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# THE BRECHNER REPORT

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## Legislature passes several open government bills

TALLAHASSEE – The Florida Legislature recently concluded its regular session, passing 22 public records exemptions, according to the First Amendment Foundation.

Both chambers passed SB 1320, which creates an exemption for certain family trust company records. Personal identifying information, trust examinations, names of shareholders or members and other confidential information are exempt under this bill.

HB 89, which allows defendants who successfully use the “stand your ground” defense to have their court records

expunged, passed.

Both the Senate and House bills proposing to exempt the names of candidates in university searches did not pass during the 2014 session.

The legislature also discussed ethics reform bills to strengthen Florida’s open government provisions to make government more transparent, according to the Tallahassee Democrat. Several government watchdog groups stressed the importance of these bills and called

on lawmakers to pass them, the paper reported.

SB 846, a government ethics bill that does not create an exemption, passed unanimously in both the House and the Senate. The bill creates a requirement for government officials to receive annual open government and ethics training.

The legislature discussed two other ethics bills, SB 1648 and HB 1151, but neither of those bills passed.

*Source: First Amendment Foundation, Tallahassee Democrat*

OPEN  
GOVERNMENT

## Court rules for media access to murder trial

JACKSONVILLE – The 1st District Court of Appeal vacated a lower court’s ruling excluding the media from jury selection in the Michael Dunn murder case.

The Florida Times-Union and several other media organizations challenged their partial exclusion from jury selection during the first two days of proceedings, according to the opinion. The trial court had placed the media in a separate room with an audio feed to listen to the proceedings, the opinion stated.

The media organizations argued

that they could not hear much of the proceedings because the judge was the only person with a microphone and the audio feed was turned off at several different times during jury selection, according to the opinion.

The appellate court found the trial court’s exclusion of the media organizations from jury selection violated the First Amendment right of access to criminal trials, according to the opinion. The appellate court also found that the trial court failed to make the necessary legal findings to support the exclusion of the media.

“The orders barring the media from

physically attending jury selection fail to overcome the presumption of openness, and this failure constitutes reversible error,” the opinion stated.

A jury convicted Michael Dunn of three counts of second-degree attempted murder and one count of shooting bullets into a vehicle, but could not decide on a first-degree murder charge, the paper reported. Dunn will be retried on the murder charge, according to the opinion.

*Source: Opinion on Petition to Review Orders Excluding the Press or Public, Morris Publishing Group et al. v. State of Florida and Michael D. Dunn, No. 1D14-0630*

COURTS

## State bureau fails to provide renovation records

TALLAHASSEE – The Florida Department of Business and Professional Regulation (DBPR) lost a public records suit against a Collier County couple, according to the Tallahassee Democrat.

Chief Circuit Judge Charles Francis ruled that DBPR did not provide records as required under Florida’s Public Records Law and had to pay

\$6,720 to Timothy and Regina Dayton for expenses they incurred, the paper reported.

The Daytons requested records from DBPR regarding administrative charges against inspectors who worked on their home in Marco Island, according to the paper. DBPR failed to respond to the request for settlement proposals until after the

Daytons filed a lawsuit.

Initially, DBPR said their failure to respond to the request involved a misunderstanding of database storage capabilities, the paper reported. Then DBPR argued that the records were exempt under the attorney work product privilege, according to the paper.

Francis dismissed DBPR’s arguments as “unacceptable,” the paper reported.

*Source: Tallahassee Democrat*

ACCESS  
RECORDS

## More records in FOIA suit found

MIAMI – The FBI has identified more classified documents that were the subject of a FOIA lawsuit filed by an online newspaper, according to The Miami Herald.

BrowardBulldog.org filed a lawsuit against the FBI seeking records about an investigation into 9/11 related terrorist activity in Sarasota, the paper reported. U.S. District Judge William J. Zloch ordered the FBI to turn the classified documents over to him for inspection, according to the paper.

Originally, the FBI estimated that there were 23 boxes of classified information to turn over to the judge, the paper reported. They have recently identified four more boxes of documents, which could add to the delay in reviewing the documents, according to the paper.

The FBI planned to deliver the documents to Zloch in four increments because the Justice Department determined that Zloch's chambers do not have enough secure storage, the paper reported. The incremental delivery significantly deviates from Zloch's order that all the documents be photocopied and delivered at once.

BrowardBulldog.org filed the lawsuit in September 2012 after the FBI denied FOIA requests, according to the paper. The online newspaper sought documents which focused on an investigation of a Saudi family, which lived in Sarasota, with possible ties to 9/11 hijackers, the paper reported.

*Source: The Miami Herald*

## Judge rules private research journal records not public

ORLANDO – A judge ruled that documents from a controversial scientific study published in a journal affiliated with faculty members at the University of Central Florida (UCF) are not public records, according to the final order granting UCF's motion for reconsideration.

Circuit judge John Marshall Kest found that the records sought by journalist and activist John Becker were exempt from disclosure under Florida's Public Records Law because the Scientific and Social Science Research Journal (SSR Journal) is privately owned, UCF does not have a substantial financial interest in the journal, and the journal was not created by UCF, according to the order.

Becker filed a lawsuit against UCF to

compel the release of the records related to an article published in the SSR Journal, according to the order. The trial court initially ruled in favor of Becker, stating that UCF must turn over the records. UCF then filed a temporary stay on the ruling, and the court granted it, according to the complaint.

The lawsuit stems from an article on gay and lesbian parenting by Mark Regnerus, according to Knight News (UCF). The study suggests gay parenting may have a negative effect on children, according to the paper.

Becker told Knight News that the controversial study has been widely criticized.

*Source: Final Order Granting UCF's Motion for Reconsideration, Becker v. UCF Board of Trustees, No. 2013-CA-5265-O, Knight News*

**ACCESS  
RECORDS**

## Jacksonville pension reform to meet in Sunshine

JACKSONVILLE – The city of Jacksonville and the Police and Fire Pension Fund will now discuss potential reforms at public meetings, according to The Florida Times-Union.

Recently, U.S. District Judge Marcia Morales Howard ruled that there would be no more private mediation talks between the parties, the paper reported.

The parties had previously attempted to address reform in private, court-ordered mediations, the paper reported.

The Times-Union filed a lawsuit in state court in December 2013 seeking access to these private mediation sessions, according to the paper.

The state lawsuit resulted in a ruling that talks between the city and the Police and Fire Pension Fund must be open to the public, the paper reported. The Times-Union also intervened in a federal lawsuit to prevent the private mediations from resuming.

The meetings between the city and the Police and Fire Pension Fund will now take place in a City Hall conference room, according to the paper.

*Source: The Florida Times-Union*

**ACCESS  
MEETINGS**

## Expressway investigation leads to indictment

ORLANDO – A member of the Orlando-Orange County Expressway Authority was indicted on bribery charges following an investigation by the State Attorney's Office in Orlando, according to the Orlando Sentinel.

A grand jury indicted Scott Batterson for bribery for allegedly seeking work or other benefits relating to his role as a board member, the paper reported. Batterson was suspended by Gov. Rick Scott and faces a \$15,000 fine and time

in prison if convicted, according to the paper.

State Attorney Jeff Ashton began investigating the authority after allegations that several of the board members may have violated Florida's Sunshine Law, according to the paper.

"It appears from the indictment there was much more on than

just 'Government in the Sunshine' violations. I'm glad we were able to stop it before it occurred," said Walter Ketcham, chairman of the board.

The investigation is still ongoing, according to the paper. Ashton told the paper that the grand jury likely will meet again and more indictments are possible.

*Source: Orlando Sentinel*

**OPEN  
GOVERNMENT**

## State Attorney inquiry ends

PENSACOLA – The State Attorney’s Office in Pensacola determined that it will not take action after investigating a potential violation of Florida’s Public Records Law by an Escambia County Commissioner, according to the Pensacola News Journal.

The office investigated a complaint from a citizen who requested emails from Commissioner Gene Valentino regarding bringing the television show “Party Down South” to Pensacola, the paper reported.

Douglas Underhill complained to the State Attorney’s Office after receiving an additional email from the county public information officer that was not included in response to Underhill’s original request, according to the paper. The email was addressed to the show’s producers from Valentino’s private email account.

Valentino said the oversight was inadvertent and caused by a technological problem, the paper reported. Valentino provided the additional emails after the State Attorney’s Office began looking into the complaint.

Assistant State Attorney Greg Marcille agreed with Valentino that the failure to provide the emails was unintentional, and the office would take no further action on the matter, the paper reported.

*Source: Pensacola News Journal*

## Judge grants rehearing in clerk of court, reporter records case

COLLIER COUNTY – A circuit judge set a trial date in a public records case between a reporter and a county clerk of court, according to the Naples Daily News.

Dwight Brock, the Clerk of the Circuit Court of Collier County, requested a rehearing to determine whether the fee he attempted to charge reporter Gina Edwards was appropriate, the paper reported.

Circuit Judge Fred Hardt had previously ruled that the \$556 fee was unreasonable and Edwards would get electronic copies of the documents she requested for \$2, according to the paper.

Brock argued that Edwards requested “scanned copies” of documents, which are not the same as electronic copies of documents stored in a database, according to Brock’s motion for rehearing. Brock also argued that he printed out paper copies of the documents and then scanned them.

Brock requested a trial and evidentiary hearing to determine how the records should be classified, according to the motion.

*Source: Naples Daily News, Defendant’s Motion for Rehearing, Gina Edwards & Associates v. Dwight Brock, No. 2014-000436-CA*

## Appeals to be filed in EDC case

BREVARD COUNTY – Both parties to the Economic Development Commission for Florida’s Space Coast (EDC) public records case plan to appeal parts of the recent ruling, according to Florida Today.

Brevard County Clerk of Courts Scott Ellis said he plans to appeal his denial of attorney’s fees, the paper reported. The EDC told the paper that it plans to file an appeal of the ruling that it is subject to Florida’s Public Records Law.

Circuit Judge John Moxley Jr. recently ruled that the EDC’s documents are

public records because the commission performs the government function of developing the local economy, according to the paper.

Moxley also said Ellis should not be entitled to attorney’s fees in the case, the paper reported. Ellis told the paper his office spent about \$80,000 on the case and will appeal the specific part of the ruling denying attorney’s fees.

The EDC has not said what the basis of their appeal will be, according to the paper.

*Source: Florida Today*

## Committee to hold ‘cure’ meeting

JACKSONVILLE – A search committee choosing Jacksonville’s new chief medical examiner will hold a public meeting to recreate the deliberations previously done in private, according to The Florida Times-Union.

A Times-Union reporter was asked to leave the first meeting so the committee could deliberate in private about who to recommend to Gov. Rick Scott, the paper reported. The reporter was the only member of the public present. Subsequently closing the meeting to the public may violate Florida’s Sunshine Law, according to the paper.

The search committee’s legal counsel said the meeting should have been open

to the public. The “cure meeting” likely will be held by phone, according to the paper.

State Attorney Jeff Siegmeister said he didn’t think the meeting needed to be open to the public because the committee can only recommend candidates to the governor, the paper reported.

Siegmeister told the paper that the meeting was closed primarily so the committee members could be more forthcoming in their discussion.

The teleconference will reconstruct the committee’s deliberations to recommend Thomas R. Beaver to Gov. Scott as Jacksonville’s new chief medical examiner, the paper reported.

*Source: The Florida Times-Union*

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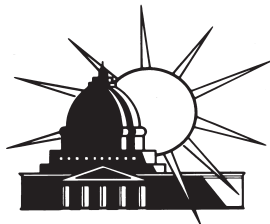
ACCESS  
MEETINGS



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## States need to be less secretive about executions

Around the country, prison officials are concealing more and more pieces of their lethal-injection protocols, with at least 10 states now making confidential, through laws or administrative regulations, the source of their lethal-injection drugs; and/or the identity of the producer, pharmacists, and prescriber; and/or the execution team's professional qualifications. Those restrictions have triggered legal challenges based on FOI statutes and the First Amendment.

In Missouri, news organizations filed lawsuits in May arguing that the public has a constitutional right of access to information regarding "the type, quality and source of drugs used by a state to execute an individual in the name of the people."

In Louisiana, a federal court ordered the department of corrections in March to disclose what drugs would be used in a specific execution. In Georgia, the state Supreme Court is reviewing a law making information about lethal drug suppliers a "confidential state secret."

In Florida, a federal court is reviewing a state law making confidential any "information which identifies an executioner, or any person prescribing, preparing, compounding, dispensing, or administering a lethal injection." And so on.

April brought us Clayton Lockett's botched execution in Oklahoma, where he did not do what he was supposed to do: die quickly and quietly. After being declared unconscious, Lockett moved his head from side to side, lifted his head and feet off the gurney, tried to say something, groaned and mumbled while writhing, opened his eyes, and attempted to get up, all before dying of an apparent heart attack less than 30 minutes later, in the execution chamber.

As the press critic Jack Shafer put it, Oklahoma accidentally killed Lockett while trying to put him to death. The Tulsa World reported that the problems arose "because a failed IV line started by a medical professional whose credentials remain secret under state law slowly leaked a drug combination that experts had warned could potentially be inhumane."

Indeed, judicial independence earlier had died a quick death



*Jonathan Peters*

(irony intended) when the Oklahoma Supreme Court stayed Lockett's execution to review the relevant secrecy practices, only to reverse course days later—after the governor refused to honor the stay.

The secrecy movement stems mostly from desperate attempts by states to procure lethal-injection drugs after major manufacturers, under pressure from the European Union, took steps recently to prevent their products from being used in executions.

Some states turned to compounding pharmacies—lightly regulated labs that mix drugs to order whose quality control is a concern. At their respective executions in January, an Ohio man gasped for 10 minutes and an Oklahoma man said, "I feel my whole body burning," after being injected with compounded drugs.

Generally, states say the purpose of secrecy is to protect lethal drug manufacturers from threats of harm, but states simply might want to incentivize the manufacturers to aid in executions—by promising not to disclose their identities or by shielding them from liability for defective drugs.

In any case, the growing secrecy surrounding lethal-injection protocols is a fundamental problem for a democracy, because capital punishment represents, to borrow a phrase from legal scholar Vincent Blasi, one form of the government's "unique capacity to employ legitimized violence."

The shift to compounding pharmacies has raised questions about the effectiveness of new and largely untested drug combinations. But the press and public cannot evaluate whether an execution method violates the Eighth Amendment if they do not know whether the drug's raw ingredients come from a reputable producer or whether the finished product is pure and sterile.

As the late Thurgood Marshall once said, "[T]he opinions of an informed public ... differ significantly from those of a public unaware of the consequences of the effects of the death penalty." Indeed, even if a state's capital punishment system is less than perfect for the circumstances, at least it can be transparent.

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