THE
BRECHNER REPORT

Volume 33, 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 2009

City commission bans texting during meetings

ACCESS MEETINGS

DELTONA – The Deltona City Commission voted 6-1 to ban commissioners from using cell phones or text messaging during commission meetings.

The ban was proposed by Commissioner Zanaida Denizac who expressed concern that using cell phones or text messaging during meetings could hinder transparency in the commission's operations, according to *The DeLand-Deltona Beacon.*

Commissioner Herb Zischkau, who admitted to text messaging during meetings, was the only commissioner to oppose the ban. He argued that banning the use of cell phones and text messages in meetings should be left up to the Florida legislature to address.

"What they have left us free to do, I think we should be left free to do," said Zischkau, according to *The Deland-Deltona Beacon.*

Although the legislature has not formally dealt with the use of such technology during meetings, the Commission on Open Government Reform recommended in its final report released in January that the use of text messaging and instant messaging be prohibited during public hearings or meetings.

Source: www.beacononlinenews.com

Judge takes back gag order

COURTS

TALLAHASSEE – Circuit Judge Kevin Davey reversed his previous order barring anyone involved in a wrongful death suit against the city from discussing the case.

In the initial gag order, Davey forbade anyone involved with the civil case against the city of Tallahassee from discussing the case or making comments about pending legislation outside of legislative hearings.

"When considering matters of constitutional right, including freedom of speech and the right to petition one's government, courts must be careful not to overstep their authority," Davey wrote in his opinion, reversing his earlier ruling, according to the *Tallahassee Democrat.*

Rachel Hoffman's parents, Margie Weiss and Irv Hoffman, are suing the city after their 23-year-old daughter, Rachel, was killed working as an informant for Tallahassee police. They have also pushed for Rachel's Law, which is currently in the Florida House of Representatives. The bill would require stricter guidelines for how law enforcement uses confidential informants.

Source: Tallahassee Democrat

Bill to allow cameras in courts

WASHINGTON – Sen. Chuck Grassley, R-Iowa, and Sen. Charles Schumer, D-NY, have introduced a bill that would give federal judges discretion to allow cameras and other electronic media in courtroom proceedings.

The Sunshine in the Courtroom bill would allow the chief judge of federal trial appellate courts to allow cameras in courtrooms, would direct the Judicial Conference to draft nonbinding guidelines for judges to use in deciding whether to allow cameras in particular cases and would also instruct the Judicial Conference to issue mandatory guidelines for obscuring vulnerable witnesses.

"Our judicial system is one of the best kept secrets in the United States. Letting the sun shine in on federal courtrooms will give Americans an opportunity to better understand the judicial process," said Grassley, according to his office. "It's just the best way to maintain confidence and accountability in the system."

Source: http://senate.gov/

Golfer's libel suit tossed out

LIBEL

JACKSONVILLE – A judge threw out professional golfer John Daly's defamation suit against *The Florida Times-Union* and Mike Freeman, a former sports columnist at the newspaper.

Daly sued the paper and the columnist for a 2005 column that discussed Daly's "thug life qualifications," including accusations of domestic violence and the golfer's three children from different women, according to *The Florida Times-Union.*

Circuit Judge Hugh Carithers threw out Daly's lawsuit because the portions of the column at issue were either undisputed fact or constitutionally protected opinion and were not made with actual malice.

"The alleged defamatory statements are opinions based upon disclosed facts," Carithers wrote in his opinion, according to *The Florida Times-Union.* "The First Amendment leaves it to the reader, not the courts, to assess the quality of the author's judgment."

Source: www.jacksonville.com

Sunshine poll shows support for open government

WASHINGTON – A survey found that while most Americans overwhelmingly support the Obama administration's commitment to transparency, 61 percent also believe that federal agencies "only sometimes, rarely or never" obey the Freedom of Information Act.

The survey of 946 adults commissioned by the American Society of Newspaper Editors and conducted by the Scripps Howard News Service and Ohio University also found that while two-thirds of respondents had heard about FOIA, only six percent said they had requested information under the act.

Belief that the federal government is "very secretive" also slightly declined from a year ago. The survey found that 40 percent believe the government is "very secretive," down from 44 percent in 2008. In 2006, 22 percent believed the government to be "very secretive" and in 2007, 37 percent believed that to be the case.

The survey has a margin of error of about 4 percentage points.

Source: Scripps Howards News Service

Man sues to keep mural

CLEARWATER – With help from the American Civil Liberties Union, the owners of a bait and tackle shop have won the first round in a federal lawsuit over a fish mural.

Herb and Lori Quintero were cited for a mural of game fish on an outside wall of their store, the Complete Angler. The city asked the Quinteros to remove the mural because it was an unauthorized sign under the city's code. The Quinteros refused to paint over the mural arguing the mural was art. Instead, they covered the painting with a banner of the First Amendment.

The owners have been fined nearly $700 and faced steeper fines until a federal judge issued an injunction against the city. U.S. District Judge James D. Whittemore issued an injunction forbidding the city from levying more fines against the shop for its mural or for the First Amendment sign while the case is in litigation because the city's case "does not withstand strict scrutiny," according to the *St. Petersburg Times*.

In his ruling, Whittemore agreed with the findings of U.S. Magistrate Elizabeth Jenkins who concluded that the mural and the First Amendment banner were "noncommercial speech protected by the First Amendment," according to the *St. Petersburg Times.*

Source: St. Petersburg Times

FIRST AMENDMENT

European court addresses access

SPAIN – The European Court of Human Rights held that a public body's refusal to provide information that is necessary for public debate is a violation of the rights of freedom of expression and freedom of information.

In the decision, the court held that the state has an obligation not to impede the flow of information needed for public debate. Further, the court held that using privacy concerns to bar the release of information related to public officials or bodies would be "fatal for freedom of expression," according to *Access Info Europe*, a human rights organization based in Madrid that promotes transparency in national and international public bodies.

The case came to the European Court of Human Rights after the Hungarian constitutional court refused a request from the Hungarian Civil Liberties Union to disclose a parliamentarian's complaint questioning the legality of a new drugs policy law, according to *Access Info Europe.*

Source: Access Info Europe

FAA releases bird strike records

WASHINGTON – The Federal Aviation Administration has made available on the Internet public records of bird collisions with planes since 1990.

The data released contains details on more than 89,000 incidents involving collisions with birds or other animals.

In releasing the records, the FAA abandoned a proposal made earlier this year that would have blocked the release of records of bird collisions, like the one that forced a U.S. Airways jet to land in the Hudson River in January.

The FAA had proposed the rule out of concern that airports and others may become reluctant to voluntarily report the information and out of concern that such information may be misleading the public.

Although the FAA releases annual summaries of collisions will all types of wildlife, the proposal had drawn criticism from public records advocates.

Source: The Associated Press

FBI wins Rosemary Award

WASHINGTON – The Federal Bureau of Investigation won the 2009 Rosemary Award for the worst FOIA performance by a federal agency.

The Rosemary Award is given annually by the National Security Archive at George Washington University.

The FBI received the award after the record-setting number of times the bureau responded to records requests with "no records." According to the FBI's reports to Congress, the bureau has been unable to find records requested 66 percent of the time over the last four years. Other government agencies have reported being unable to find records requested 13 percent of the time, according to the *National Security Archive*.

The Rosemary Award was named after President Richard M. Nixon's secretary, Rose Mary Woods, who famously erased an eighteen-and-a-half minute section of a Watergate conversation on the White House tapes.

Past winners of the Rosemary Award have included the Department of the Treasury, the Air Force, and the Central Intelligence Agency.

Source: National Security Archive

Truth can be libelous

MASSACHUSETTS – The 1st U.S. Circuit Court of Appeals ruled that truth is not a defense in some private-figure libel cases and refused to dismiss the libel suit brought by a former Staples employee.

Alan S. Noonan is suing the company claiming an e-mail company executives sent to 1,500 employees stating that he had been fired for violating the company's travel and expenses policy was sent with malicious intent despite being true.

Although the federal court was interpreting state law, not federal law, the decision counters years of precedent holding the truth is an absolute defense to libel.

LIBEL

In its decision, the court relied on a Massachusetts statute from 1902 that allows for a true statement to be considered libelous if published with "actual malice."

The court held that the "actual malice" in the Massachusetts statute meant "ill will," and was not the same as the "actual malice" standard, of publishing with reckless disregard for the truth, established by the U.S. Supreme Court for public figures in *New York Times v. Sullivan*.

Source: The Reporters Committee for Freedom of the Press and First Amendment Center

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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.

ACCESS RECORDS

New charges for public records

HERNANDO COUNTY – The county commission adopted the "Duplication of Documents Fees Policy," which charges a fee for public records requests that require creating special reports or requests that are voluminous.

Commissioner Jim Adkins was the lone opponent of the new policy. He asked the commission to reconsider the policy at a subsequent meeting with little success and said he had received between 50 to 75 e-mails from residents opposing the new charges.

"It takes transparency out of government," he said, according to *The Tampa Tribune.*

Commission Chairman David Russell, who supports the new policy, said that as long as citizens' requests are reasonable and easily obtained, the commission "will bend over backward to make sure they get the information requested," according to *The Tampa Tribune.*

Source: The Tampa Tribune

Identities of blog viewers sought

VIRGINIA – The publisher of the community news blog is fighting a subpoena for the identities of all who viewed and posted on his blog posting about a local defamation suit.

PRIVACY

Waldo Jaquith, who publishes cvillenews.com in Charlottesville, Va., was subpoenaed by Thomas Garrett, who is suing *The Hook* for defamation, after the newspaper wrote a series covering criminal proceedings against him. Jaquith has obtained pro bono assistance from Public Citizen, the ACLU of Virginia and the Thomas Jefferson Center for the Protection of Free Expression, according to *The Reporter's Committee for Freedom of Press.*

Garrett is seeking "any and all documents and information relating to persons posting comments on the article," according to the *Citizen Media Law Project.* Jaquith's posting discussed the lawsuit and was critical of Garrett.

In a motion to quash the subpoena Jaquith's counsel is arguing the information is protected by reporter's privilege.

Source: Citizen Media Law Project and The Reporters Committee for Freedom of the Press

Judge tosses out Sunshine suit

PENSACOLA – A judge ruled that the Community Maritime Park Associates did not violate the Sunshine Law by not designating time for public comment during meetings.

ACCESS MEETINGS

The lawsuit alleged that the CMPA, which oversees a proposed $40 million downtown park, violated the law at about 30 meetings that were open to the public but did not have an official period for public comment.

In the decision, Circuit Judge Frank Bell wrote that the Sunshine Law guaranteed meetings of governmental bodies to be open, but did not guarantee the public a right to speak at those meetings, according to the *Pensacola News-Journal*.

Source: Pensacola News- Journal

Obama hosts online town hall

WASHINGTON – Keeping his campaign promise of opening up the White House, President Barack Obama hosted an online town hall meeting from the White House's East Room.

NEW TECHNOLOGY

For more than an hour at the "Open for Questions" town hall meeting, the president answered questions picked from the more than 104,000 sent over the Internet and from the nearly 100 audience members who were invited to attend the meeting.

Most of the questions focused around the president's budget proposal, housing bailout plan and economic stimulus package.

Source: The Washington Post

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3208 Weimer Hall, P.O. Box 118400
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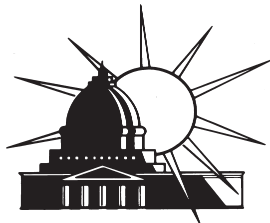
June 2009



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Florida's "no approach zone" unconstitutional

The Back Page
By Paul McAdoo

In reaction to a shooting by police in Ft. Myers, Fla., the American Civil Liberties Union of Florida, working with members of the local community, drafted a petition to amend the city's charter to create a citizens oversight board for the police department.

The Citizens for Police Accountability, Citizens for a Better Fort Myers Government, and the Florida NAACP Youth Council all circulated a petition to place the oversight board on the ballot. To be placed on a ballot, petitions must be submitted "signed by 10 percent of the registered electors as of the last preceding municipal general election."

The circulators took their petitions to churches, community centers, and door-to-door in an effort to collect the required signatures, but these efforts were not sufficient to gather the full number. They also attempted, unsuccessfully, to circulate the petition at the January 2008 Presidential Preference Primary.

However, Florida law, Section 102.031(4), forbids circulation of petitions within 100 feet of a polling place. This "No Approach Zone" insulates voters from interaction with petition circulators.

The plaintiffs sued the Secretary of State of Florida, Kurt Browning, and the local supervisor of elections, Sharon Harrington, challenging Section 102.031(4) on the grounds that it was an unconstitutional infringement of their First Amendment rights of speech and association. However, the plaintiffs only sought the right to circulate their petition after the voters had cast their ballot.

On Aug. 21, District Judge John E. Steele heard arguments of counsel on a motion for preliminary injunction.

The key case relied upon by both parties was a 1993 U.S. Supreme Court plurality opinion assessing Tennessee's 100-foot restriction on polling place activity, *Burson v. Freeman*. In that case, a politician sought to solicit votes at Tennessee polling places. The Supreme Court, in a divided opinion, upheld the Tennessee statute as constitutional on its face. The plurality held that some restricted zone around the polling place was necessary to prevent voter fraud and intimidation.

Paul McAdoo

The plurality limited the application of the modified burden by explaining that the more lenient standard "applies only when the First Amendment right threatens to interfere with the act of voting itself."

In the Ft. Myers case, the plaintiffs argued that the modified burden did not apply because their activity would not interfere with the act of voting itself because it occurred only after the voter exited the polls. In this sense, plaintiffs explained, their activity was constitutionally indistinguishable from that of media exit-pollers who are permitted under the statute to be within the 100-foot zone. Attorneys for the Secretary of State argued that *Burson* grants states a great deal of flexibility and choice in regulating the area outside of polling places.

On Aug. 22, Judge Steele granted the plaintiffs' motion for preliminary injunction on the grounds that the statute, as-applied to post-vote circulation, infringed the plaintiffs' First Amendment rights because the State had not been able to show that it was either necessary or narrowly tailored to achieve the State's interests under either a traditional analysis or the *Burson* modified standard.

As a result of Judge Steele's ruling, the plaintiffs were able to circulate their petition at the Aug. 26 primary election in Ft. Myers. The plaintiffs have now submitted their petitions to the Supervisor of Elections for verification. Both Defendants appealed Judge Steele's order to the 11th Circuit. Oral argument took place on March 11.

Should the 11th Circuit uphold Judge Steele's ruling, it would help future petition circulators gain access to the high concentration of registered voters at polling places and early voting sites in Florida. This would be a significant victory for petition circulators, whether they are grass roots movements or more well-funded groups. It would increase the voice of the citizens of Florida on everything from amendments to the Florida Constitution to local issues.

Paul McAdoo is an associate at Thomas, LoCicero & Bralow PL, the law firm which represents the ACLU and the NAACP in this case.