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# THE BRECHNER REPORT

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## Prosecution blocks witness names in Martin case

ORLANDO—Prosecutors in the case against George Zimmerman for the death of 17-year-old Trayvon Martin asked a judge for a court order sealing the identities of key witnesses.

Documents filed earlier this month with the Seminole County Clerk of Courts included a partial list of witnesses to be used in the case, the *Orlando Sentinel* reported. The witness list revealed the names of six civilians, including Martin's parents, but the rest were redacted, following Special

Prosecutor Angela Corey's removal of the witness's names from the publicly released information, prior to her motion to the court.

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Daytona Beach lawyer and general counsel to the First Amendment Foundation John D. Kaney Jr., said that it is normally up to a judge to redact the information.

"I don't know of any situation where a prosecutor made the unilateral decision to keep any part of the records secret, closed,

after the exemption for investigation has expired, which this one has," Kaney said. "She has to do that in a motion to the court. She can't just do that on her own call."

Other evidence removed from the public release include Zimmerman's statements to the police.

Both the prosecution and the defense have expressed concern that the potential witnesses could be harassed if their names are released.

Source: *Orlando Sentinel*, *The Associated Press*, *Sarasota Herald-Tribune*

## Judge says clicking "like" is not protected speech

NORFOLK, Va. – A federal judge ruled that clicking the "like" button on Facebook does not constitute speech protected by the First Amendment.

Six employees lost their jobs when they were fired by Sheriff B. J. Roberts of the Hampton Sheriff's Department.

Roberts said some of the workers were let go because he wanted to replace them with sworn deputies and others dismissed because of poor performance or his belief

that their actions "hindered the harmony and efficiency of the office."

The employees claim they were fired for supporting Roberts' opponent in an election. One of the workers had "liked" Roberts' opponent's Facebook page.

Public employees are allowed to speak as citizens on matters of public concern,

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*The Associated Press* reported, but Judge Raymond A. Jackson, for the U.S. District Court of the Eastern District of Virginia, ruled that clicking "like" did not amount to constitutionally protected expression.

While Jackson acknowledged that other courts have found Facebook posts to constitute protected speech, those cases involved "actual statements," according to the ruling.

Source: *The Associated Press*

## Scott announces program, places emails online

TALLAHASSEE – As part of a new service called "Project Sunburst," Gov. Rick Scott is making his emails, as well as the emails of nearly a dozen other administrative officials, available online for individuals to read.

The decision comes nearly nine months after Scott ordered an investigation to determine how emails between Scott and

his top officials during his inauguration period were deleted.

"This unprecedented step gives the citizens of Florida as well as members of the media an open and transparent window in the way state government works," Scott said in a statement.

The service will allow anyone to access emails as soon as 24 hours after

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they are written, the *South Florida Sun Sentinel* reported. Some emails may take up to seven days to appear on the website, if they have to be reviewed to prevent the publication of exempt information.

It will include any emails sent from smartphones used by Scott and his top staff, but will not include text messages or messages on social media outlets, according to the *Sun Sentinel*.

Source: *South Florida Sun-Sentinel*

## Mayor creates public accountability office

JACKSONVILLE – Jacksonville Mayor Alvin Brown announced plans to create a new public accountability office.

The purpose of the office is to coordinate responses to public records

requests, maintain online registries and record postings, reported *First Coast News*.

"Our citizens have a right to know and hold government accountable," Brown said in a news release. "The

Office of Public Accountability will not require additional taxpayer dollars, but it will ensure that city government is responsive when taxpayers exercise their right to know."

Source: *First Coast News*

## Media granted greater access in Fernandez case

JACKSONVILLE – A federal judge ruled that the media should have more immediate access to court motions filed in the case against 13-year-old Cristian Fernandez.

The *Florida-Times Union* and *First Coast News* filed a motion to intervene, seeking to ensure full and timely access to public court records in the case against Fernandez, who is being held on murder charges in the death of his 2-year-old

half brother.

Fourth Judicial Circuit Judge Mallory Cooper told the attorney representing the media parties that prosecutors and defense attorneys will now be responsible for making their own redactions to motions before they are filed with the clerk of court.

Previously, Cooper ordered the clerk to provide her with any motions for review for redactions before they were entered

into the public record due to the prior release of confidential records as part of a court file.

The attorney representing the media parties argued that the rules of procedure require the parties in the case, as opposed to the court, to make redactions to any motions and to file a certificate noting those redactions.

Source: *The Florida-Times Union, First Coast News*

## Southwest Ranches resident files records lawsuit

SOUTHWEST RANCHES – A Southwest Ranches resident filed a public records lawsuit against the town, accusing it of withholding town officials' personal email addresses.

The resident, Bill Di Scipio, said he wants officials' personal email addresses to determine whether "town officials are using back channels to get around" the

state's Sunshine Law, the *South Florida Sun Sentinel* reported.

Di Scipio said he received a partial list from a prior public records request producing 6,000 emails, according to the *Sun-Sentinel*. The lawsuit is the second filed by Di Scipio against the town of Southwest Ranches.

The first involved a dispute over \$1.25

and whether he could photograph town records related to a controversial federal detention center. A judge dismissed that lawsuit in March.

Town attorney Keith Poliakoff said the town plans to recover \$20,000 in legal costs following the dismissal of the March lawsuit.

Source: *South Florida Sun-Sentinel*

## Appeals court awards fees for delay

ORANGE COUNTY—An appeals court ruled that a county was responsible for paying attorney's fees to a successful records requester where the county failed to comply with the request for 45 days.

Susan Hewlings filed a request for all documents related to a dangerous dog investigation of her pet, according to the Reporters Committee for Freedom of the Press. Although the county acknowledged receipt of Hewlings' request, it failed to provide her with the documents. Hewlings then petitioned the trial court to order production of the records. The county complied following a court order to respond within 48 hours.

Hewlings then filed a motion for attorney's fees for the costs she incurred pursuing the records. The trial court refused to award attorney's fees, but the 5th District Court of Appeals reversed the order, granting the fees.

"The mere fact that the County quickly responded to Hewlings' request was not dispositive of whether the County unjustifiably delayed in complying with her records request," the ruling stated. According to the court, failure to respond refers to "delay in complying with a records request, not delay in responding to a records request."

Source: *RCFP.org*

## Official's missing emails recovered

PANAMA CITY – Following a public records request filed with the Bay Area Economic Development Alliance (EDA), it was discovered that former Bay Area EDA official Janet Watermeier deleted all of her emails prior to her departure from the agency, the *Panama City News Herald* reported.

The *News Herald* filed the public records request for information related to the now-defunct Redpine Healthcare Technologies, which received a \$5.1 million incentive package from state and local governments. The EDA had largely relied on Watermeier's discretion in

relation to the Redpine deal, according to the *News Herald*.

Watermeier, who was found to have deleted more than 680 pages of emails, has since turned over the emails to agency officials.

Each agency is allowed and encouraged to set its own schedule for the destruction of records, so long as they adhere to the mandatory minimums in state and federal law, reported the *News Herald*. At the time, the EDA did not have a policy on retention of employee emails.

Source: *Panama City News Herald*

## Partial loss for grass firm in records lawsuit

TALLAHASSEE – A three-judge panel for the 1st District Court of Appeals in Tallahassee ruled that a grass company could not obtain records of a University of Florida organization.

The court held that records sought by Environmental Turf Inc., an Avon Park firm, from the Florida Foundation of Seed Producers Inc., are exempt from the state's Public Records Law because the foundation constitutes a direct-support organization.

Although the trial court ruled that other records requested by the organization were also exempt from disclosure under research and litigation exemptions, the appellate court noted that Circuit Judge Robert Roundtree Jr., in Gainesville had not reviewed the records. The panel remanded that part of the case to the trial court with instructions to review the records in private before ruling.

Source: *The Associated Press*

## Judge dismisses suit against Port Authority

INVERNESS – A judge dismissed an Inverness man’s lawsuit against Citrus County and members of its port authority.

Robert A. Schweickert Jr. filed the lawsuit against the Citrus County Board of County Commissioners and the Citrus County Port Authority, alleging commissioners, sitting also as port authority members, violated the state’s Sunshine Law after meeting separately with an attorney, reported the *Citrus Daily*.

Schweickert claimed commissioners improperly decided to retain the attorney’s law firm to lobby the Florida Legislature for Port Citrus after each commissioner heard from the attorney about the possibility of building a port at the Cross Florida Barge Canal.

Circuit County Judge Richard “Ric” Howard, for the 5th Judicial Circuit in Inverness, dismissed the lawsuit, stating that Schweickert had failed to state facts upon which any Sunshine Law violation could be made.

Source: *Citrus Daily*

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## Access denied to affidavits in FAMU hazing death

TALLAHASSEE—A judge denied a motion filed by the *Orlando Sentinel* and *The Associated Press* to disclose probable cause affidavits against the 13 defendants charged in the death of a Florida A&M University drum major.

Judge Marc Lubet, for the 9th Judicial Circuit in Orange County, ruled that neither media outlet had authority to intervene but recommended the media outlets seek an order requiring a government agency to perform its duty, according to *The Associated Press*.

The State Attorney’s Office has refused

to release the documents, claiming they are part of discovery and exempt from being disclosed as part of a criminal probe.

An affidavit usually becomes a public record after it is filed with the Clerk of Court, but the State Attorney’s Office has not filed the affidavits for 11 of the defendants who have been charged with a third-degree felony for Robert Champion’s death. The media groups argued that the affidavits are no longer confidential because all defendants have been arrested, *The Associated Press* reported.

Source: *The Associated Press*

### ACCESS RECORDS

## Judge refuses to block details in Brevard antitrust lawsuit

BREVARD COUNTY—A judge has refused to prevent the release of information related to a lawsuit brought by Space Coast Health Foundation against Health First healthcare system.

The antitrust lawsuit, first filed in 2005, seeks the forced sale of Health First’s Viera Hospital to a third party.

Attorneys for the foundation filed a motion, seeking to keep details of the case as well as a possible settlement from the press and the public, reported Florida Today.

Florida Today, as well as other media outlets, filed a motion to intervene, arguing that information related to the

case could affect a large number of residents living in the area and the media’s coverage of the details would not impact the foundation’s ability to choose a fair and impartial jury.

Brevard County Circuit Judge George Maxwell III refused to block the release of the information, stating “I do not believe I have the right to control free speech.”

The information relates to the potential for increasing the jury award, attorney fees, and how using injunctive relief, a judge could decide important parts of the award, according to *Florida Today*.

Source: *Florida Today*

### FIRST AMENDMENT

## Groups warn of litigation in wake of law’s enactment

TALLAHASSEE - On July 1, a new Florida law took effect that allows students to give “inspirational messages” to their peers in a school assembly.

Groups, such as the American Civil Liberties Union and the Florida School Boards Association, have recommended school boards refrain from adopting a policy implementing the law, stating that doing so will invite costly litigation, *The Miami Herald* reported.

The bill, which was controversial from the start, was signed into law by Gov. Rick Scott in March 2012. Although it

specifically prohibits school personnel from reviewing the message so they cannot be accused of violating the prohibition, opponents of the law say it authorizes prayer in school, according to the *Tallahassee Democrat*.

Although the ACLU does not usually commit to legal action before a lawsuit is filed, the organization has stated it will bring a lawsuit challenging any school board policy implementing the law.

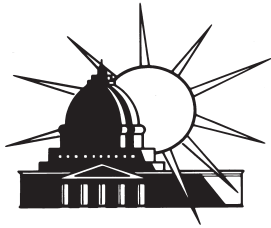
Source: *Tallahassee Democrat, The Miami Herald*

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## Media parties intervene in Zimmerman case

Media companies across Florida and the nation have gained critical access to court records in the highly-publicized, second-degree murder prosecution of George Zimmerman, the self-designated neighborhood watchman who shot and killed 17-year-old Trayvon Martin in Sanford, Florida. On June 12, Judge Kenneth R. Lester, Jr., of the 18th Judicial Circuit Court of Florida, issued a broad order unsealing numerous records, and ensuring public access to court documents as the case progresses.



Drew Shenkman

The case began under a shroud of secrecy, when at a hearing on April 12, Zimmerman asked the court to seal materials that were soon to be provided to him in discovery by the state prosecutor. The State did not oppose Zimmerman's request, and the court subsequently sealed the records without requiring or receiving evidence on the issue of closure, without reviewing the records to be sealed, and without giving the public and press the opportunity to oppose closure.

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By Drew Shenkman

when the court file was ordered unsealed, with only the names and addresses of witnesses to be redacted.

The court followed that order with another on April 30, denying the state's request for a gag order, and holding that all documents filed with the court are "presumed to be made available as a public record," ordering that the parties may not file any documents under seal without moving for protective order, redacting from public view only information restricted from dissemination by law, and submitting an unredacted copy for in camera review.

While much of the discovery provided to Zimmerman was released, portions still contained redactions and while other documents were withheld entirely.

On May 24, citing the dangers of pretrial publicity, the State and Zimmerman each moved for additional closure, seeking protective orders to retroactively approve redactions made to discovery records, as well as the withholding of others in their entirety. The documents withheld included categories ordinarily available to the public including autopsy reports, photos from the crime scene, names of witnesses, statements made by Zimmerman to police, tests performed by the Sanford Police Department,

Zimmerman's cell phone records, and statements of key witnesses.

The media companies asked the court to deny the parties' motions and order the redacted and withheld documents be released.

The court heard argument on the motions on June 1, and on June 12 issued an opinion releasing the vast majority of information. Specifically, the court held that Florida law requires that witnesses be identified where the individual has voluntarily spoken about the case in

the public, but the law does not mandate disclosure of those who have thus far chosen to remain anonymous.

It also held that statements of all witnesses must be disclosed, as well as all tests performed by police. Further, the court held that all statements made by Zimmerman to police must be released, with the exception of legitimate confession material, but only if that information passes the judge's in camera approval. The court also ordered the release of all crime scene photos as well as the autopsy report.

Although the court found no authority to release Zimmerman's cell phone records finding them to be irrelevant to the case, consistent with the order, all communications between Zimmerman and the Sanford Police Department or 911 were released.

The court also ordered that transcriptions of phone calls made from jail by Zimmerman to his wife must be disclosed. Finally, the court ordered the release of all emails received by the Sanford Police Department during its investigation, with only the names of previously unidentified witnesses redacted where necessary. As of June 18, Zimmerman's attorney has asked the court to reconsider its ruling.

The media who intervened should be applauded for taking a stand to perform the important function of government oversight, as well as to protect the public's right to access court records and proceedings.

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*Drew Shenkman is an associate with Holland & Knight LLPs Washington, D.C. office. Holland & Knight intervened in the Zimmerman case on behalf of McClatchy Co., NBCUniversal, Gannett, The New York Times, The Associated Press, Times Publishing Co., Dow Jones & Co., E.W. Scripps, CBS News, Hearst Corp., Morris Publishing Group, First Amendment Foundation, Florida Press Association, CNN, and In Session.*