plaintiff, neither myself nor the SAO has the authority to demand that the Clerk grant the SAO access to grand jury materials after a criminal case has concluded.

8. Moreover, during my administration, neither myself nor my office has accessed grand jury materials from the Clerk's office in this or any other instance.

9. As provided in section 905.17(1), Florida Statutes (2020), the Clerk has sole custody and possession of the Requested Materials, which can only be released by the Clerk pursuant to an order of the Court.

FURTHER AFFIANT SAYETH NAUGHT.

By:

DAVID ARONBERG

STATE OF FLORIDA
COUNTY OF PALM BEACH

Sworn to and subscribed before me this 30th day of July, 2020, by DAVID ARONBERG, who is personally known to me or has shown _____ as personal identification.

Latosha Lowe-Goode
Notary Public

Notary's Stamp or Seal



LATOSHA LOWE-GOODE
Commission # GG 967813
Expires May 28, 2024
Bonded thru Budget Notary Services