

IN THE SUPREME COURT OF FLORIDA

TASHARA LOVE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC18-747

L.T. Case No: 3D17-2112

RESPONSE TO MOTION FOR LEAVE TO APPEAR AS AMICUS

Respondent State of Florida hereby respectfully opposes the Miami-Dade State Attorney's Office's motion for leave to appear as amicus for the purpose of adopting the position of the League of Prosecutors – Florida (hereinafter "League").

1. Florida's Attorney General is the "chief state legal officer" for the State of Florida. Art. IV, s. 4(b), Fla. Const. In that capacity, the Attorney General—not the State Attorney—represents the State in "all suits or prosecutions, civil or criminal or in equity, in which the state may be a party, or in anywise interested, in the Supreme Court and district courts of appeal of this state." §16.01(4), Fla. Stat.; *see* § 27.02, Fla. Stat.

2. The parties, including the Attorney General, did not oppose the League's motion to file an amicus brief, even though the League asks this Court to consider certain constitutional issues that, in the Attorney General's view, are not

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properly before the Court. *See* State’s Answer Brief at 10-11. Thus, this Court need not grant the State Attorney’s highly unusual—and apparently unprecedented—motion to “adopt” the League’s position to have the benefit of the League’s briefing. The League’s brief is already available to the Court, as are other briefs discussing the constitutional separation-of-powers issue. Rather, granting the State Attorney’s motion to adopt a position that has already been discussed by other amici would serve no purpose other than to circumvent Florida law, which grants the Attorney General, not the State Attorney, the authority to speak for the State in its appellate courts.

3. In support of her request to “adopt” the position of another amicus, the State Attorney cites only one authority—this Court’s 1989 decision in *Smith v. State*, 537 So. 2d 982, 983 n.1 (Fla. 1989). That case is inapposite. In *Smith*, the Court permitted the State Attorney to file a brief as amicus curiae so as “to have the benefit of the arguments which persuaded the trial court to rule to the contrary” of the position taken by the parties. *Id.* The Court did not allow the State Attorney to adopt a brief that had already been filed by a different amicus. In addition, the amicus brief in *Smith* was allowed so that this Court would have the benefit of full adversarial briefing as to the issue that was certified to this Court as a question of great public importance—whether the sentencing guidelines were invalid. *Id.* at 983 & n.1.

Here, by contrast, the League’s brief seeks primarily to address constitutional issues that do not form the basis for this Court’s decision to exercise discretionary review. *See* League’s Amicus Br. at 2-3. Indeed, this Court need not reach the constitutional questions the League addresses if the Court resolves the conflict between the district courts by ruling, as the Third District did below, that the recent Stand Your Ground amendment does not apply retroactively as a matter of statutory interpretation. Finally, this Court in *Smith* did not indicate that the Attorney General opposed the State Attorney’s request to file an amicus brief; in the particular circumstances present here, the Attorney General opposes a request to have the State speak with more than one voice in a state appellate court, particularly when such a precedent need not be set in order to ensure that this Court has full briefing as to the issue that forms the basis for the Court’s grant of discretionary review.

For the foregoing reasons, the State respectfully recommends that this Court grant the League’s motion to file an amicus brief, but deny the State Attorney’s separate motion to “adopt” the League’s position in the State Attorney’s capacity as an amicus.

Respectfully submitted.

PAMELA JO BONDI
ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing response has been furnished by electronic service through the Florida Courts E-Filing Portal on this 13th day of November, 2018, to all parties required to be served.

/s/ Amit Agarwal
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