
THE BRECHNER REPORT

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Legislation seeks to protect right to speak

TALLAHASSEE – Legislation recently introduced in both houses of the Florida Legislature would protect the right of Florida citizens to speak at public meetings.

The proposed law, which grants members of the public a “reasonable opportunity to be heard” before official action is taken, comes in the wake of a 2010 decision by the Florida Supreme Court—in letting stand an appeals court ruling—that citizens have a right to be

seen but not necessarily to be heard.

The decision angered open government advocates, who said that it essentially grants government officials the authority to silence citizens at public meetings. Legal experts say that right is not explicitly protected by law.

S.B. 310 was originally filed by Sen. Joe Negron (R-Stuart) in the last year’s legislative session, but it died in committee.

Legislation has since been reintroduced

in both houses of the Legislature, and would make it a second-degree misdemeanor to knowingly violate the law.

The bills came just before oral arguments were heard before the 5th District Court of Appeal, in Daytona, in which residents of St. Johns River Water Management District challenged official action that prevented them from speaking at a public hearing about a water treatment plant on the St. Johns River.

Source: Tallahassee Democrat, Orlando Sentinel

ACCESS MEETINGS

Governor posts faculty salaries

TALLAHASSEE – Records showing the salaries of 52,000 state employees from Florida’s 11 public universities have been posted on Florida Gov. Rick Scott’s website, floridahasarighttoknow.com.

The records, which account for \$2.66 billion and range from \$30,000 to \$1.4 million, show only the base rates and the state funds that pay those rates.

Faculty leaders questioned Scott’s motive for posting the salaries, but a spokesman from Scott’s office said that it is part of the governor’s effort to enhance state government transparency, according

to *The Miami Herald*. Salaries of state employees are public record.

The push may be part of a campaign to create private-sector jobs and promote change in higher education, including placing greater emphasis on STEM subjects—science, technology, engineering and math, *The Herald* reported.

In October, Scott sent letters to officials at the 11 universities asking for a wide range of information, including how many students are finding jobs and lists of their highest-paid faculty members.

The data is from May and is expected to be updated in November.

Source: The Miami Herald

ACCESS RECORDS

Judge unveils juror names

ORLANDO – A judge has released the names of the 12 jurors and three alternates in the Casey Anthony murder trial after a three-month “cooling off” period, during which the names of the jurors were withheld.

Although jurors’ names are usually released immediately after a verdict is rendered in Florida, Judge Belvin Perry ordered the names to remain private to protect their safety and well-being.

News organizations attempted to

contact the jurors the day the names were released, but none of those efforts proved successful.

All 12 of the jurors were selected from Pinellas County due to concerns of pretrial publicity in Orlando.

In July, the panel of jurors found Casey Anthony not guilty of first-degree murder in the death of 2-year-old daughter Caylee Anthony.

Source: Orlando Sentinel

Survey: Fla. gets “B” in transparency

ARLINGTON, Va. – Florida scores a “B” in transparency, according to a study recently completed by the nonprofit Sunshine Review, an organization dedicated to state and local government transparency.

Sunshine Review analyzes state and local government websites using a 10-point transparency checklist to determine whether state and local government websites are making information related to budgets, elected officials, open meetings laws and taxes, among other criteria, available to citizens on their websites.

Although the state’s official MyFlorida.com portal was praised for providing a current state budget along with the governor’s budget proposal for the next fiscal year, it was criticized for not providing information on state-paid lobbying, agency lobbying contracts or “comprehensive information” for making public records requests.

Source: The Miami Herald

Judge holds secret meetings to find leakers

MIAMI-DADE – A Miami-Dade Circuit Court judge ordered more than 30 state child welfare workers to appear before her privately to sign statements swearing they did not leak information about a controversial child custody hearing to *The Miami Herald*.

Miami-Dade Circuit Judge Maria Sampedro-Iglesia, one of five judges presiding over child welfare cases in the county's Children's Courthouse, compelled 33 Department of Child and Families (DCF) employees to appear before her after details about the custody case, which had been closed,

were leaked to the newspaper.

No public notice was given before the workers were required to appear to sign a sworn affidavit.

Sampedro-Iglesia closed the one-on-one meetings where she gathered the signatures after learning that reporters from *The Herald* wanted to attend.

Only one of the 33 employees refused to sign the affidavit and was then banned from the courthouse until the child custody case was resolved.

She resigned from her position at DCF several days later.

The hearing involved the custody

of Victor Barahona, 11, whose foster parents, Jorge and Carmen Barahona, have been charged with first-degree murder in the death of his twin sister, Nubia.

Sampedro-Iglesia called the one-on-one meetings after an article published by *The Herald* in August contained details about the proceeding.

The Herald has not contested Sampedro-Iglesia's decision to close the child-custody proceedings, portions of which can be closed under state child confidentiality laws.

Source: *The Miami Herald, RCFP.com*

Mayor: Reporters must register as lobbyists

BROWARD COUNTY – Lauderdale Mayor Richard Kaplan pledged that he would not speak with journalists unless they register as lobbyists, according to a new code of ethics recently enacted in Broward County.

Although the new ethics code does not go into effect until Jan. 2, it requires elected officials to record the names of any lobbyists with whom

they meet, The Reporters Committee for Freedom of the Press reported. According to the new code, lobbying is defined as

communication that "seeks to influence, convince or persuade" covered individuals to support or oppose an item.

"Though reporters do not necessarily consider what they do is lobbying, their work is provided to editors who use their

research to write editorials," Kaplan wrote in an email to a *South Florida Sun-Sentinel* reporter.

Although Chief Appellate Counsel for Broward County Andrew Meyers said it is clear reporters are not covered by the code, he said his office does not plan to clarify it, according to The Reporters Committee.

Source: *South Florida Sun-Sentinel, RCFP.com*

FIRST AMENDMENT

Grand jury probe nets \$11K bill

SANTA ROSA COUNTY – Records related to a wide-ranging grand jury investigation will cost the first person or organization to request the records \$11,658.90, according to policy adopted by the County Commission during its Sept. 22 meeting.

That amount relates to the time it took the county attorney's staff to review 220,369 emails and other documents

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as well as other copying costs, the *Pensacola New-Journal* reported. County officials handed over the documents after

they were subpoenaed as part of a grand jury investigation into various county business deals, including land purchases, dealings

with numerous develops, travel and the ambulance service contract.

Source: *Pensacola New-Journal*

Audit finds records in "disarray"

HALLANDALE BEACH – An audit of the Hallandale Beach Community Redevelopment Agency (CRA) showed that the city has failed to properly track city land acquisitions, developer agreements and loans to businesses.

Three-fourths of the city falls within the CRA district, which collects property taxes for property acquisitions and to promote business growth. City officials ordered the audit in August 2010 after suspecting that there were problems with records contained in the files.

Auditors were unable to find records for 30 properties owned by the agency,

including files relating to 13 properties that had been sold, according to a draft of the audit. The audit also showed that documents were missing in 31 files related to the agency's business and commercial loan program, which handed out \$1.5 million in assistance as of June 2010.

Alvin Jackson Jr., CRA director for Hallandale Beach, acknowledged that he found many CRA files incomplete when he became head of the agency in January 2010, but said there was not a system in place and no one was assigned to the tasks of making sure the records were complete.

Source: *Broward Bulldog*

Two more join counties upping fees

GAINESVILLE – Changes made to public records policies in Cape Coral and Santa Rosa County could lead to increased fees for citizens who want access to city documents.

Under new policies enacted in each of the districts, citizens requesting public records will have to pay the hourly salary and benefits of the time it takes the employee to fulfill the request if the request takes longer than a specified amount of time.

In Santa Rosa, that time is 30 minutes. In Cape Coral, fees may be assessed after 15 minutes. These changes represent a continuing trend among local governments to amend fee policies.

Source: *Pensacola News-Journal, Cape Coral Daily Breeze*

Judge lifts order protecting petition signers

TACOMA, Wash. – A federal judge in Washington lifted an order preventing the release of the identities of more than 137,000 people who signed a 2009 petition against a law extending benefits to same-sex domestic partners.

In his Oct. 17 order, U.S. District Court Judge Benjamin H. Settle found that Protect Marriage Washington, the organization seeking to keep the names and addresses of Referendum 71 petition signers private, had not presented sufficient evidence of “threats, harassment, or reprisals” to prevent release of the documents.

The decision follows the U.S. Supreme Court’s 2010 decision in *Doe v. Reed*, in which the Court rejected the argument that allowing any disclosure of referendum petitions under the state public records act violated individuals’ First Amendment rights.

In his order, Judge Settle said that courts are generally hesitant to deny disclosure, especially where the group requesting the exemption has not demonstrated its “minor status.”

Source: RCFP.com

Fla. judge reopens landmark Medicare privacy case

JACKSONVILLE – A federal judge has reopened a 32-year-old case, which barred government access to names and incomes of Medicare providers contained in medical records.

Dow Jones, publisher of *The Wall Street Journal*, and Real Time Medical Data, a medical marketing firm, filed a Motion to Intervene, after the Department of Health denied Dow Jones’ request to access a database containing Medicare billing and reimbursement information.

The Department of Health barred access based on a 1979 decision, in which the Florida and American Medical Associations successfully convinced the court that disclosure of such information would “constitute a clearly unwarranted invasion of personal privacy.”

More than 30 years later, Dow Jones

and Real Time brought suit under the Freedom of Information Act (FOIA) and Privacy Act, seeking to have the injunction reversed. They claimed that the injunction interfered with their legitimate business practices.

On Sept. 26, Florida District Judge Marcia Morales Howard found that Dow Jones and Real Time’s Motion to Intervene was “timely” and raised important questions regarding the applicability of FOIA and the Privacy Act in keeping the names private.

“Indeed, there appear to be no circumstances weighing against intervention,” Howard wrote in her order.

Dow Jones and Real Time will have to file their own FOIA lawsuits if the 1979 decision is reversed.

Source: Courthouse News

Officials defend private briefings

DUNEDIN – Four members of the Pinellas County City Commission have been accused of repeatedly violating Florida’s Government-in-the-Sunshine law for meeting one-on-one with city staffers.

Julie Scales, the fifth member of the city commission and a former Pinellas County government attorney, says she disagrees with a 30-year-old Florida attorney general’s opinion that city staffers can be briefed on agenda items before meetings, the *St. Petersburg Times* reported.

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Scales says that the commissioners’ practice of meeting one-on-one has led city staffers to tailor their recommendations, rather than relying on their own expert opinions and research.

She also says that she believes the practice has led to backroom discussions, decisionmaking and votes on multimillion-dollar projects and other issues before they have been discussed publicly.

The other members of the commission, however, say that no open government laws have been broken.

Source: *St. Petersburg Times*

SAO investigates tourism board

ESCAMBIA COUNTY – The State Attorney’s Office has opened an investigation to determine whether the Escambia County Tourist Development Council (TDC) violated Florida’s Sunshine Law.

Allegations arose after details surfaced regarding the council’s plan to restructure the tourism business by moving tourism promotions from under the Pensacola Bay Area Chamber of Commerce to create its own separate board, the *Pensacola News-Journal* reported.

The restructuring, which has been spearheaded by the Tourism Stakeholder Group, would have an effect on how \$4

million of taxpayer money is allocated each year.

The group has been accused of meeting privately and with county commissioners to discuss concerns.

Emails to and from the TDC’s former vice president of tourism, who resigned in September, have been subpoenaed, the *News-Journal* reported.

The law prohibits board members from discussing matters in private that are “reasonably likely” to come before the public board, said Barbara Petersen, of the Florida First Amendment Foundation.

Source: *Pensacola News-Journal*

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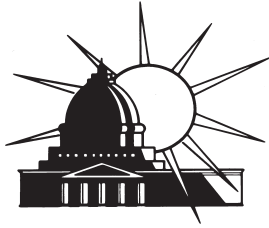
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SLAPP'ed with a suit, weak laws risk silencing speech

What do a Dallas land developer, a Baltimore city councilwoman and an Atlanta nonprofit organization have in common? Besides their involvement in matters of significant public interest and concern, they all SLAPP'ed the people who spoke out in opposition.

Short for strategic lawsuits against public participation, SLAPPs have become an all-too-common tool for intimidating and silencing critics of individuals and businesses. The hallmark of SLAPP suits is their success, not on their legal merits, but rather in removing the speaker from the public forum, thereby chilling important public discussion and debate.

These suits, frequently disguised as defamation claims, are often based on media coverage of newsworthy events, statements or other efforts to report on or oppose a building permit or zoning change and statements made before a

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By *Kristen Rasmussen*

legislative, executive or judicial proceeding or in connection with an issue under review by a governmental body. To prevent a chilling effect on vital public speech, 31 states, along with the District of Columbia and U.S. territory of Guam, have specific anti-SLAPP laws or case law addressing the causes of action. Under most anti-SLAPP statutes, the plaintiff has the burden of showing a probability that he will prevail in the suit if the person being sued files a motion to dismiss or strike — a procedure designed to ensure that a plaintiff's constitutional right to petition the court for redress of injury is not infringed.

After considering this evidence, the judge determines if the claim has merit or is merely an attempt to intimidate or silence a critic. If the judge deems the claim meritless, he or she may grant the defendant's motion to dispose of it. In that case, many of the statutes allow the defendant to collect reasonable attorney fees and court costs from the plaintiff.

The Reporters Committee for Freedom of the Press, a Washington, D.C.-based nonprofit organization that works to defend the First Amendment rights and freedom of information interests of the news media, recently published a comprehensive



*Kristen
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survey and evaluation of each jurisdiction's protection against SLAPP suits.

Those jurisdictions awarded the maximum four stars — California, Illinois, Louisiana, Oregon, Rhode Island, Texas, Vermont and Washington — have enacted anti-SLAPP statutes that broadly define the types of free speech and petition activities that qualify for their protection.

Notably, these states protect speech made in *any* forum, including a website publicly available over the Internet, in connection with *any* issue of public concern or interest, not just, for example, speech made before a governmental body in connection with an issue under review by that body. These states also provide for the mandatory, not just permissive, award of costs and attorney fees to a prevailing SLAPP defendant.

Conversely, lower ratings were assigned to jurisdictions with anti-SLAPP laws that narrowly limit their scope of protected activity, such as Pennsylvania, where the anti-SLAPP statute applies only to individuals directly petitioning the government about environmental issues. Other jurisdictions suffered lower ratings because of additional burdens included in their anti-SLAPP laws.

Although the scope of protection is broad under Maryland's anti-SLAPP statute — extending to communications with “the public at large” regarding “any issue of public concern” — it is considered one of the nation's weakest because its definition of a SLAPP suit also mandates that the cause of action be brought “in bad faith.” Such a provision imposes a significant financial burden that paradoxically requires a SLAPP defendant to endure costly discovery in an attempt to ascertain a plaintiff's intent in filing a SLAPP.

The dangerous effect is that defendants who likely cannot afford the costs will opt to remain quiet the next time they observe a public wrong, a serious detriment to the important public debate these speakers sought to inform.

The Reporters Committee's complete anti-SLAPP report is available at <http://www.rcfp.org/antislapp>.

Kristen Rasmussen is the 2011-2012 McCormick Legal Fellow at The Reporters Committee for Freedom of the Press.