

# *Florida High School Moot Court Official Issue Packet*

Logan Bartram

v.

State of Florida

**REVISED VERSION II**

A collaborative court education project of  
*The Florida Law Related Education Association, Inc.*

Special thanks to

*Supreme Court of Florida*

*District Courts of Appeal*

*The Florida Bar Law Related Education Committee*

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# FLORIDA HIGH SCHOOL APPELLATE COMPETITION 2016 REGISTRATION FORM

\_\_\_\_\_ Yes, we would like to submit a brief for the Appellate Competition. Teams are limited to two students per brief. Briefs must be received in Tallahassee by March 16, 2016.

I. Student's Name: \_\_\_\_\_  
School: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ County: \_\_\_\_\_  
E-mail: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
 Team Captain

**I attest that the brief I have submitted is the sole work of my partner and myself.**

Signature of student: \_\_\_\_\_

II. Student's Name: \_\_\_\_\_  
School: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ County: \_\_\_\_\_  
E-mail: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
 Team Captain

**I attest that the brief I have submitted is the sole work of my partner and myself.**

Signature of student: \_\_\_\_\_

III. Teacher's Name: \_\_\_\_\_  
School: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ County: \_\_\_\_\_  
E-mail: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

IV. Attorney Coach's Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ County: \_\_\_\_\_  
Firm Name: \_\_\_\_\_  
E-mail: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

**Brief submitted on behalf of: (Check One)**

**Petitioner or Respondent**

**Return 3 copies of this form and 3 copies of the brief to the address listed below.**

The Florida Law Related Education Association, Inc.  
2930 Kerry Forest Parkway, Suite 202  
Tallahassee, Florida 32309

**Email one copy in digital form to [staff@flrea.org](mailto:staff@flrea.org) by the due date.**

# RULES AND GUIDELINES

## Introduction

An appeal from a trial court to an appellate court normally involves two components: a written brief and an oral argument. **In this exercise, you will prepare a brief to the Supreme Court of Florida which will serve as the basis of an oral argument.** The top brief writers in each Appellate District will have the opportunity to present oral arguments in District Court of Appeal competitions. **Each student who authors a brief needs to be able and prepared to present oral arguments at a district competition should their brief be selected.** Selected teams will advance in the competition to the state level, with the statewide finalists having the opportunity to present oral arguments in the Florida Supreme Court in Tallahassee. District competitions will be held in late March and early April 2016 and the State Finals will be held on May 2 and 3, 2016 in Tallahassee. Multiple teams may submit briefs from each school. In determining which side you choose, you should read and analyze the cases cited in the case materials.

### A. Rule 1: Teams

1. Each team must consist of two students from the same school. One student should be designated as the team captain.
2. **Each team is permitted to submit a maximum of two briefs – one for the petitioner and one for the respondent.**
3. **Each teacher/sponsor may only submit two briefs per side of the case for a total of four briefs. All students are encouraged to write briefs, but teachers should exercise their discretion in selecting the top two briefs for each side of the case to submit.**
4. **Teams will need to prepare oral arguments for the party they wrote a brief supporting. Students will need to be able and prepared to present oral argument should their brief be selected to advance to the district competition. To view a sample oral argument, [click here](#).**
5. Teams may use attorney coaches and teachers as advisors to guide them through the process of preparing the brief and oral arguments; however, the writing of the briefs must be the sole work of the students. Attorneys and teachers are strictly prohibited from writing any portion of the brief.
6. Team Registration Form

Team rosters and registrations should be completed and submitted with the briefs by the due date. At competition, teams will be identified only by code.

7. Roll Call

Students will announce their names and team codes at the beginning of every round to the judging panel. No information identifying the team, beyond the students' names and team code, should be provided to the judges.

**B. Rule 2: The Packet**

1. Students should assume the moot court packet is complete and factual. Briefs which challenge the validity of issues beyond the scope of the issues questioned in the moot court packet will not be entertained. **Students should not reference information contained in the mock trial materials unless so stated in the moot court packet. The moot court and mock trial packets are not interchangeable.**
2. Students may only utilize the case law referenced in the moot court packet. **It is, however, acceptable to cite cases that are contained within provided case law.** Any deviation is a rules violation.
3. Students may not construct additional facts not found in the moot court packet specifically. Any information utilized that cannot be fairly inferred from the moot court information packet will be considered beyond the scope, and therefore, a rules violation. Students cannot cite information from the mock trial materials if not explicitly found in the moot court packet.

**C. Rule 3: Competition Format**

1. This competition is composed of two phases: (1) the brief writing phase; and (2) the oral argument phase.

**D. Rule 4: The Brief**

1. Three copies of the students' brief must be received by The Florida Law Related Education Association, Inc. no later than March 16, 2016. Additionally, a digital copy should be emailed to [staff@flrea.org](mailto:staff@flrea.org) by the due date.
2. Each brief should follow the format of the enclosed brief outline. Failure to adhere to the format may lead to disqualification. The entire brief must be no longer than 20 pages inclusive of cover and table of contents. The pages must be letter-sized 8 1/2" x 11." Format the text by allowing one-inch margins. All briefs must be typed and double-spaced. The type style should be Times New Roman 12 point font and each paragraph should be indented. Page numbers should appear centered at the bottom of each page. A cover page should clearly identify "Brief for Petitioner" or "Brief for Respondent" and list the participants' names, school, address, telephone numbers, and email addresses.
3. Pursuant to Rule 2, briefs may not include any case law beyond what is presented in the packet and may not include any manufactured or researched facts beyond what is found in the moot court packet specifically. **It is acceptable to cite cases that are contained within provided case law.**
4. Legal citation is not required, but is encouraged. Information on legal citations can be found in the appendices of the packet.

**E. Rule 5: The Oral Argument**

1. Two students must participate for a team per round. Both students must speak and address one of the two questions in each round. Only one student may present rebuttal for petitioner.
2. Each team is given 20 minutes to present their case, as outlined below:

<b>Speaker</b>	<b>Time Limit</b>
<i>Petitioner</i>	<i>18 minutes</i>
Attorney - Question 1	9 minutes
Attorney - Question 2	9 minutes
<i>Respondent</i>	<i>20 minutes</i>
Attorney - Question 1	10 minutes
Attorney - Question 2	10 minutes
<i>Petitioner - Rebuttal</i>	<i>2 minutes</i>

3. Rounds will start on time. Teams should identify an alternate in the event that a team member cannot participate. In the event that a team, or a portion of the team, fails to appear within ten minutes of the time indicated, the team will compete with an incomplete team. Advancement will be at the discretion of the State Director.
4. Two students will present during any one round of competition. Each student will address one of the two questions presented in the brief. Both students must speak during the oral argument. If the second student does not speak during the course of the oral argument, that student will receive a score of zero (0).
5. No communication should occur between students participating in the round and other team members, coaches, or anyone else in the audience outside the bar. Any communication with anyone outside of the partner student during that round will constitute a rules violation.
6. Students should display dignity and respect to the judges, staff, and other competition personnel.  
  
Additionally, teams should respect each other.
7. Dress should be professional, courtroom attire.
8. During oral arguments, students will be scored based on the criteria found on the score sheet in the packet.
9. Scores and winners will not be disclosed after a round, but verbal critiques will be given.

**F. Rule 6: Videotaping/Photography**

1. Cameras and recording devices are permitted in certain courtrooms; however, the use of such equipment may not be disruptive **and must be approved in advance of the competition by The Florida Law Related Education Association, Inc.**
2. When one team requests to videotape during a trial, the opposing team must be consulted and their permission granted prior to taping.

**G. Rule 7: Viewing an Argument**

1. Team members, alternates, attorney coaches, teacher coaches, and any other persons directly associated with a team, except those authorized by the State Director, are not allowed to view other teams in competition so long as their team remains in the competition.
2. Judges should maintain order in the courtroom. If observers are disorderly, they will be asked to vacate the premises.

**H. Rule 8: Decisions**

1. All decisions of the judges are final.

**I. Rule 9: Team Advancement**

1. Teams will be scored first on their written briefs to determine if they advance to the oral argument presentations at the district level. Students who author the briefs need to be able and prepared to present oral arguments at a district competition should their brief be selected.
2. During the scoring of the written briefs, the panel of evaluators will give each brief a numerical score consistent with the score sheet located on the website. The scores from each of the judges in the panel will be added together to determine the top two to four briefs. The top two to four teams in each district may be given the opportunity to compete in the district competition.
3. During the oral argument competition, a panel of judges will score student performances in each round. The team that receives the higher score from each judge will be awarded that judge's ballot. The team with highest number of ballots wins the round.
4. At the end of the competition, the judges will consult to recommend the team or teams from the district to advance to the state competition.
5. Teachers may use their discretion in identifying an alternate student to participate in the state competition, if needed, upon approval of the State Director.
6. Briefs will be scored and a Best Brief award presented at the state competition consistent with the practices outlined herein.

7. The state finals will incorporate one preliminary round and one final round of competition. The top two teams will be determined by the panel of DCA judges evaluating the preliminary rounds. These top two teams will meet in the final round of competition. The team receiving the most ballots in the final round will win the competition.

**K. Rule 11: Eligibility**

1. All students on a team must be enrolled in the same public or private school in the district for which they are competing. In cases of homeschool students, the State Director will make the final eligibility determination.
2. Florida public and private high school students, as well as homeschool students, are eligible and encouraged to participate.

*All questions should be submitted in writing to [staff@flrea.org](mailto:staff@flrea.org).*

**NOTE: FLREA strongly encourages the use of an appellate attorney during the coaching process. The FLREA website contains valuable resources to assist you in preparing your brief, as well as your oral argument. All teams should [view the final round](#) of last year's state competition prior to participating in the oral hearing. Visit our website at [www.flrea.org](http://www.flrea.org) and look under Moot Court for additional information or write to [staff@flrea.org](mailto:staff@flrea.org). To watch real oral arguments from the Florida Supreme Court, go to the Gavel to Gavel site at <http://wfsu.org/gavel2gavel/>.**

# SOURCES OF LEGAL RESEARCH

The legal authorities you will be using as your source of research and for purposes of citing to the Court are included or referenced in the case materials.

You may also read articles and legal authorities from other sources and jurisdictions to get ideas and arguments for your brief, but these materials may only be used to get ideas or to enhance your understanding of the legal issues. They may not be cited as authority in this contest. Your Attorney Coach may wish to suggest reading material. While you are encouraged to explore other sources, there is no requirement that you do so.

Information on research using primary and secondary sources is enclosed in the Appendices for your review.

Additionally, you can utilize online research through a variety of sources. You should be able to find most of the cited cases at [www.findlaw.com](http://www.findlaw.com), under Laws: Cases and Codes. From the Findlaw "Cases and Codes" page, scroll down and click on the U.S. Supreme Court link and pull all cases with (i.e. 123 U.S. 456). For all Circuit Court cases with a \_\_\_F.2d, F.3d or F.Supp., click on the applicable Circuit Court link. For example, *Doe v. v. Dept. of Pub. Safety*, 271 F.3d 38, 60 (2d Cir. 2001) would be found under the **Second Circuit**.

**Remember that in preparing your brief, you can only use the legal authorities included or referenced in these materials. You can research other authorities but you should only use authorities cited in the case packet and within the case law provided.**

# RELEVANT LEGAL AUTHORITY

In developing briefs and oral arguments, student competitors may utilize any authority cited in the mock appellate opinion included in the case materials, including federal and state case law (and various authorities cited therein), federal and state constitutional provisions, and federal and state statutes. Students should be careful to explore the authorities independently as opposed to relying solely on the context in which they are presented in the mock appellate opinion. For example, reading and applying dissenting opinions may be important and relevant in your oral arguments depending on the position you are representing in this case.

\*\*\* Note: Case law mentioned in the materials may be utilized by students in the development of briefs and oral argument. Additional cases may be added by the state committee.

**Regarding the facts of the underlying case, the students do not need any facts other than what is provided in the mock appellate opinion.**

**Students are not allowed to use facts from the mock trial case unless specifically mentioned in the moot court packet.**

## **Article I, Section 4 of the Florida Constitution**

**Freedom of speech and press.**—every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions and civil actions for defamation the truth may be given in evidence. If the matter charged as defamatory is true and was published with good motives, the party shall be acquitted or exonerated.

### **Section 784.048. Florida Statutes - Stalking**

784.048 Stalking; definitions; penalties.—

(1) As used in this section, the term:

(a) “Harass” means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.

(b) “Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose. The term does not include constitutionally protected activity such as picketing or other organized protests.

(c) “Credible threat” means a verbal or nonverbal threat, or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct, which places the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm. It is not necessary to prove that the person making the threat had the intent to actually carry out the threat. The present incarceration of the person making the threat is not a bar to prosecution under this section.

(d) “Cyberstalk” means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.

(2) A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person and makes a credible threat to that person commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person who, after an injunction for protection against repeat violence, sexual violence, or dating violence pursuant to s. 784.046, or an injunction for protection against domestic violence pursuant to s. 741.30, or after any other court-imposed prohibition of conduct toward the subject person or that person’s property, knowingly, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks a child under 16 years of age commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) A law enforcement officer may arrest, without a warrant, any person that he or she has probable cause to believe has violated this section.

(7) A person who, after having been sentenced for a violation of s. 794.011, s. 800.04, or s. 847.0135(5) and prohibited from contacting the victim of the offense under s. 921.244, willfully,

maliciously, and repeatedly follows, harasses, or cyberstalks the victim commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(8) The punishment imposed under this section shall run consecutive to any former sentence imposed for a conviction for any offense under s. 794.011, s. 800.04, or s. 847.0135(5).

(9)(a) The sentencing court shall consider, as a part of any sentence, issuing an order restraining the defendant from any contact with the victim, which may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any such order be based upon the seriousness of the facts before the court, the probability of future violations by the perpetrator, and the safety of the victim and his or her family members or individuals closely associated with the victim.

(b) The order may be issued by the court even if the defendant is sentenced to a state prison or a county jail or even if the imposition of the sentence is suspended and the defendant is placed on probation.

### **Section 784.049. Florida Statutes - Sexual Cyberharassment**

(1) The Legislature finds that:

(a) A person depicted in a sexually explicit image taken with the person's consent has a reasonable expectation that the image will remain private.

(b) It is becoming a common practice for persons to publish a sexually explicit image of another to Internet websites without the depicted person's consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person.

(c) When such images are published on Internet websites, they are able to be viewed indefinitely by persons worldwide and are able to be easily reproduced and shared.

(d) The publication of such images on Internet websites creates a permanent record of the depicted person's private nudity or private sexually explicit conduct.

(e) The existence of such images on Internet websites causes those depicted in such images significant psychological harm.

(f) Safeguarding the psychological well-being of persons depicted in such images is compelling.

(2) As used in this section, the term:

(a) "Image" includes, but is not limited to, any photograph, picture, motion picture, film, video, or representation.

(b) "Personal identification information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person.

(c) "Sexually cyberharass" means to publish a sexually explicit image of a person that contains or conveys the personal identification information of the depicted person to an Internet website without the depicted person's consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person.

(d) "Sexually explicit image" means any image depicting nudity, or depicting a person engaging in sexual conduct.

(3)(a) Except as provided in paragraph (b), a person who willfully and maliciously sexually cyberharasses another person commits a misdemeanor of the first degree.

(b) A person who has one prior conviction for sexual cyberharassment and who commits a second or subsequent sexual cyberharassment commits a felony of the third degree.

(4)(a) A law enforcement officer may arrest, without a warrant, any person that he or she has probable cause to believe has violated this section.

(b) Upon proper affidavits being made, a search warrant may be issued to further investigate violations of this section, including warrants issued to search a private dwelling.

(5) An aggrieved person may initiate a civil action against a person who violates this section to obtain all appropriate relief in order to prevent or remedy a violation of this section, including the following:

(a) Injunctive relief.

(b) Monetary damages to include \$5,000 or actual damages incurred as a result of a violation of this section, whichever is greater.

(c) Reasonable attorney fees and costs.

(6) The criminal and civil penalties of this section do not apply to:

(a) A provider of an interactive computer service, information service, or communications service, that provides the transmission, storage, or caching of electronic communications or messages of others; other related telecommunications or commercial mobile radio service; or content provided by another person; or

(b) A law enforcement officer, as defined above, or any local, state, federal, or military law enforcement agency, that publishes a sexually explicit image in connection with the performance of his or her duties as a law enforcement officer, or law enforcement agency.

(7) A violation of this section is committed within this state if any conduct that is an element of the offense, or any harm to the depicted person resulting from the offense, occurs within this state.

**Note: statute has been slightly altered for better understanding. I.E. the definitions included in the statute.**

### **CASE LAW**

Any of the cases listed below or any case mentioned within the cases cited in the moot court appellate case materials may be utilized in the briefs and oral arguments.

1. Chaplinsky v. New Hampshire, 315 U. S. 568, 315 U.S. 571-572
2. Elonis v. United States, No. 13-983 (2015)
3. Jacobellis v. Ohio, 378 U.S. 184
4. Matthews v. State, 336 So. 2d 643, 646 (Fla. 1st Dist. Ct. App. 1976)
5. Miller v. California, 413 U.S. 15 (1973)
6. Roth v. United States, 354 U. S. 476 (1957)
7. Texas v. Johnson, 491 US 397 (1989)
8. U.S. v. Kosma, 951 F. 2d 549, 557 (3d Cir. 1991)
9. United States v. Martinez, 736 F. 3d 981, 985 (2013)
10. United States v. Stevens, 559 U.S. 460 (2010)
11. Watts v. United States, 394 U.S. 705 (1969)

# FORMAT OF THE BRIEF

Each brief should follow the format of the enclosed brief outline. Failure to adhere to the format may lead to disqualification. The entire brief must be no longer than 18 pages, letter-sized 8 ½" x 11." Format the text by allowing one-inch margins. All briefs must be typed and double-spaced. The type style should be Times New Roman 12 point font and each paragraph should be indented. Page numbers should appear centered at the bottom of each page. A cover page should identify "Brief for Petitioner" or "Brief for Respondent" and list the participants' names, school, addresses, telephone numbers, and email addresses.

Do not be overly concerned with legal citation; mistakes will not hurt your score. You may even choose not to use legal citation, so long as you make it clear what case you are referencing.

If you do try to use legal citation, here are some pointers – you may want to use the *Blue Book, a Uniform System of Citation*, (18<sup>th</sup> ed., 2005), which should be available at any local law library for reference. However, you may simply follow the form of citation used in the sample brief.

When first citing a U.S. Supreme Court case, you should cite to the U.S. Reporter. For example, on page 6 of the sample brief, the petitioner cites to "*Jones v. United States*, 463 U.S. 354, 364 (1983)." The number 463 is the volume number, "U.S." stands for the U.S. Reporter, the books in which the Supreme Court cases are published, 354 is the first page of the cited case, and 364 is the exact page in the case upon which either the quoted language or the referenced portion of the case appears. *All subsequent cites* to the same case, immediately following that full cite, should be "*See id.*" cites. However, if the referenced portion of the case is on a different page, your cite should appear as "*See id.* at \_\_\_\_\_" (that specific page on which the quote or reference is located).

If a case has been previously cited but not immediately previously cited, then a shortened cite form should be used. For example, in the sample brief, *Jones v. United States*, is cited on page 6, followed by a "*See id.*" cite. Then on page 7, the *United States v. Ward* case is cited in its entirety. The petitioner then must again cite to *Jones v. United States*. If the petition were to use a "*See id.*" cite there would be confusion because the reader would assume that the petitioner was referring to the *Ward* case, the immediately preceding case. Therefore, the petitioner abbreviated the case name and simply lists the volume number of the U.S. Reporter, 463 and only the specific page in the case on which the reference appears after the word "at." If the petitioner went on to cite to the *Jones* case again, he or she could once again use a simple "*See id.* at \_\_\_\_\_" cite.

**Again, it is not necessary that you follow the exact legal citation form used in the sample brief.** Do the best you can. We are more concerned with the arguments you choose to make.

You will note that on the cover page of the sample brief, in the lower right hand corner, the petitioner's attorney has only identified himself or herself as counsel for petitioner. **You should include your full name, followed by the names and address of your high school, telephone numbers, and email addresses where you can be reached both at school and home.** Briefs should conform to the following outline:

- I. Cover Page
- II. Table of Authorities
- III. Opinion Below
- IV. Constitutional and Policy Provisions Involved
- V. Questions Presented
- VI. Statement of the Case
- VII. Summary of the Arguments
- VIII. Argument
  - a. Question I
  - b. Question II
- IX. Conclusion

# SECTIONS OF THE BRIEF

## **Cover Page**

Follow the guidelines and see sample cover page.

## **Table of Authorities**

- List cases you used in your arguments to support your position.
- List relevant constitutional and policy provisions.

## **Opinion Below**

Include a short statement of the proceedings in the lower court/court below and the ruling or judgment of the trial court which is being appealed from.

## **Constitutional and Policy Provisions Involved**

Spell out the relevant provisions in the U.S. Constitution and policy provisions involved in the case from either the perspective of the petitioner or respondent.

## **Questions Presented**

Recite the two constitutional questions or issues on appeal before this Court.

## **Statement of the Case**

This will encompass a statement of the important issues and facts before the Court from either Petitioner's or Respondent's perspective. This section should incorporate (1) a concise (one or two sentences if possible) introductory explanation of the general nature of the case as a lead-in to the brief; (2) a short statement of the proceedings in the court below and the ruling or judgment of the trial court which is being appealed from; (3) a concise statement of the issues before the Court on appeal from the Petitioner's or Respondent's perspective; and (4) a concise statement of the important facts. This section should be presented in a light favorable to your side and contentions in your case.

## **Summary of Argument**

Include three or four paragraphs highlighting a summary of your arguments supporting either the Petitioner's or Respondent's position. Essentially this is a short synopsis of your arguments which will follow. See below.

## **Arguments**

This portion of the brief should discuss your position on the facts, arguments, and legal authorities (statutes and case law) which support your position on the questions presented. If the case law is favorable to your side, show how the prior cases are applicable to the facts or analysis of that case from the present case. You may wish to select the cases which most strongly support your arguments.

## **Conclusion**

This part is a short summary of your answers to the issues on appeal (the questions presented) and should consist of only a few sentences. It is a very concise statement of why you want the appellate court to agree with you. **The conclusion should also state what specific relief is being requested:**

**General example of the final sentence in the brief and during oral arguments:**

*“In conclusion, for these reasons, we ask the court to reverse the decision of the ... District Court of Appeal and find .....*”

## **SUBMITTING THE BRIEF**

Briefs should be submitted in the required format to The Florida Law Related Education Association, Inc. and should be **received by March 16, 2016**. The winning brief writers will be notified for dates of the local oral arguments.

Submit three copies of all briefs to the following address.

The Florida Law Related Education Association, Inc.  
2930 Kerry Forest Parkway, Suite 202  
Tallahassee, Florida 32309

**Additionally one electronic version must be submitted by the due date to [staff@flrea.org](mailto:staff@flrea.org).**

**For any questions, submit in writing to [staff@flrea.org](mailto:staff@flrea.org).**

# BRIEF WRITING PRIMER

There are two main ways to argue your position to the appellate court: through the appellate brief and through the appellate oral argument. They serve different functions and, to an extent, courts look for different things from each function.

Of the two functions, the brief is the more important. It succinctly reviews for the court what the case is about (what the relevant facts and legal issues are), what the law is (for each issue raised by the appeal), and what relief you are seeking. It really does not matter which side of the case you are on or which issue you are addressing. Your job is to persuade the court that your position is correct – that is, that the facts and relevant law support the relief you seek and that the outcome you want makes sense.

The brief is your chance to shine. It is your chance to show the court that you understand your issue, that you have done the necessary research into it, and that you can communicate the argument in a scholarly way. The court looks to you for guidance, and it is your responsibility to convince the court that you can be trusted.

Let us go over some of the more important factors that judges look to when reading/grading an appellate brief.

## **Effective Organization of the Facts/Procedural History**

Judges are busy and they look to you to narrow down the facts to those that are most important to deciding the issue. Have you summarized for the court all the facts that are relevant to your issue and that the court needs to know about in order to decide the case? Most cases have a lot of facts, but not all of those facts are relevant to the issue being raised on appeal.

For example, suppose your client was convicted of running a red traffic light and you are appealing that conviction. Does it make a difference how large the tires on his car were? Probably not (it might be relevant to a speeding ticket, but not running a red light). On the other hand, is it important to know what the weather and traffic conditions were at the time, or whether the police officers were in a position to see the intersection at the time that you client drove through it? Probably. Your ability to recognize a relevant or essential fact and to communicate it in an easy-to-understand way is very important to your ability to persuade the court.

## **Persuasive Use of Pertinent Facts/Diffusing Damaging Facts**

Do not ignore bad facts. If they are important to the case (and, of course, relevant to the issues on appeal), someone will find them. Probably your opposing counsel. It will make you look less than honest with the court if you do not disclose bad facts. Your job is to find a way to be candid, but to emphasize the facts that support your position. Finally, do not merely list the essential facts. Weave them into a story. Make the brief interesting to read.

## **Issue Recognition**

The way that you frame your issue will direct the court to the specific question it must decide in the case. Once you have identified the issues to be raised on appeal, state them clearly in the

brief. Be direct and forceful, without being wordy. Use active verbs. Remember that judges are very busy. They do not often have the time to wade through wordy, vague, or repetitive briefs.

The way you phrase the issue for the judges sets the stage for everything to follow in the brief. The issue also determines what your analysis will be. You have to make sure that your legal analysis and the conclusion that you reach parallel the issue that you raise.

### **Legal Analysis**

Now that you have framed the issue that you want the appellate court to address, you have to lay out an analysis that is direct, logical, and persuasive. Your reader should be able to follow the analysis and, at the end of it, reach the same conclusion that you did.

Remember that your analysis revolves around the law. What is the law on the subject of your argument/on your issue? You either want the appellate court to apply the existing law (and perhaps extend it to a new set of facts and application) or to explain why, based on the distinct facts in your case, the existing law does not apply.

You must be clear in your thinking and direct in your writing.

### **Persuasive Use of Authority**

Courts are guided by the law, and it is your job to tell them what the law is, how the facts of the cases that you cite are either substantially similar to your facts or are so different (in important ways) that the legal conclusion in those cases should not apply to your case. Your Issue Booklet identifies the leading cases for the issue you have raised. Your job is to explain to the court why the conclusions in those cases do or do not control the outcome in your case.

To do this, you may need to discuss the facts of the more relevant cases. Discussing the facts of those cases may help the court in your case to determine whether the holding in the prior cases apply to your circumstances.

Remember that you, acting in the role of a moot court lawyer, are, essentially, stepping into the same role as an officer of the court that all attorneys step into. While you represent a client, you also play an important role in helping to shape the law. So be candid, thorough, and forceful.

### **Clarity, Conciseness and “Readability”**

In writing, let the first sentence of each section be your thesis sentence. State what your proposition is and let subsequent sentences support your thesis statement. End your paragraph with a conclusion that repeats your thesis statement.

Once you have completed your brief, be prepared to review and edit it. Revision means “to see again.” You can revise your writing most effectively if you can figure out a way to see it again. When we review something we have written, however, it is often difficult. Not only do we have what we have written on paper, but we also have what is still in our mind.

To distance ourselves from what we have put on the printed page from what is in our mind, we need to see what we have written in a different way. For example, instead of looking at our

complete message, we need to review what we have written differently, i.e. sentence by sentence. As we review each sentence individually, we can ask ourselves the following questions: 1) did the sentence say what I wanted it to say?; 2) did I say it in a clear manner?; 3) could I have said what I wanted to say in fewer words?; and 4) could I have said it better? When we look at what we have written sentence by sentence, we will often find that we wrote many things that were unnecessary. For example, in the preceding sentence, could I have just say "...we'll find we wrote many unnecessary things."

### **Organization, Headings and Subheadings**

No one likes to read a brief that is nothing more than a blob of words (imagine this Help Guide without any headings). Your readers are human and like to be able to focus on certain ideas at a time. As you take notes regarding the issues you are treating, therefore, you should note what the different issues are and organize your writing around each issue. To alert your reader that one issue is ending and another beginning, you should use headings and subheadings. Headings and subheadings not only help you telegraph to your reader that a change in issues or the treatment of a sub-issue is coming up, but help you frame your brief around the issues that will aid the logical organization of your full brief.

### **Compliance with Rules**

Let's be honest. Following your appellate brief writing rules can be less intellectually challenging than writing other school papers and you might even find it boring. Following the rules, however, is vital to practicing attorneys. Attorneys are required to follow different sets of rules to ensure a certain standard is followed that will be fair to everyone. For example, a Florida attorney writing a brief in state court has to follow the Florida Rules of Appellate Procedure (in federal court, the Federal Rules of Appellate Procedure apply). Because attorneys have to learn and follow court (and their Bar Association) rules, you too are being judged on your willingness to learn and follow your "quasi-court" rules for your moot court competition.

### **Spelling and Grammar**

Spelling and grammar are important to clarity and presentation. Errors in spelling or grammar have a negative effect on your reader. A reader who sports spelling and grammar errors may believe that the writer lacks credibility. The reader may question, therefore, the soundness of that writer's legal arguments. In this day of spell-check and automated grammar-check tools, there is no excuse (other than competition rules) not to use them, and using those tools will enhance your credibility with the reader. Remember, though, to still proofread: spell-check cannot substitute to careful review of your final brief. The appearance of your document will also affect your credibility and opportunity to persuade. People do see the small stuff.

### **Citation Style**

Are the citations sloppy? Are your citations proper (do they follow the rules provided)? Did you pay attention to detail? Again people see the small stuff and are affected by anything that might affect your credibility. Remember when doing your citations (as well as other portions of your brief) that you should base your decisions on the rules, not your own preferences.

**Good luck!**

# Sixth District Court of Appeal

## State of Florida

Opinion Filed December 10, 2015

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Appeal No. 6D14-5498

Lower Tribunal No.  
CA-1357

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**Logan Bartram**  
Appellant,

vs.

**State of Florida,**  
Appellee.

Appeal from the Circuit Court of the Twenty-First Judicial Circuit In and For Spring County, Florida.

Before JUDGES KENNEDY, LINCOLN and WASHINGTON.

KENNEDY, Judge.

This appeal arises from a judgment entered against Logan Bartram in favor of the State of Florida. After his motion to dismiss was denied, Appellant was convicted in the Twenty-First Judicial Circuit for: (1) making threatening communications and for (2) sexual cyberharassment, based on comments he posted on a social networking website. Appellant appealed. We affirm the decision of the trial court.

### **I. Facts and Procedural History**

As a student at Sunshine High School, Appellant had the opportunity to enroll in music courses and develop his musical career. Appellant was an active user of the social networking website “FacePlace.” Users of that website may post items on their FacePlace page that are accessible to other users, including FacePlace “friends” who are notified when new content is posted. Appellant was previously in a close intimate relationship with the victim.

The undisputed facts show that the Appellant, a student at Sunshine High School, logged into his “FacePlace” account with his mobile phone and posted topless photographs of the victim (his ex-girlfriend) without her permission. At the same time the photos were uploaded, other

photos not containing the victim were also uploaded through his mobile phone. It is not under dispute that the Appellant and the victim began to have problems with their relationship and broke up. Also, it is not under dispute that the victim was over the age of eighteen (18) at both the times the photos were taken, as well as when the photos were uploaded onto the Appellant's "FacePlace."

Upon the end of their relationship, Appellant began posting self-written music lyrics containing violent language and imagery concerning the victim. These posts were often posted with disclaimers that they were based off of the Appellant's favorite music artists and not intended to depict real persons. These posts also included statements that the Appellant was exercising his rights explicitly stated in the Florida Constitution. Many other students and their family members who knew the Appellant saw his posts as threatening. The victim sought and was granted a state court protection order against the Appellant.

When the victim informed the school resource officer and other law enforcement about the posts, the local agency began to monitor Appellant's "FacePlace" activity and eventually arrested him. He was charged with (1) making threatening communications, and (2) sexual cyberharassment.

At trial, the victim testified that she took the lyrics and statements seriously, saying, "I felt like I was being stalked and being embarrassed in front of everyone in the community and for potential college scouts to see. I felt extremely afraid for my life and my future. As soon as we broke up, all of the [Appellant's] lyrics changed and I felt they were all being targeted at me." The victim further testified that Appellant rarely listened to rap music and that she had never seen the Appellant write rap lyrics during the four years that they dated. The victim even purchased the Appellant his first guitar and frequently listened to new songs he wrote and sang prior to their breakup. The victim explained that the lyric form of the statements did not make her take the threats any less seriously.

At trial, Appellant requested a jury instruction that the Government was required to prove his intent to make the threats through his lyrics and harass the victim by uploading the various pictures of the victim. The court told the jury that the Appellant could be found guilty if, at least, he had a conscious disregard for the possible harm that could occur and did occur to the victim through the lyrics and pictures uploaded.

Appellant was convicted on both counts of the indictment: (1) making threatening communications, and (2) sexual cyberharassment. He has appealed.

## **II. Standard of Review**

This case involves the right to freedom of speech under the Florida Constitution and statutes that relate to the right of freedom of speech and sexual cyberharassment. As such, the trial court's applications of the law are reviewed de novo. *Lieberman v. Marshall*, 236 So. 2d 120, 123—24 (Fla. 1970).

Further, to provide definition, under Florida Statute 934.02:

(2) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation and does not mean any public oral communication uttered at a public meeting or any electronic communication.

(3) "Intercept" means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

(7) “Contents,” when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication.

(9) “Aggrieved person” means a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed.

(10) “Law enforcement agency” means an agency of the State of Florida or a political subdivision thereof or of the United States if the primary responsibility of the agency is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state and if its agents and officers are empowered by law to conduct criminal investigations and to make arrests.

### **III. Right of Freedom of Speech under the Florida Constitution**

Under Article I, Section 4 of the Florida Constitution, “[e]very person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press.” This provision was adopted in 1998.

The Florida Constitution does not provide an absolute guarantee against all government intrusion into the freedom of an individual’s speech, however “[l]iberty of speech must be respected by [government] agents, even if the speech is angry, critical, adverse, or threatens to bring about economic harm . . .” *Lieberman*, 236 So. 2d at 127. “Unreasonable or improper **infringements** of this liberty cannot stand.” *Id.* “An injunction is not justified because the words spoken may be critical or unpleasant, or because on previous occasions there were improper incidents or confrontations if the incident subject to the order was lawful and orderly.” *Id.* at 127—28. In certain narrowly drawn categories, the Government may permissibly restrict speech on the basis of content. *United States v. Stevens*, 559 U.S. 460 (2010). A “true-threat” is one of those exceptions. This category of unprotected speech is permissible as the harms the speech imposes overwhelmingly outweigh any Constitutional concerns about the freedom of speech.

Moreover, if the speech intentionally “threatens an injury to the person, property or reputation of another, or maliciously expose another to disgrace, or to expose any secret affecting another . . . [then whoever] shall be guilty of a felony of the second degree,” as stated in Florida statute. Fla. Stat. 836.05 (2015). Specifically, speech cannot be protected if it is found that the speaker intended harm or injury, specifically, an intention of a “true threat” or “individual threat” through the speech or expression. *Matthews v. State*, 336 So. 2d 643, 646 (Fla. 1st Dist. Ct. App. 1976). If evidence is found to be sufficient that the speaker intended injury or harm through the speech or expression, then the speech or expression exceeds the bounds of permissible expression protected by the Constitution. *Id.*

#### **True Threat Doctrine**

“[A] statement is a true threat when a reasonable speaker would foresee the statement would be interpreted as a threat.” *U.S. v. Kosma*, 951 F. 2d 549, 557 (3d Cir. 1991).

This case presents the question whether the “true threats” exception to speech protection under the Florida Constitution requires a jury to find if the defendant subjectively intended his statements to be understood as threats and incite the recipient to believe that injury or harm can

or could occur. Appellant challenges his conviction arguing that he did not intend his FacePlace posts to be threatening. We consider whether this true threat standard requires a subjective intent to threaten or if a conscious disregard for the harm that may occur is sufficient.

Further, in *United States v. Kosma*, the appellate court held that the “the defendant intentionally make a statement, written or oral, in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of an intention to inflict bodily harm upon or to take the life of the President, and that the statement not be the result of mistake, duress, or coercion.” *Kosma*, 951 F. 2d at 557.

Here, the court is dealing with a case of first impression in that the Appellant is stating that a conscious disregard for the harm that may occur is not enough to uphold a conviction, whereas the speaker must foresee and actually intend the harm in order to be convicted. We reject this argument by the Appellant.

The court has held that the same “knowingly and willfully” mens rea threats to the President also applies under Florida Statute 836.05.

Per Florida Statute 847.012, knowingly “means having the general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both: (a) the character and content of any material described which is reasonably susceptible of examination by the defendant; and (b) the age of the minor.”

Further, there is no precise definition of the term willful because its meaning largely depends on the content in which it appears. It generally signifies the sense of the intentional as opposed to the inadvertent, the deliberate as opposed to the unplanned, and the voluntary as opposed to the compelled. Willful is thought of as meaning: intentional; not accidental; voluntary; designed.

Moreover, true threats encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. *Watts v. United States*, 394 U.S. 705 (1969).

Appellant contends that this definition of true threat means that the speaker must both intend to communicate and intend for the language to threaten the victim.

The prohibition on true threats protects individuals from the fear of violence and from the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence may occur. Limiting the definition of true threats to only those statements where the speaker subjectively intend to threaten would fail to protect individuals from the fear of violence and the disruption that fear engenders because it would protect speech that a reasonable speaker would understand to be threatening, and more specifically, the conscious disregard of a speaker of the possible harm or fear that will or could occur. As far as we are concerned, the majority of courts that have considered this question have not found a requirement of a subjective intent to threaten. Such as *Watts v. United States*, where the Court reached its conclusion on a true threat not being protected expression by basing its decision on the objective characteristics of the speech and the context in which it was delivered, not the speaker’s subjective mental state. *United States v. Martinez*, 736 F. 3d 981, 985 (2013); *Watts v. United States*, 394 U.S. 705, 705—08 (1969). For example, courts look to where the statements were made, and the nature of the statement. Here, the Appellant posted his lyrics onto FacePlace which are accessible by any member of the public, however Appellant including disclosures with his lyrics suggests the nature of the speech is threatening and recognized as threatening by the speaker.

Therefore, when the Government shows that a reasonable person would perceive the threat as real, and even if the speaker just had a conscious disregard for the possible harm or

injury, then a true threat may be punished and any concern about the risk of violating the freedom of speech has been answered.

For the foregoing reasons, we will uphold the Appellant's conviction for making threatening communications towards the victim in violation of his Protective Order.

#### **IV. Section 784.049. Florida Statutes - Sexual Cyberharassment**

The next issue this court will address is the protection of freedom of speech under Article I, Section 4 of the Florida Constitution which states:

Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions and civil actions for defamation the truth may be given in evidence. If the matter charged as defamatory is true and was published with good motives, the party shall be acquitted or exonerated.

Section 784.049 of the Florida Statutes addresses the issue of sexual cyberharassment. The term "sexual cyberharassment" is defined as the act of publishing a sexually explicit image of a person that contains or conveys the personal identification information of the depicted person to an Internet website without the depicted person's consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person. Sexually explicit image is defined as any image depicting nudity, or depicting a person engaging in sexual conduct. In this case, the female was depicted topless in a suggestive manner.

The Appellant is calling into question the constitutionality of this statute in light of the protection of free speech guaranteed under the Florida Constitution. The legislative intent, as cited in the statute, is "safeguarding the psychological well-being of persons depicted in such images." The right to free speech is not absolute. Where the court has ruled that speech cannot be limited because it is offensive in nature or unpopular, *Texas v. Johnson*, 491 US 397 (1989), the court has upheld public policy that serves to protect individuals when their rights are infringed upon. Florida Statute 784.049 serves to protect the public interest and does not violate Article I, Section 4 of the Florida Constitution.

In addition to protecting the rights of those depicted in the images, the U.S. Supreme Court stated in *Miller v. California*, 413 U.S. 15 (1973), "This Court has recognized that the States have a legitimate interest in prohibiting dissemination or exhibition of obscene material when the mode of dissemination carries with it a significant danger of offending the sensibilities of unwilling recipients or of exposure to juveniles." By publishing these photos in a public forum through the internet, the Appellant has subjected the general public to viewing pictures of an obscene nature.

In addressing the issue of obscenity, the majority opinion in *Roth v. United States*, 354 U. S. 476 (1957) stated "All ideas having even the slightest redeeming social importance -- unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion -- have the full protection of the [First Amendment] guaranties, unless excludable because they encroach upon

the limited area of more important interests. But implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance. . . . This is the same judgment expressed by this Court in *Chaplinsky v. New Hampshire*, 315 U. S. 568, 315 U. S. 571-572:"

Where the court recognizes there is no government intrusion on the privacy of the individual depicted in the photo in this case, we would assert that there is a fundamental right to privacy within the confines of a personal, intimate relationship. A reasonable person would conclude that absent consent to the publication of intimate photos there is an inherent right to privacy.

The Appellant also argues that the pictures uploaded through his mobile device do not fall within the statutory definitions provided in Florida Statute Section 815.06.. Section 815.06 was enacted in 1978, long before the advent of the Internet, and social media accounts such as FacePlace. However, the statute has remained virtually unchanged since its original enactment.

For purposes of this case, the operative terms in the statute are:

(2) "Computer" means an internally programmed, automatic device that performs data processing.

(4) "Computer network" means any system that provides communications between one or more computer systems and its input or output devices, including, but not limited to, display terminals and printers that are connected by telecommunication facilities.

(7) "Computer system" means a device or collection of devices, including support devices, one or more of which contain computer programs, electronic instructions, or input data and output data, and which perform functions, including, but not limited to, logic, arithmetic, data storage, retrieval, communication, or control. The term does not include calculators that are not programmable and that are not capable of being used in conjunction with external files.

The Government responds that because the Appellant's FacePlace account is stored on a computer device somewhere on the Internet, Appellant violated the statute when he uploaded the topless photographs to the account without the victim's permission.

We agree with the Government regarding Florida Statute Section 815.06 as a mobile phone can be construed as a computer system as it is a device which contains computer programs and includes functions such as data storage and communication.

## V. Conclusion

**Held:** While negligence with respect to the communication of a threat and regarding sexual cyberharassment, is not sufficient to support a conviction, the jury finding of recklessness is sufficient to support the intent requirement for a conviction. Additionally, we hold that Florida Statute 784.049 does not violate the Appellant's right to freedom of speech under Article I, Section 4 of the Florida Constitution.

WASHINGTON, M., CONCURS.

LINCOLN, D., DISSENTING.

**LINCOLN, D., dissenting.**

I respectfully disagree with the analysis and conclusions of the majority.

There are multiple issues before the court to address including (1) threat prosecutions regarding new forms of technology, more specifically “social media” and the appropriate mental state for a conviction of sexual cyberharassment under Florida Statutes 784.048 and 784.049, as well as (2) the right to freedom of speech under Article I, Section 4 of the Florida Constitution and the First Amendment to the United States Constitution.

Looking to history, other appellate courts in other districts have considered the first issue, “true threat prosecutions” and have held that this provision demands proof only of general intent, which here requires no more than that a defendant (1) knew he transmitted a communication, (here, a “post on FacePlace”), (2) knew the words used in that communication, and (3) understood the ordinary meaning of those words in the relevant context. In contrast, other courts have concluded that proof of an intent to threaten was necessary for conviction.

Adopting this contrasting position, the Appellant urges us to hold that “threatening communications” and sexual cyberharassment pursuant to Florida Statute 784.048, require under Article I, Section 4 of the Florida Constitution proof of an intent to threaten due to a person’s right to freedom of speech. The Government in turn advocates a general-intent approach.

Rather than resolve the conflict, the majority opinion decides to agree with the general intent approach but leaves nothing in its place for future cases. Lower courts are thus left to guess at the appropriate mental statute for threatening communications and sexual cyberharassment under Florida Statute 784.049. All they know after this decision is that a requirement of general intent will do. Here, the majority leaves the definition for general intent open. The majority does not address if a finding of recklessness can be sufficient for culpability. While the opinion carefully leaves open the possibility that recklessness may be enough, at the very least, courts can safely infer that a majority of this Court would not adopt an intent-to-threaten requirement.

This failure to decide throws everyone from appellate judges to everyday FacePlace users, such as the Appellant, into a state of uncertainty. In a technological world like we have here today, this can be problematic. This uncertainty could have been avoided. Although I am sympathetic to my colleagues’ policy concerns about the risks associated with not prosecuting instances like the issue before us, the answer to such fears is not to just leave the question open.

Focusing mainly on sexual cyberharassment under Florida Statute 784.049, Appellant argues, like the first issue regarding his song lyrics, that he uploaded the photos inadvertently with other photos to his “FacePlace” page. Further, per Appellant, the posts were not directed at a specific person as they were all “uploaded” with other photos onto his own personal social media account.

Appellant again argues that Florida Statute 784.049 requires proof of intent to cause harm or injury, and a photo is a form of communication which should also be protected through Article I, Section 4 of the Florida Constitution. Unlike the song lyrics, in the photos, the record shows that the victim was “tagged” in the photos. Although the Appellant argues that the “tag” was through a “Facial Recognition” tool on “FacePlace”, he did not intentionally direct the photos to the victim. While these two forms of communication can be distinguished, my colleagues yet again leave the question open, and do not enforce an intent-to-threaten through either of the Appellant’s charges.

I find that Florida Statute 784.049 violates the right to freedom of speech under Article I, Section 4 of the Florida Constitution and the First Amendment to the United States Constitution. The statute provides the following definition of sexual cyberharassment:

“...to publish a sexually explicit image of a person that contains or conveys the personal identification information of the depicted person to an Internet website without the depicted person’s consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person.”

In this day and age of technology, it is critical that individuals demonstrate a level of personal responsibility with respect to the ease of which any form of expression is communicated – be it through photos, the written word, or videos. The Appellant took these photos on a personal device with the consent of the depicted, giving the Appellant ownership rights of those photos. The exercise of personal responsibility lies in the initial consent of allowing these pictures to be taken in the first place. This “inherent right to privacy” suggested by my colleagues was effectively surrendered by the depicted when permission to take such a photo was given. By decisively saying that the posting of photos depicting another individual in an allegedly compromised state, absent expressed intent, is a criminal act under Florida Statute, the majority is advocating for censorship and an outright violation of the Appellant’s individual right to freedom of expression.

My colleagues have also relied on *Miller v. California* and *Roth v. United States* to provide precedent for this case, offering support to the idea that the photos in question are obscene. Obscenity is a purely subjective definition. As Justice Potter Stewart penned in the concurring opinion in *Jacobellis v. Ohio*, 378 U.S. 184, “I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it...” In this case, the photos do not elevate to a level of the obscene. Additionally, the forum in which these photos were published are on a website where individuals subscribe to the content, connect willingly with friends, and engage in the content by their own will. Where I agree with *Miller* in asserting that “This Court has recognized that the States have a legitimate interest in prohibiting dissemination or exhibition of obscene material when the mode of dissemination carries with it a significant danger of offending the sensibilities of unwilling recipients or of exposure to juveniles”, there are mechanisms in place on social media sites to regulate the dissemination of what may be deemed “offensive” material. The censorship of such content should be left to the business operating the website, not this court.

For these reasons, I respectfully disagree with the analysis and conclusions of the majority and assert that the act of making threatening communications and Statute 784.049 do require a specific intent so that it will not violate the freedom of speech under Article I, Section 4 of the Florida Constitution.

# Supreme Court of Florida

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No. SC14-0001

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**LOGAN BARTRAM**  
Petitioner,

vs.

**STATE OF FLORIDA,**  
Respondent.

## **ORDER INVOKING DISCRETIONARY JURISDICTION**

On consideration of Petitioner's Notice to Invoke Discretionary Appellate Jurisdiction, the above-styled case is hereby acknowledged. Upon direction of the Justices of the Court, it is hereby ordered that the following issues be briefed and argued to the Court by the parties:

1. Whether a showing of recklessness, absent intent, is sufficient to sustain a conviction under Florida Statute 784.048 or are such communications protected under Article I, Section 4 of the Florida Constitution.
2. Whether Florida Statute 784.049 addressing the public dissemination of intimate photos taken by the Petitioner through social media, violates the right to freedom of speech provided by under Article I, Section 4 of the Florida Constitution and the First Amendment to the United States Constitution.

Dated: January 4<sup>th</sup>, 2016.

*John A. Tomasino*

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John A. Tomasino  
Clerk, Supreme Court

# HOW A CASE PROGRESSES THROUGH THE STATE AND FEDERAL COURTS

