
THE BRECHNER REPORT

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Walton settles suit, will pay \$148K attorney fees

WALTON COUNTY – On the eve of trial, Walton County Commissioners voted to settle a public records lawsuit and pay the resident requesting e-mail records \$148,000 in attorney’s fees. Suzanne Harris requested e-mail records from the county in October and December of 2008.

The request was never filled, though the county contended that its “offer to allow Ms. Suzanne Harris to utilize Walton County’s intranet system and a county computer to retrieve records responsive to her requests complied” with the Public Records Law, according to the final judgment signed by 1st Circuit Judge

David W. Green.

In addition to paying attorney’s fees, the Board of County Commissioners must also comply with the Public Records Law; comply with Harris’ request within 30 days of the judgment; conduct annual public records trainings; and designate a records management liaison officer.

The annual training must “emphasize the applicability of the Public Records Act to all public officials’ e-mail communications regarding county business, whether or not such e-mail communications are sent or received on an official Walton County e-mail

account.”

The settlement also stipulates that commissioners will only use official e-mail accounts to conduct official business and enter into an agreement specifying obligations regarding records maintained by the Clerk of Court. Walton County Clerk of Court Martha Ingle was named in the suit, and her office was ordered to pay \$6,500 in attorney’s fees.

The final judgment also included a provision reserving “exclusive jurisdiction over the parties and the subject matter” to use its contempt powers to enforce the terms of the judgment.

Source: Northwest Florida Daily News (Fort Walton Beach)

**ACCESS
RECORDS**

‘Wafflegate’: Rail e-mail subject lines draw ire

TALLAHASSEE – Gov. Charlie Crist ordered an investigation of e-mails between transportation officials regarding a commuter rail bill with subject lines such as “pancakes” and “French Toast,” but ignored calls to delay signing the bill.

Crist signed the bill (HB 1B), which allows for the creation of a commuter rail in the Orlando area called SunRail and payment to CSX Transportation, Inc. of at least \$432 million for the SunRail track.

The e-mails between Department

of Transportation Secretary Stephanie Kopelousos and her deputy, Kevin Thibault, concerned SunRail but contained subject lines of breakfast foods.

The so-called “Wafflegate” e-mails were produced in response to a public records request by Sen. Paula Dockery, who opposed the transportation bill. Dockery, a Republican gubernatorial candidate, urged Crist to delay signing the bill.

She said the code words might have

been utilized to block her efforts to obtain details on the rail deal, according to The Palm Beach Post.

Kopelousos, however, said the use of odd subject lines was “a mere eye-catcher” so she would look at the e-mail among the hundreds she receives every day. “There was nothing more, nothing less than just that,” Kopelousos said.

Melinda Miguel, inspector general, will conduct the investigation.

Source: The Palm Beach Post

AGO: Economic group not subject to Sunshine

TALLAHASSEE – The office of Florida Attorney General Bill McCollum has issued an informal opinion stating that Florida’s Great Northwest does not fall under Florida’s Open Meetings and Public Records laws.

The opinion was requested by state Sen. Don Gaetz (R-Niceville) and Rep. Marti Coley (R-Marianna) after a series of articles in the Northwest Florida Daily News drew light to the economic development organization’s contention that the laws did not apply.

The informal opinion concluded that

based upon the information presented, Florida’s Great Northwest was not acting on behalf of a public agency. The nonprofit was founded in 2002 “to facilitate economic and workforce development within the sixteen county region of northwest Florida,” according to the informal opinion.

Though Florida’s Great Northwest distributes a \$15-million federal grant, the AG office could not “state that a grant from the federal government . . . subjects

an otherwise private entity to” state open government laws.

Another panhandle economic group, TEAM Santa Rosa, was the subject of a State Attorney’s Office investigation regarding the applicability of open government laws.

The State Attorney’s Office concluded that TEAM Santa Rosa was subject to open government laws because the county had delegated economic development duties to the agency.

Source: Northwest Florida Daily News

**ACCESS
MEETINGS**

Miranda review thwarted by \$40K records review

CITRUS COUNTY – Two attorneys hoping to use a public records request to determine how many Citrus County criminal defendants signed a Miranda form now deemed “fatally defective” have been stalled by the potential \$38,560 it would cost them for the records. Miranda warnings inform defendants of their right to an attorney and that their statements to police can be used against them in court.

The Florida Supreme Court overturned a man’s conviction involving a similar form used in Tampa, and the U.S. Supreme Court is currently reviewing that decision.

Inverness lawyers Bill Grant and Bo

Samargya requested from the Citrus County Sheriff’s Office and State Attorney’s Office information relating to cases where defendants confessed after signing the flawed Miranda form. Grant and Samargya requested records dating back two years.

The State Attorney’s office estimated it would cost \$17,000 to produce the records based on a staff person working 500 hours at an overtime rate of \$35 per hour. The State Attorney’s Office estimated a review would include 15,000 files.

An estimate of \$21,560 was given by the Sheriff’s Office to review 29,000 of

its files. The figure was based on a staffer being paid \$14 an hour over 1,540 hours.

Grant and Samargya hoped an independent review would occur, with Grant saying he is seeking outside sources to fund the review. But Assistant State Attorney Ric Ridgway said there is no guarantee a case would be tossed if the form was used but that prosecutors are on the lookout for these types of cases. For those already convicted, Ridgway said there was nothing he could do if he came across one because defendants must file appeals.

Source: Citrus County Chronicle

NCAA upholds FSU sanctions

TALLAHASSEE – The Florida State University student athlete cheating scandal, which prompted a public records battle between the National Collegiate Athletic Association (NCAA) and the media, has to come to an end. The NCAA Division I Infractions Appeals Committee upheld the NCAA’s original penalty, which includes vacating victories in 10 sports, including 14 wins by football coach Bobby Bowden.

The 1st District Court of Appeal ruled that documents sought by the media, including an NCAA transcript, were public records. The NCAA appealed that

decision to the Florida Supreme Court, where the Court has yet to decide whether to take the case.

FSU spent \$201,000 defending itself against the NCAA penalty—during which time FSU lawyers accessed the documents at the center of the public records dispute via a custodial Web site. The university also spent \$81,000 in the public records lawsuit (arguing in favor of disclosure), according to the St. Petersburg Times.

Bowden has retired, and three FSU staff members involved in the alleged cheating were fired.

Source: St. Petersburg Times

Dispute between commissioner, activist, prompts e-mail review

BREVARD COUNTY – The handling of a Port St. John activist’s request for e-mail records has prompted the Brevard County Commission to reconsider how it handles public records requests. On Aug. 9, Maureen Rupe requested Commissioner Trudie Infantini’s e-mails for the previous four months in hopes of learning about her budget proposals for the upcoming fiscal year.

Almost two months later, and nearly a week after the new \$1.1-billion budget was adopted by the commission, Rupe received a \$595 bill and 3,970 pages of printouts. Infantini initially wanted to reject Rupe’s request, according to an Aug. 21 e-mail stating that “[f]our months of e-mails is excessive. I am retracting my permission for the entire contents for four months. Instead, if Maureen wants

correspondence between specific parties or on specific topics she can have that but everything else is clearly fishing.”

Rupe complained to commissioners at a December meeting. “The public record law is in place to ensure that government is working for the people,” Rupe said.

In response, the commission waived Rupe’s \$595 fee and addressed problems with the county’s current public records procedures, calling it “vague,” “gray,” and “a broken system.” A new draft policy suggested by County Attorney Scott Knox would have the county compile cost estimates and require a 25 percent deposit prior to processing large requests. The county apparently has had issues with large records requests being filled but never picked up or paid for.

Source: Florida Today

County seeks suit sanctions

NASSAU COUNTY – A county attorney handed over nearly 100 personal e-mails between he and his wife in an attempt to put an end to a public records lawsuit filed in federal court. Nassau County Attorney David Hallman responded to Yulee resident Thomas Brady’s Nov. 16 request for all e-mails sent or received by Hallman, County Commissioner Mike Boyle and two staffers.

In reviewing the approximately 40,000 e-mails for attorney-client privilege, Hallman identified 91 e-mails between he and his wife that did not pertain to county business and therefore were not considered public records. On Dec. 15, Hallman notified Brady of the existence of the e-mails and told him that they would not be included in the county’s response.

Brady responded by filing a \$25-million lawsuit in federal court alleging constitutional violations. Hoping to avoid spending further time or money on the matter, Hallman on Dec. 30 sent Brady the e-mails, which mostly revolved around the well-being of Hallman’s dog, as well as dinner reservations and dry cleaning matters.

Hallman also served Brady with notice that the county would seek sanctions against him for filing a frivolous lawsuit if it was not timely dismissed.

Source: Fernandina Beach News-Leader

Judge denies request to close murder trial

TALLAHASSEE – Circuit Judge Mark Walker denied a co-defendant’s request to partially close a Tallahassee murder trial. Walker did not elaborate on the reasons behind his decision to reject the request by attorneys for Andrea Green.

Green is one of two men accused of murdering 23-year-old first-time police informant and Florida State University alumna Rachel Hoffman. Green’s trial is set for October, but his co-defendant and stepbrother-in-law, Deneilo Bradshaw, was tried in December.

That trial, which Walker kept open, resulted in a guilty verdict and life sentence for Bradshaw. Green, who faces the death penalty, argued that the fairness of his trial would be compromised if evidence in the case was made public during Bradshaw’s trial.

Hoffman was killed during a botched drug sting by Tallahassee police.

Source: Tallahassee Democrat

ACCESS COURTS

Executive order changes process for declassifying security records

WASHINGTON – President Obama signed an executive order shortly before the new year that overhauled the executive branch’s treatment of classified national security information.

The order notes that “[p]rotecting information critical to our Nation’s security and demonstrating our commitment to open Government . . . are equally important priorities.”

The order was accompanied by a presidential memo to agency leaders, directing them to periodically conduct “comprehensive” reviews of classification guidelines. Indefinite classification of information is no longer permitted.

The order establishes a National Declassification Center at the National Archives aimed at declassifying historical documents more quickly. Obama established a four-year deadline to process

a backlog of these types of records. More than 400-million pages of these documents exist, including archives on military operations during Vietnam and World War II.

Another change implemented in the order is the elimination of a 2003 rule by President George W. Bush that permitted spy agencies to veto decisions of an interagency panel declassifying information. The new rule directs intelligence agencies who object to declassification to appeal to the president.

“Everything depends on the faithful implementation by the agencies, but there are some real innovations here,” said Steven Aftergood, director of the Federation of American Scientists’ Project on Government Secrecy.

Source: www.whitehouse.gov, *The New York Times*

Panel urges “friending” caution

ST. PETERSBURG – Facebook friendships should be avoided among lawyers and judges, according to a recent opinion of the Florida Judicial Ethics Advisory Committee. The Committee concluded that lawyers and judges who are “friends” on Facebook could “convey the impression that they are in a special position to influence the judge,” a violation of the Code of Judicial Conduct.

Although the Committee does not mandate judge actions, most judges are likely to err on the side of caution and follow the recommendation, said Florida Supreme Court Public Information Officer Craig Waters. The Florida

Supreme Court has the authority to mandate judicial conduct.

A judge can, however, post comments on another judge’s social networking site during judicial elections. And a judicial campaign can have “fans” that include lawyers, according to the opinion.

Judge Thomas McGrady, chief of the 6th Judicial Circuit in Pinellas County, said the 69 judges in his circuit

would receive a copy of the ruling and that he doesn’t have a Facebook page due to the potential conflict of interest. “If somebody’s my friend, I’ll call them on the phone,” McGrady joked.

Source: *The Associated Press*

NEW TECHNOLOGY

Judge limits courtroom blogging

JACKSONVILLE – Real-time blogging by reporters in a murder trial proved to be a challenge for a Jacksonville judge, who revised his electronic coverage rules several times during the course of the trial.

Circuit Judge L. Page Haddock initially ordered two television reporters and a *Florida Times-Union* reporter to halt electronic coverage of the trial of three men accused in the shooting death

of an 8-year-old girl. Haddock cited a 1979 Florida Supreme Court decision on cameras in the courtroom that did not address the new technologies.

Haddock later revised his restrictions to allow blog and video coverage but only when he was present in the courtroom. He also limited the number of devices to two per courtroom.

Source: *The Florida Times-Union*

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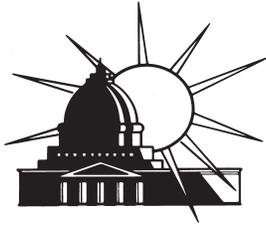
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When you sign a petition, should it be a secret?

*What's in a name? That which we call a rose
By any other name would smell as sweet."*

In Shakespeare's *Romeo and Juliet*, that phrase set out a central theme of the star-crossed lovers' tragedy: Real meaning lies in individuals, not in their feuding families' names.

The 45 words of the First Amendment are law rather than literature. But for the U.S. Supreme Court in an upcoming case, the question "What's in a name?" will involve parsing the modern meaning and application of First Amendment rights of free speech, petition and assembly.

The Court has agreed to consider *Doe v. Reed*, concerning whether Washington state officials can release more than 120,000 names on a petition that sought a referendum on repealing the state's domestic-partnership rights. Some supporters of the gay-

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By Gene Policinski

rights law have said if the names become public, they will identify signers by name and address in Internet postings.

Those seeking to have the Court prevent disclosure say "there is a reasonable probability that the signatories ... will be subjected to threats, harassment, and reprisals." In their petition, they cite a death threat to the campaign manager of a group supporting the referendum, Protect Marriage Washington.

On the other side, Washington state officials say the petition and names are public records.

Justices will have to decide whether implied First Amendment protection of privacy in political speech and association should be overridden by a "compelling public need" for the names to be made public.

The issue of anonymous political activity has roots in the very founding of the nation. The *Federalist Papers*, a series of political writings first published in 1787, identified the author as "Publius." In reality, it was the work of three men, John Jay, James Madison and Alexander Hamilton. Writers in pre-revolutionary times frequently wrote under assumed names to avoid arrest or retaliation from supporters of the Crown.

Legal protection of the right of association has found Supreme Court protection in much more modern circumstances: In one



Gene Policinski

instance, the Court recognized the right of privacy and anonymity in association in the landmark 1958 case, *NAACP v. Alabama*, which involved concerns about very likely intimidation and threats to personal safety from state officials. In another case, the Court struck down laws that required political pamphleteers to identify themselves to officials.

The issue has taken on a new twist — and urgency — because of the Web. It's not at all new to require that the names of campaign contributors, petition signers and others filing any manner of public reports or records be available on records considered open and public.

What is new is the ease with which such names and other personal information can be aggregated and distributed — sometimes replete with photos of individuals and maps of where homes or businesses are located. And therein is the online rub.

An attorney for the group Protect Marriage Washington told reporters that keeping the names secret would "protect the rights of citizens ... to speak freely and without fear. No citizen should ever worry that they will be threatened or injured because they have exercised their right to engage in the political process."

Still, to hide the names of those who take a stand on one side of an issue is to hinder the opportunity for the exchange of views with the public in general and opponents in particular.

Secrecy also removes a measure of public accountability — when, for example, names on petitions are vetted by state examiners. Laws to prevent or punish intimidation or violence already exist. Such acts are illegal even if done with a political or social purpose in mind.

The circumstances in the Washington state dispute and others like it pit the values of personal privacy and public disclosure against each other in a contemporary setting.

After the Court hears arguments in April and likely issues a ruling later this year, we'll know more about how the First Amendment will function in the Internet Age.

Gene Policinski is vice president and executive director of the First Amendment Center. He is a veteran journalist and a founding editor at USA TODAY. His weekly "Inside the First Amendment" column is available at www.firstamendmentcenter.org.