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# THE BRECHNER REPORT

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## Venice city council members settle Sunshine suit

VENICE – The City Council voted to accept a settlement in a civil suit brought against four city council members and five former city officials alleging improper use of e-mails in violation of the Sunshine Law.

The settlement was announced three days before the trial was set to begin.

In the settlement, the council admitted to violating the law for not keeping e-mails on the city's computer server, but the officials did not individually admit to wrongdoing.

Also, the city will pay legal fees for both sides estimated at \$1 million, according to the *Sarasota Herald-Tribune*.

Sarasota activist Anthony Lorenzo filed the suit against Mayor Ed Martin, council members Sue Lang, John Moore and John Simmonds, former Mayor Fred

Hammett and four former members of the Airport Advisory Board.

Lorenzo alleged that the commissioners used their personal e-mail addresses and computers to discuss city business and that those discussions constituted improperly noticed public meetings. Also, the suit alleged that officials used liaisons to communicate with each other about city business and that the officials improperly saved or destroyed e-mail exchanges between them discussing city business.

Notwithstanding the settlement, City Councilwoman Sue Lang said she did not think she did anything wrong, according to the *Sarasota Herald-Tribune*.

In January, the council approved a policy prohibiting public officials from using their personal e-mail for city business and from using city computers for personal business. The policy also

requires officials to forward all e-mails regarding city business received in their private e-mail accounts to their city e-mail accounts. The policy requires all city officials and employees attend Sunshine Law training.

The city also provides online access for anyone to log on to the server and see all e-mails sent to and from council members. Mayor Martin stopped online access to incoming e-mail briefly before the council voted unanimously in February to reverse the policy.

The Florida Department of Law Enforcement has said that it has been following the case and will make a determination on whether to pursue criminal charges after reviewing the finding in the civil suit, according to the *Sarasota Herald-Tribune*.

Source: *Sarasota Herald-Tribune* and *Venice Gondolier Sun*

### ACCESS MEETINGS

## College's meeting "questionable"

NICEVILLE – Attorney General Bill McCollum has asked Panhandle prosecutors to look into whether campus officials at Northwest Florida State College violated the Sunshine Law in the "very questionable" manner in which a meeting of college trustees was planned, advertised and held.

College trustee chairman Wesley Wilkerson responded to the attorney general in writing that the meeting was noticed in the *Northwest Florida Daily News* and that the college board "adheres to public notice and compliance with all sections of the Sunshine Law," according to the letter, which was published in the *Walton Sun*.

However, the newspaper in which the meeting was noticed was 150 miles away from the location of the meeting. No minutes were taken at the meeting and trustees approved a "record"

of what took place 10 months later, according to the *St. Petersburg Times*.

Former House Speaker Ray Sansom is being investigated for links to the college by the state attorney, a grand jury and is also facing review from a House special investigator and the state Commission on Ethics.

Sansom resigned as speaker after coming under fire for accepting a \$110,000 job at the college, steering \$35 million to the college over the last two years as top budget writer in the House, and for helping coordinate the meeting of trustees at a members-only club via e-mail with college president Bob Richburg.

Sansom has denied any wrong doing, according to the *St. Petersburg Times*.

Source: *Pensacola News-Journal*, *St. Petersburg Times*, *Walton Sun* and *Northwest Florida Daily News*

## New shield law

WASHINGTON – A federal shield law was reintroduced in both the U.S. House of Representatives and the U.S. Senate in February.

### REPORTER'S PRIVILEGE

A shield law would protect journalists from testifying about confidential sources. Both the House bill, H.R. 985, and the Senate bill, S. 448, contain exceptions for national security, terrorism, and situations where reporters are eyewitnesses to crimes.

President Barack Obama and Attorney General Eric Holder have said they support a federal shield law.

Source: *The Reporters Committee for Freedom of the Press* and *Society of Professional Journalists*

## Attorney files suit protesting record copying fees

ST. PETE BEACH – An attorney has filed a lawsuit protesting a \$7,721.35 charge resulting from a public records request.

Attorney Ken Weiss made a public records request to attorneys representing St. Pete Beach for all e-mails and documents related to a separate lawsuit, according to the *St. Petersburg Times*.

A city attorney informed Weiss in

writing that an “extra administrative fee” would be required to cover the estimated 32 hours of attorney time and 22 hours of staff time to assemble and redact the records requested and that the rate for the attorneys time would be calculated at the rate the attorneys charge the city: \$205 per hour.

Weiss has said he did not agree to pay any extra fees and is willing to pay

the normal copying fee of 15 cents per page, according to the *St. Petersburg Times*.

In his lawsuit, Weiss is asking the court to require the city and its attorneys to honor his public records request, to impose a fine on the city for violating the public records law and to force the city to cover his legal fees for the suit.

Source: *St. Petersburg Times*

## Judge rules Proposition 8 donor names open

CALIFORNIA – A federal judge denied a request for an injunction to shield campaign finance records from the public by supporters of California’s Proposition 8 because the supporters failed to demonstrate “irreparable harm.”

Supporters of Proposition 8, the California ballot measure that banned gay marriage, sued to close the records

because they had allegedly been harassed.

“The court finds that the state is not facilitating retaliation by compelling disclosure,” said U.S. District Judge Morrison England Jr., according to *The Reporter’s Committee for Freedom of the Press*.

According to the report, donors from

homemakers to millionaires donated more than \$40 million during the campaign.

Proposition 8 passed with 52 percent of the vote and is under review by the California Supreme Court, which had legalized same sex marriage in May.

Source: *The New York Times* and *The Reporter’s Committee for Freedom of the Press*

## Board rejects book ban

FORT WALTON BEACH – The Okaloosa County School Board voted unanimously to keep a book on two high schools’ reading lists despite requests from parents to remove it.

### FIRST AMENDMENT

“The Kite Runner,” a novel by Khaled Hosseini, depicts the lives of two young boys growing up in Afghanistan before the Taliban took over and through the Sept. 11, 2001 attacks. The book, which includes a depiction of the sexual molestation of a child, has faced similar challenges across the country.

The school board will keep the book in the advanced classes and in the media centers at Choctawhatchee and Fort Walton Beach high schools.

The parents, Laura and Jeff Stovall, asked the school board to remove the book in January because of its “mature content,” according to the *News Herald*.

Source: *News Herald*

## Tracking tax dollars online

TALLAHASSEE – Celebrating Sunshine Week, Governor Charlie Crist and Chief Financial Officer Alex Sink unveiled the Sunshine Spending Web site, which allows Floridians to track how the state government is spending taxpayer dollars.

The Web site is updated nightly and allows the public to search for information on payments to vendors and other recipients of state funds by using the vendor’s name.

Information available on the Web site includes total payments to vendors for each fiscal year beginning in the

2004-2005 fiscal year and information about each payment including the name of the requesting state agency, the telephone number of the agency’s finance and accounting person and the document numbers for documents related to that payment.

According to the governor’s press office, no additional tax dollars were spent to create or maintain the Web site.

The Web site can be accessed at [www.FLGov.com/sunshinespending](http://www.FLGov.com/sunshinespending) or at [www.MyFloridaCFO.com/SunshineSpending](http://www.MyFloridaCFO.com/SunshineSpending).

Source: <http://www.flgov.com>

## AP sues over Obama photo

NEW YORK – The Associated Press is suing the artist behind the red, white and blue image of President Barack Obama with the

word “HOPE” at the bottom, claiming copyright infringement.

The image created by artist Shepard Fairey became one of the most recognized images of the 2008 presidential election and was sold by the thousands as posters, stickers and buttons.

Fairey has admitted the image was based on a 2006 photograph of Obama taken by an Associated Press

photographer.

The Associated Press argues it owns the copyright of the image and is seeking credit and compensation.

Fairey argues his use of the photograph is protected under the fair use doctrine because it was used for a civic purpose.

Fair use protects some use of copyrighted works based on how much of, and for what purpose, the original work is used.

Source: *The Associated Press* and *The Reporters Committee for Freedom of the Press*

## Shell bills problematic

TALLAHASSEE - Nearly 100 shell bills have been introduced in the Florida Senate for the 2009 legislative session.

Shell bills are filed at the beginning of the session and provide the structure, but not the purpose or language, for a bill. They are problematic because the text could be filled in and the bill voted on at anytime during the session giving the public little notice or time for comment.

## FREEDOM OF INFORMATION

Shell bills introduced this session include 14 bills related to open government, 14 bills for "economic development" and an unprecedented 80 bills slated for "governmental operations," according to the *First Amendment Foundation*.

If shell bills on open government turn into anything, often it is an exemption, said Adria Harper, director of the *First Amendment Foundation*.

"We have to monitor them really closely to see if they turn into something that could be detrimental to our right of access," Harper said.

Source: *First Amendment Foundation and Daytona Beach News-Journal*

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## COURTS

### Back-up recordings a concern

HIGHLANDS COUNTY – Judge J. David Langford, chief judge of the 10<sup>th</sup> Judicial District Court, will review the court's unwritten policy of having a back-up audio recording system running continuously in courtrooms.

The back-up audio recording system runs from 8 a.m. to 8 p.m. every workday, even when the court is in recess.

Nick Sudzina, court administrator, said the audio recordings are maintained to protect against human error, system malfunction and to ensure records of court proceedings are accurately maintained, according to *Highlands Today*.

However, the recording policy has raised concern for the privacy of privileged attorney-client communication.

"The whole reason for a conversation being confidential is that nobody hears it," said Rex Dimmig, director of the 10<sup>th</sup> Judicial Circuit Public Defender's Office, according to *Highlands Today*.

The recordings are subject to the public records law and if requested would be reviewed and redacted. The chief judge would be the one to make a decision if there is a question about material to redact, said Sudzina, according to *Highlands Today*.

Source: *Highlands Today*

### Gag orders denied in two cases

BRADENTON – Manatee County Circuit Judge Diana Moreland denied a gag order requested by the defense attorney in a DUI-manslaughter case.

In her ruling, Moreland wrote that the defendant had not proven the need for the order and that the request was too broad.

Assistant Public Defender Franklin Roberts filed a motion in December asking the judge to issue a gag order for anyone involved in the case and to block access to otherwise public records

including crime scene photos, interview notes and blood test results.

Roberts argued the prejudicial publicity and local media coverage had hurt defendant, Julissa S. Martinez Artiga's chance for a fair trial.

Roberts also requested and was denied a gag order in the case against Dwight Baldwin, who is charged in the beating death of a child.

Source: *Bradenton Herald and Manatee Herald-Tribune*

### Teachers sue school board

MIAMI – The United Teachers of Dade, the state's largest teachers union, is suing the Miami-Dade School Board for violating the Sunshine Law by holding an improperly closed meeting in which it discussed budget issues.

The allegations stem from a January meeting, in which Superintendent Alberto Carvalho and the board met in executive session to discuss collective bargaining issues.

Under the Sunshine Law, boards are allowed to meet in closed session to discuss issues directly involving litigation or contract negotiations.

However, it was later discovered that collective bargaining was discussed as part of the superintendent's plan to cut more than \$50 million from the budget, according to *The Miami Herald*.

The teachers are seeking the minutes and notes from that meeting and several others held since the superintendent's appointment in October, as well as a court order voiding any action taken by the board in illegal meetings.

Source: *The Miami Herald and www.nbc6.net*

## ACCESS MEETINGS

### County to get ethics training

MONROE COUNTY – Monroe County Administrator Roman Gastesi plans to implement ethics training that will focus on state gift laws and the Sunshine Laws for the more than 400 county employees.

Gastesi pointed to the county's Human Resources Division policy of requiring

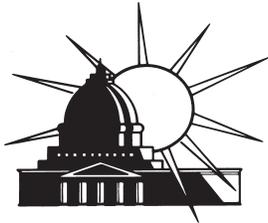
people to fill out a form to review an employee's file, as an area that could be corrected, according to the *Key West Citizen*. Under the state's public records law, a person can make a verbal request for such documents.

Source: *Key West Citizen*

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## Newspaper sues city commission over backroom deals

“BACKROOM DEALS” shouted the Knoxville *News Sentinel*'s banner headline on Feb. 1, 2007, with a six-column deck elaborating: “Mayor says public's faith ‘shaken’ after political ploys fill 12 offices.

At issue was a special meeting of the Knox County Commission held on Jan. 31 to appoint a dozen replacements for top officeholders who had been forced out when the state Supreme Court ruled that term limits — long ignored in Knox County — did, indeed, apply. The ruling threatened the core of the local government power structure and set off a scramble to maintain the patronage system that had dominated county politics for decades. The frenzy of deal-making that ensued was capped by the “Black Wednesday” meeting, which was interrupted by frequent recesses so the ruling faction could retreat backstage to iron out last-minute bumps in its bid to retain, and expand, its power base.

### The Back Page

By Jack McElroy

The result: the commissioners appointed a son, a wife, a father, a campaign treasurer and a bevy of other cronies, several of whom immediately turned around and hired the ousted politicians to taxpayer-funded jobs.

There was one hitch in the plan, however. In Tennessee, there's a law called the Open Meetings Act, drafted in the post-Watergate era by former *News Sentinel* editor Ralph Millett and other open government allies. Better known as the Sunshine Law, the act requires that local government bodies do all their decision-making in public. The County Commission had violated the act with impunity. The *News Sentinel* had to stand up for the law or see it become meaningless.

The act requires that a citizen bring suit to enforce it, so on Feb. 5, 2007, under my name, the *News Sentinel* sued the largest local government in its circulation area. Commissioners and other politicians decried the move, accusing the newspaper of acting out of self-interest. Ire mounted after fresh stories disclosed that one of the new appointees was a former drug-dealer and another was responsible for a \$250,000 sexual-harassment judgment. As the newspaper broadened its coverage into nepotism and featherbedding in county government, one commissioner threatened to pull legal advertising. Publisher Bruce Hartman and I responded with a front-page letter to readers promising not to back off.

The county law director, himself an appointee of the



Jack McElroy

commission, tried to derail the suit through pre-trial motions, and he did manage to get a similar lawsuit by a group of citizens dismissed. But through the skillful legal work of Richard Hollow, the *News Sentinel*'s longtime counsel and an architect of the Open Meetings Act, the newspaper's case survived, and, ultimately, the parallel suit by citizens was resurrected and combined with the *News Sentinel*'s.

Public support for the newspaper remained strong. “Don't let up,” was the most frequent of the thousands of e-mails, phone calls, Web postings and personal comments the newspaper staff received.

Jury selection began on Sept. 11, 2007, and the trial started the following day. Under the rules of Tennessee's Chancery Court, jurors were charged with answering 29 interrogatories. Then, based on those findings of fact, the chancellor would make the final judgment.

Still, it took the jury just four hours to complete deliberations and answer all 29 questions in favor the newspaper and the citizen plaintiffs.

“This is the first time in the history of Tennessee that a jury has been asked to sit in judgment of its government,” said Hollow after the verdict. “It is a tremendous victory for the people of Tennessee.”

Three days later, the chancellor presented his ruling. The 12 appointees were removed immediately from office, and the remaining county commissioners were ordered to begin the process from scratch, but this time in compliance with the Open Meetings Act.

A few days later, a local sign maker, unsolicited, brought a banner to the *News Sentinel*. It read:

THANKS

The Light from the Lighthouse  
has brought Justice to Knox County  
— Citizens of Knox County

It hangs now in the newsroom above the conference table where the daily news meetings are held.

*Jack McElroy is the editor of the Knoxville News Sentinel. The newspaper is the 2008 winner of the Brechner Center for Freedom of Information annual FOI award for its coverage of “Black Wednesday” appointees.*