
THE BRECHNER REPORT

Volume 39, Number 6 ■ A monthly report of mass media law in Florida
Published by The Brechner Center for Freedom of Information ■ College of Journalism and Communications ■ University of Florida
June 2015

Legislature passes many records exemptions

TALLAHASSEE – The Florida Legislature passed 26 laws pertaining to open government and First Amendment issues during the 2015 session, according to the Florida First Amendment Foundation. The Legislature approved 13 new exemptions, reenacted 7 previous exemptions and passed 6 bills that do not create exemptions, the First Amendment Foundation reported.

The Florida House ended its session three days early, dropping many proposed exemptions from Florida’s Public Records

Law, according to the Tampa Bay Times. The Legislature succeeded in passing 13 out of more than 50 proposed exemptions, according to the

paper. A proposed bill that would have exempted the names and information of candidates for top state college and university jobs, and a bill that would have exempted surveillance video from public buildings owned by community development

**ACCESS
RECORDS**

districts were not passed, the paper reported.

Gov. Scott signed a new exemption into law concerning police body camera footage. The heavily criticized law will exempt certain portions of recordings from police body cameras, the paper reported.

Many of the proposed exemptions that did not pass this session could return next session, according to the paper.

Source: Florida First Amendment Foundation, Tampa Bay Times, Florida Senate (<http://www.flsenate.gov>)

Cabinet lawsuit may settle

TALLAHASSEE – A lawsuit against the Florida Cabinet may end in a settlement, according to the Sarasota Herald-Tribune.

Numerous media organizations filed a lawsuit against Gov. Rick Scott and his Cabinet, claiming that they violated Florida’s Sunshine Law for secretly arranging to fire former FDLE Commissioner Gerald Bailey, the paper reported.

The parties have brought in former Florida Supreme Court Justice Major

Harding as a mediator in a potential settlement, according to the paper. Plaintiffs also want to hear Bailey’s testimony as part of a settlement, the paper reported.

“It has to happen one way or another,” said paralegal Michael Barfield, who works for Andrea Mogensen, one of the attorneys working on behalf of the plaintiffs. The case can’t reach a settlement “until they know more about what exactly happened,” Barfield told the paper.

Source: Sarasota Herald-Tribune

**ACCESS
MEETINGS**

House holds closed meeting

TALLAHASSEE – Florida House Republicans met privately to discuss healthcare budgeting before the legislative session closed, according to the Tallahassee Democrat.

House Speaker Steve Crisafulli, who distributed information about Medicaid expansion during the meeting, said the closed meeting did not violate Florida’s Sunshine Law, the paper reported.

“Our general counsel went through our talking points. I was very scripted,” Crisafulli told the paper. “He said everything we were doing in that meeting was perfectly within the confines of the law.”

Medicaid expansion caused a standoff between the House and the Senate, halting negotiations between the two chambers and forcing the regular session to end without a budget, the paper reported. The legislature must now hold a special session sometime in June.

The Senate held a public hearing to discuss the same issues, according to the paper.

Source: Tallahassee Democrat

**ACCESS
MEETINGS**

Court rules on House adjournment

TALLAHASSEE – The Florida Supreme Court ruled the House’s early adjournment violated the state constitution, according to The Tampa Tribune.

Members of the Florida Senate filed a lawsuit to force the House back into session after adjourning more than three days early, the paper reported. The court ruled that it was too late to order legislators to return to Tallahassee, according to the paper.

The majority opinion ruled that ordering the House to return to Tallahassee to finish their session would not “produce any beneficial result,” since the 2015

regular legislative session was set to conclude less than one day after the petition was filed, according to the opinion.

In a concurring opinion, Justice Barbara Pariente emphasized that the early adjournment violated Article III of the Florida Constitution, but said “there is simply no way to mandate that the entire Florida House of Representatives return to Tallahassee to continue conducting its legislative responsibilities.”

Source: The Tampa Tribune, Arthenia Joyner, et al. v. The Florida House of Representatives, et al., No. SC15-813

COURTS

Judge orders Google to release Scott email data

SANTA CLARA COUNTY, CA – A California judge ordered Google to release IP addresses and data from Florida Gov. Rick Scott’s personal email account and the accounts of two staff members, according to the Tampa Bay Times.

Santa Clara County Superior Court Judge Mary E. Arand ruled that Scott could not dismiss attorney Steven R. Andrews’ request for the information from the email accounts, the paper reported.

Andrews wants the information from Google to help prove his claim that Scott attempted to use his email account to circumvent Florida’s Public Records Law, according to the paper.

A Tallahassee court had approved a subpoena seeking the information from Google, the paper reported. Additionally, Circuit Court Judge Charles A. Francis ordered Scott to stop fighting the request.

In September, Scott filed suit in California to prevent Google from releasing the information, according to

the paper. Scott claimed releasing the information would be an invasion of the email account owners’ privacy and the privacy of third parties.

Arand noted that the order does not authorize Google to release the content of the emails, but only the IP address and subscriber information for each email, the paper reported.

Scott’s spokesman said his lawyers are reviewing the ruling, according to the paper.

Source: Tampa Bay Times

Charter school suit dropped

LEE COUNTY – A public records lawsuit filed against the Marco Island Charter Academy last year was dropped, according to the Naples Daily News.

Citizens Awareness Foundation Inc., a nonprofit organization, filed a lawsuit against the school, claiming the school’s former principal failed to respond to a public records request, the paper reported.

Shawn Arnold, attorney for the school, said the school agreed not to seek legal fees from the foundation in exchange for dismissing the lawsuit, according to the paper.

The foundation requested a payroll transaction from the school last May, the paper reported. Former principal George Andreozzi never responded to that email, claiming he never received the email. The foundation then filed a lawsuit, claiming the school violated Florida’s Public Records Law, according to the paper.

The foundation was heavily scrutinized after the Florida Center for Investigative Reporting published a report last year showing it had filed more than 140 similar lawsuits across the state in the past year, the paper reported.

Source: Naples Daily News

Florida Virtual School sues for records

ORLANDO – Florida Virtual School filed a lawsuit claiming its foundation violated Florida’s Sunshine and Public Records laws, according to the Orlando Sentinel.

Orange Circuit Judge Lisa Munyon ordered the foundation to “expeditiously” turn over all public records to the school, the paper reported. The school asked for records including the foundation’s business plan, solicitation records, bank statements, meeting minutes and computer hard drives, according to the paper.

The school also alleged that the foundation had mismanaged funds raised to benefit the school, the paper reported. Florida Virtual School is an online public school that provides free classes to any student in the state, according to the paper.

The foundation and the school have been arguing over how donations are spent and the process of appointing foundation board members since last year, the paper reported.

The school claimed that the foundation removed computer records and refused to provide the school with complete expenditure records, according to the paper. The school also alleges that the foundation appointed board members without authorization and held meetings without proper notice or minutes, the paper reported.

Source: Orlando Sentinel, Florida Virtual School v. The Foundation for Florida Virtual School, No. 2015-CA-002815-O

Court upholds campaign law

WASHINGTON, D.C. – The United States Supreme Court upheld a Florida law that bans judges from asking for campaign money, according to The Miami Herald.

The court ruled that prohibiting judges from directly soliciting campaign funds does not violate the First Amendment, the paper reported. The ruling affects not only Florida, but also many of the 39 states where voters elect judges.

The ruling stemmed from a Florida case involving Lanell Williams-Yulee’s bid for a seat as a county court judge in Hillsborough County, according to the opinion. During campaigning, Williams-Yulee signed a letter announcing her candidacy and asking for contributions, the opinion stated.

The Florida Bar subsequently filed a complaint against Williams-Yulee, claiming she had violated Florida’s Code of Judicial Conduct by personally soliciting campaign funds, according to the opinion. Yulee then filed suit, claiming the Bar’s reprimand and fine violated her First Amendment rights, the opinion stated.

“Most states with elected judges have determined that drawing a line between personal solicitation by candidates and solicitation by committees is necessary to preserve public confidence in the integrity of the judiciary,” wrote Chief Justice Roberts for the majority. “These considered judgments deserve our respect.”

Source: The Miami Herald, Williams-Yulee v. Florida Bar, No. 13-1499

COURTS

Pension case may not reach settlement

JACKSONVILLE – The ongoing case involving the city of Jacksonville Police and Fire Pension Fund may not go to mediation, according to The Florida Times-Union.

Judge Thomas Beverley ruled in March that the 30-year-old agreement between the city and the fund was invalid because it violated Florida's Sunshine Law, according to the paper.

Attorney Bob Dees, who represents Curtis Lee and the Concerned Taxpayers of Duval County, said they would like the pension fund and unions to agree on benefits in public, the paper reported.

The parties had discussed a potential settlement once Beverley issued his ruling, but the settlement appeared dead when Beverley denied the pension fund's motion for rehearing, the paper reported.

Dees said any negotiations likely would include not only his clients, the city and the pension fund, but also the unions, in order to come to an agreement about pension benefits, according to the paper. Dees said his clients should not be part of those negotiations, however, because only the city and the unions have a right to discuss benefits, the paper reported.

Source: *The Florida Times-Union*

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The Brechner Report is published 12 times a year under the auspices of the University of Florida Foundation. *The Brechner Report* is a joint effort of The Brechner Center for Freedom of Information, the University of Florida College of Journalism and Communications, the Florida Press Association, the Florida Association of Broadcasters, the Florida Society of Newspaper Editors and the Joseph L. Brechner Endowment.

Officials fined for violation

VERO BEACH – Two Indian River Shores officials were fined for violating Florida's Sunshine Law, according to Scripps Treasure Coast Newspapers.

County Judge David C. Morgan fined Mayor Brian Barefoot and Councilman Richard Haverland \$200 each and ordered the officials to receive some training on Florida's Sunshine Law, the paper reported.

Barefoot and Haverland both acknowledged they spoke by email regarding the town of Indian River Shores' lawsuit against the city of Vero Beach,

according to the paper.

Both Barefoot and Haverland insisted that their correspondences were intended to help provide the press with information, the paper reported.

Florida's Sunshine Law forbids two or more public officials from discussing any issue that may come before that body for a vote.

Both officials paid their fines immediately, according to the paper.

Source: *Scripps Treasure Coast Newspapers*

Training raises Sunshine questions

WEST PALM BEACH – City officials in West Palm Beach met privately to hold training on Florida's open government laws, according to The Palm Beach Post.

Many members of the city staff met for three hours in a closed-door training session without notice to the public, the paper reported. According to staff who attended, the meeting covered many issues like the Sunshine Law, legal definitions and dealing with the media.

City spokesman Elliot Cohen said the administration checked with the

Attorney General's Office in Tallahassee to determine whether the training session should be held in public, according to the paper. The Attorney General's Office said the training sessions did not need to be held in public, the paper reported.

Florida's Sunshine Law requires nearly all state and local public bodies to meet in public. There is no special exemption from the law for training sessions, Barbara Petersen, president of the First Amendment Foundation, told the paper.

Source: *The Palm Beach Post*

Court rules NSA program illegal

WASHINGTON, D.C. – A federal appeals court ruled the National Security Agency's bulk collection of Americans' phone records is illegal, according to The New York Times.

The U.S. Court of Appeals for the 2nd Circuit found that the section of the USA Patriot Act, referred to as Section 215, cannot be interpreted to justify the collection of bulk phone records, the paper reported.

Section 215 will expire on June 1, and Congress must decide

whether to end the program, replace the program, or extend it without any changes, according to the paper.

This ruling is the first time a higher-level court outside of a special intelligence court has reviewed the NSA's phone records surveillance program, the paper reported. The ruling did not include an injunction ordering the program to stop and it is unclear

whether the program will stop before Congress can make a decision about Section 215, according to the paper.

The court unanimously ruled that Section 215 "cannot bear the weight the government asks us to assign to it, and that it does not authorize the phone metadata program," according to the opinion. In ruling the collection program illegal, the court said, "we

do so comfortably in full understanding that if Congress chooses to authorize such a far-

reaching and unprecedented program, it has every opportunity to do so, and to do so unambiguously."

The government could appeal the ruling to the full 2nd Circuit or to the Supreme Court, the paper reported. A White House spokesman said the government is still reviewing the ruling.

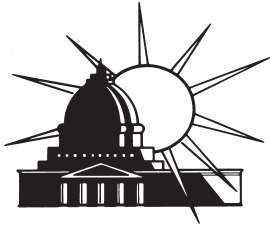
Source: *The New York Times*, *ACLU v. Clapper*, No. 14-42

PRIVACY

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June 2015



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Lawmakers quit early, still damaged public records

Politicians in Tallahassee bickered about almost everything this year.

Except when it comes to your constitutional right to access public information.

On that, they agree you should have less access.

Lawmakers did a lot of damage to public records this year.

They found 13 new ways to limit government transparency and renewed seven more exemptions to Florida's Sunshine Law.

If there is one good thing to come from this year's legislative meltdown, it's that lawmakers gave up and went home before they could do any more damage.

"It's the only thing this Legislature can agree on," said Barbara Petersen of the First Amendment Foundation. "One of the last

things the House did before it quit was pass an exemption."

If House Speaker Steve Crisafulli had stuck around instead of stomping off to his room like a pouty teenager, the

results would have been much worse.

Last year the Legislature passed a record number of new exemptions to public records.

This year they simply didn't have time.

So, Mr. Speaker, don't say I never thanked you for anything.

Though it's probably not much consolation, considering the reckless manner in which Crisafulli and his cronies shut down public access to information.

Take, for example, police body cameras.

There's wide agreement that body cameras are good for law enforcement agencies because they help reduce complaints and improve safety.

Orlando Police Chief John Mina said this week that a study on his officers' body cams confirmed just that, and he plans to add 450 more of the devices to his department during the next four years.

What makes the cameras so effective is accountability — the idea that the actions of police officers and those that they are arresting will be on videotape for public scrutiny.

The Legislature passed a law that broadly exempts lots of those videos from public view: anything shot inside a private residence; at a health care or social services facility or in a place where a



Beth Kassab

person has a reasonable expectation of privacy.

That's a lot of video that's suddenly no longer subject to public scrutiny.

And the House did it without any deliberation. The bill (SB248), which was filed in the Senate, was never considered by a single House committee. Not a single member of the House ordered an analysis of the bill, which is standard protocol.

But it was passed almost unanimously by a vote of 112-2.

"The House had to waive its rule to pass that bill,"

Petersen said.

Also passed were broad exemptions for home addresses, telephone numbers and photographs of current or former members of the military who served after Sept. 11, 2001.

This bill (HB 185) creates a bureaucratic nightmare for property appraisers, tax collectors, public utilities and any other agency that might keep this information. The bill fails to address how a person's military service should be confirmed, opening up the door for it to be exploited.

"The burden the exemption will place on records custodians will be extreme, requiring them to track thousands (if not tens of thousands) of requests for confidentiality," wrote Petersen in a letter to Gov. Rick Scott asking him to veto the bill. "The cost of access to public records will increase exponentially — redaction costs are passed along to the requester — as will time delays in accessing commonly requested public records."

In addition to the administrative headache, there's no good reason for exempting this information.

The purported motive is safety. Lawmakers are upset about a list of military personnel created by a terrorist group.

As Petersen points out, that list was created not through a public records request, but through information posted on the Internet by the U.S. military.

But almost anything suffices as an excuse in Tallahassee to shut down public information.

And the truly frightening thing is that lawmakers are getting away with it. Sunshine's best hope appears to lie with the Legislature's inability to function.

Beth Kassab is a columnist at the Orlando Sentinel. This column appeared in the paper on May 6, 2015.

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By Beth Kassab