THE
BRECHNER REPORT

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Judge throws out Sunshine suit but blasts policy

HAINES CITY – A judge dismissed an Open Meetings suit against the Haines City Commission, paving the way for the former city manager to receive her severance payment.

The suit, filed by two local business owners, stemmed from meetings in April where the Commission voted to give departing city manager Ann Toney-Deal severance pay of approximately $312,430. Plaintiffs John Webb and Warren McKnight alleged that the Commission violated the Open Meetings Law by not placing the severance issue on a meeting agenda and by giving unreasonable—three hours—notice. Webb and McKnight also contended the Commission violated the law by not allowing public comment.

ACCESS MEETINGS

Circuit Judge Michael Raiden dismissed the suit, finding that the Open Meetings Law didn't require the Commission to only act on matters placed on the agenda and that the public had no right to speak at the meeting. Raiden ruled that because the plaintiffs had actual notice of the meetings, they couldn't sue over whether three hours notice was reasonable.

"[T]his order absolutely must not be read as approving a city policy that three hours' notice is sufficient," Raiden wrote in his ruling. "It is not a green light to the city to continue this practice."

Raiden also called the three-hour notice "a disaster waiting to happen."

Haines City requested legal fees from Webb and McKnight, but Raiden did not rule on that issue.

Source: The Ledger (Lakeland)

Doctors challenge gun gag law

MIAMI – An anti-gun violence group and 11,000 doctors have teamed up to fight a Florida law that prohibits physicians from talking about firearms with patients.

FIRST AMENDMENT

The doctors, along with the Brady Center to Prevent Gun Violence, are asking a federal judge to issue an injunction to prevent enforcement of the law and declare it unconstitutional. They say it violates their First Amendment free speech rights and could harm patients.

Supporters of the law contend that it protects patient privacy and the Second Amendment right to carry a gun.

The law took effect June 2.

Source: Associated Press

High Springs found in violation

HIGH SPRINGS – A circuit judge ruled in favor of a citizen who sued the city of High Springs after she alleged they took too long to hand over a job applicant's polygraph results.

Judge Victor Hulslander ruled that the city unlawfully withheld the polygraph results of a police officer for 12 days. Florida's Public Records Law has no set time within which agencies must respond to requests, but the time must be "reasonable."

ACCESS RECORDS

"An unjustified delay in complying with a public records request amounts to an unlawful refusal," Hulslander wrote. "A failure to respond timely to a public records request due to oversight by the Defendant is not a reasonable justification for such a delay."

Robyn Rush requested polygraph results of Officer Clint Knowles, who was hired at the High Springs Police Department after being fired from the Sarasota County Sheriff's Department. Knowles filed a discrimination lawsuit against the Sarasota agency.

A routine pre-employment polygraph was conducted on April 15, 2010, and High Springs resident Robyn Rush requested the results on April 18. She received one page of the three-page polygraph report on April 27. She received the other two pages on May 18.

Hulslander ruled that the city was justified in redacting the questions and answers from the polygraph report.

Source: Alachua County Today

Email leads to Sunshine case

FLORIDA KEYS – A member of the Florida Keys Mosquito Control District has pleaded guilty to a non-criminal violation of the Open Meetings Law. Joan Lord-Papy, a five-term commissioner, will pay a $250 fine along with $270 in court costs.

The charge stems from an email Lord-Papy sent on April 27 in response to an email from a fellow commissioner. The first email was related to interview dates for district director applicants. That email, sent by Commissioner Jack Bridges, included a warning that other commissioners should not reply to avoid violating the Open Meetings Law.

Lord-Papy replied, upset that she was left out of the hiring process while out of the country. "I also want to be on the record as opposing this cavalier and shoddy approach to hiring an individual for such an important post," she wrote.

Source: The Florida Keys Keynoter

Ethics Commission tackles texting transparency

JACKSONVILLE – The Ethics Commission for the City of Jacksonville has decided to consider developing a policy on text messaging in hopes of preserving government transparency.

"It's an effort to keep up with technology and maintain transparency for public records," City Ethics Officer Carla Miller said.

Miller noted that text messages can be problematic if they are also public records. "City Council members all have their own private providers, and if they don't contact those providers to request to have those messages saved, then they are normally erased from the provider's system in three to five days," she said. "After that, the only record would be on the cell phone itself, but that depends on whether or not the user deletes the message."

In addition to public records concerns, council members were concerned about texting during meetings. Miller suggested that texting be banned during meetings or the messages be recorded and available to the public.

Council member Bill Bishop cautioned against a ban on texting in Council chambers.

"If you follow that logic then maybe there ought to be a rule prohibiting conversations during Council meetings, of any sort," Bishop said. "At some point it goes a little past the point of reason."

The legislative subcommittee of the Ethics Commission will research the texting issue.

Source: Jacksonville Daily Record

Brothers use courts to advocate for open records

ZEPHYRHILLS – Brothers Joel and Robert Chandler have filed 30-40 public records lawsuits in recent years, pitting them against medical examiners, police departments and other government agencies in Florida.

Most recently, Robert Chandler sued Zephyrhills over a book the city produced, challenging the cost of the book and taking issue with sales tax being charged. City council members agreed to lower the cost of the book—which cost $18 to produce but was being sold for $32—and stop charging sales tax. The city will also pay $4,000 for Robert Chandler's legal fees.

"I would like to see Zephyrhills become a role model for public meetings and public records," Robert Chandler, 29, said.

In 2008, Joel Chandler, 47, succeeded in suing the Polk County School Board for information about dependents receiving health care through the school district.

Since then, he has continued to make public records requests to various agencies and litigate issues if he feels he is unlawfully denied.

His brother Robert joined the cause in 2010 after being told a CD of licensing information for fishermen would cost $450. The brothers protested the policy and eventually received the information. The commission has since changed its policy and provides the CD free of charge to requesters.

Source: Tampa Tribune

PRIVACY

Hustler faces $375K penalty for publishing photos

ATLANTA – A federal judge has reduced a jury award of $19.7 million to the family of a woman whose nude photos were published in *Hustler* magazine after her death. U.S. District Judge Thomas Thrash reduced the award to $375,000, citing Georgia law that caps punitive damages.

The family of Nancy Benoit sued the magazine but lost when a federal trial judge ruled that the magazine had a right to publish the photos because Benoit's death was a matter of public interest. Benoit's husband, Chris Benoit, was a professional wrestler who killed her and their young son before committing suicide in 2007.

The U.S. Court of Appeals for the 11th Circuit reversed that decision, ruling that the notoriety of the death didn't give publishers free reign to publish images. The U.S. Supreme Court declined to hear *Hustler*'s appeal.

The family's attorney said he will likely ask the judge to reinstate the original award.

Source: Associated Press

Federal court rejects privacy claims against COPS

ATLANTA – The U.S. Court of Appeals for the 11th Circuit has rejected a Florida woman's claim that her privacy was invaded after she appeared on an episode of the television show "COPS."

Arlene Spilfogel sued the show's producers as well as Fox and TBS after she was recorded on a public street discussing the details of her traffic stop for running stop signs and driving without a tag or working headlights. Spilfogel sued for the torts of public disclosure of private facts and intrusion upon seclusion, both common law causes of action in Florida.

Spilfogel described the facts disclosed about her as "eccentric reactions and behavior in stressful situations." Specific facts included: "that she was upset with her daughter, that she keeps her cell phone in a plastic bag in her purse and uses the phone with the bag on it, and that she had a trunk full of items that she wanted to give to hurricane victims but these donations had not been accepted."

The 11th Circuit affirmed the trial court's dismissal of Spilfogel's suit, noting that the facts disclosed were unlikely to be considered by a juror to be private and offensive. The intrusion claim was dismissed because the events in question occurred on a public street.

Source: Spilfogel v. Fox (11th Cir., unpublished)

Judge delays release of juror names

ORLANDO – The judge who presided over the murder trial of Casey Anthony will keep the names of jurors under wraps until at least Oct.25, citing safety and privacy concerns.

Anthony, 24, was found not guilty of the 2008 death of her 2-year-old daughter, Caylee. At a hearing two days after the verdict was rendered, attorneys for the media, including the Associated Press, *Orlando Sentinel, St. Petersburg Times* and *Tampa Tribune* challenged Judge Belvin Perry Jr.'s decision to keep the names secret indefinitely.

"It is no big secret that some people disagree with their verdict," Perry said. "Some people would like to take something out on them."

Attorneys for the media urged the judge to release the names, citing increased public understanding and the importance of an open system. "If you have an anonymous verdict, it's going to cut against that verdict," media attorney Rachel Fugate said.

Anthony was found guilty of four misdemeanor charges of giving false information to a police officer.

Source: St. Petersburg Times

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Former prosecutor settles free speech lawsuit against boss

JACKSONVILLE – A former prosecutor has settled her First Amendment lawsuit against her former boss, Third Judicial Circuit State Attorney Robert L. "Skip" Jarvis Jr..

KrisAnne Hall sued Jarvis last year, claiming she was improperly fired for speaking at Tea Party and Republican events. Jarvis contended that Hall's activities were disrupting his office.

After court-ordered mediation in July, Hall and Jarvis agreed to settle. The pair issued a mutual statement and Jarvis agreed to pay a portion of Hall's attorney's fees. Hall will not be resuming her position at the State Attorney's Office.

In the statement, Hall wrote that she "strongly believes" she was exercising her constitutional right to speak out on issues of public concern. Jarvis wrote that he "strongly believes" that he has the authority to ask Hall to limit speech to preserve the integrity of the State Attorney's Office.

Hall agreed to dismiss her case in Jacksonville federal court.

Source: Gainesville Sun

High Court: Free speech not implicated by legislative votes

WASHINGTON – The U.S. Supreme Court ruled unanimously that state ethics rules preventing public officials from voting on certain matters due to conflicts of interests do not violate the First Amendment.

The case, *Nevada Commission on Ethics v. Carrigan*, stemmed from a Nevada city council member's reprimand after voting on a casino project that was developed in part by his campaign manager. Michael Carrigan fought the sanctions by the state ethics panel, claiming the ethics law violated his speech rights.

The Nevada Supreme Court struck down the law as overbroad and a violation of legislators' speech rights.

The U.S. Supreme Court, however, ruled that ethics rules like Nevada's were common for hundreds of years and did not infringe on free speech.

"Voting is not a symbolic action as is, for example, the burning of a flag," Justice Antonin Scalia said while reading parts of the opinion he authored for the Court. "[The public official votes] not as an individual but as a political representative engaged in the legislative process. Acting in that capacity, his vote is not his own speech but a mechanical function of government."

Source: USA Today

Scott prevails in challenge to Fla. campaign finance law

TALLAHASSEE – A federal judge has struck down a Florida law that provided matching tax dollars to opponents of candidates who contributed in excess of the statutory threshold.

For Gov. Rick Scott, that limit was $24.9 million in the Republican primary against Bill McCollum. Scott sued, arguing that the cap violated his First Amendment rights. For every dollar Scott spent over the limit, McCollum would have received a $1 match from taxpayers.

The decision by U.S. District Judge Robert Hinkle was handed down shortly after the U.S. Supreme Court struck down a similar Arizona law on free speech grounds. The Court held that the law burdened political speech without a compelling government interest.

During his 2010 bid for governor, Scott spent more than $70 million of his own funds.

"Gov. Scott views this as another big victory for taxpayers, who will no longer be forced by politicians to foot the bill for attack ads and campaign costs," Scott spokesman Brian Burgess said.

Source: The Miami Herald

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UF UNIVERSITY of FLORIDA

Classification reform key to Obama's FOIA vision

President Obama has made substantial progress on improving how federal agencies implement the Freedom of Information Act. But for his administration to truly be "the most open and transparent in history" in respect to FOIA, Obama must fundamentally transform the classification system. Fortunately, the Public Interest Declassification Board provides him with that opportunity. He should seize it to mandate that agencies adhere to their "sunshine dates" to ensure timely declassification of documents, and reform the referral system to eliminate redundant declassification re-reviews.

President Obama deserves credit for forcing more than half of federal agencies to improve their FOIA practices. But these incremental improvements are not enough to truly provide citizens the ability to know how their government is operating. Obama's FOIA reforms, certainly a positive step, have not tackled the root causes of glacial FOIA response times – the failure of agencies to adhere to their prescribed declassification dates and the wasteful and unnecessary "referral system," in which any agency claiming "ownership" of a document can review and censor its release. To fix these root issues and ensure that Americans have access to records in the future, President Obama must transform the classification system.

The Back Page

By Nate Jones

In December 2009, President Obama instructed the Public Interest Declassification Board, a nine-member panel of intelligence officials, legislators, and academics appointed by the President and Congress, to "design a fundamental transformation of the security classification system."

In May, the National Security Archive presented two practical and feasible solutions to improve the FOIA process and classification system to the PIDB: adhere to "sunshine dates" included at the creation of every classified document, and eliminate the redundancies in the equity system.

The first mechanism to fundamentally transform the classification system, adhering to predefined "sunshine dates" to automatically declassify documents, is already explained in the President's Executive Order on Classification. The executive order exempts confidential human sources, confidential intelligence sources and key design concepts of weapons of mass destruction from automatic declassification. In short, each time a classified document is created, its creator is required to stamp a "declassify on date" at its top. Unfortunately, agencies do not currently honor these "sunshine dates." The result of this is countless historic documents which remain classified long after the intent of their creators. Forcing agencies to adhere to this "sunshine date" and declassifying the vast bulk of classified information at the date specified, rather than requiring a line-by-line review by a declassifying authority, would substantially decrease the universe of classified information, reduce the burden on the limited resource of security reviewers, and ensure that citizens are easily afforded access to their previously classified material.

Nate Jones

Second, Obama must reform the agency "equity" system, a problem that has ground declassification processing to a halt. This system is based on the belief that any agency can claim equity or "ownership" of a document and censor its release. This means that documents are often referred and re-reviewed by multiple agencies. This daisy chain of referrals can often result in decades-long delay. Re-review of the same document by multiple agencies is redundant, costly, and inefficient.These bureaucratic "declassification turf wars" do not further protect secrets, they merely impede the public's access to information.

Therefore, the National Security Archive proposed an expanded role for the newly established National Declassification Center in which reviewers can review documents a single time and avoid having to send documents to a plethora of agencies for redundant re-reviews before declassification.

The current system of declassification has become untenable. Adhering to "sunshine dates" to automatically declassify the bulk of information in the classified universe and reforming the equity system to eliminate redundant declassification re-reviews are the best solutions to improve the glacial FOIA process, fulfilling ancient FOIA requests, and ensure that President Obama's vision of transparent and accessible government becomes reality.

Nate Jones is FOIA Coordinator at the National Security Archive.