THE
BRECHNER REPORT

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Emails to Scott's official account now on website

TALLAHASSEE – Gov. Rick Scott has announced that he will begin posting emails from his official state account on the Project Sunburst website, the *Tampa Bay Times* reported.

The Project Sunburst website, which went live in May, was created by the Scott administration to "give citizens and media easy access to executive staff emails," according to the website.

OPEN GOVERNMENT

The emails of Scott, Lt. Gov. Jennifer Carroll and several other staff members are to be posted on the public website within seven days, with a goal of 24 hours, the website stated.

The emails from Scott's official state account were not originally displayed because of "concern for privacy of the people who include personal information in their emails to the governor," said Scott spokesman Brian Burgess.

"In an effort to protect those citizens the initial rollout of the Sunburst system did not include emails sent or received using the official website contact form or its associated email address," Burgess said.

Emails sent to Scott's official email account have now been added to the system.

The administration also said it would phase out RLS@eog.myflorida.com, an email address listed on many websites across the state under the heading "Governor Rick Scott's email" that was not on the official state website, the *Tampa Bay Times* reported.

Source: Tampa Bay Times

Student newspaper sues over removal of news racks

GAINESVILLE – *The Independent Florida Alligator*, a student-run newspaper at the University of Florida, is suing the university to stop removal of its newspaper racks.

The newspaper's nonprofit owner, Campus Communications, filed suit, seeking a preliminary injunction to prevent the university from removing the racks on constitutional grounds.

UF adopted a rule to regulate printed material on campus in 2009 that poses a First Amendment challenge, said Tom Julin, the newspaper's attorney. The university said it planned to remove more than 20 of *The Alligator*'s orange racks and replace them with black modular units owned by UF that would cost a monthly fee and allow the university to decide where the free newspaper is distributed on campus, according to *The Miami Herald.*

FIRST AMENDMENT

A letter from the UF vice president of business affairs and the university's general counsel stated, "We want to assure you and your clients that the University will not regulate, or attempt by any means to regulate, the viewpoints expressed in the Alligator."

The university also agreed to waive the fees and any licensing agreements, *The Miami Herald* reported.

"The rule is so vague that it could be used to censor the contents of the paper," Julin stated.

Implementation of the regulation has been delayed since its adoption in 2009, according to *The Associated Press. The Alligator*, founded in 1906, has been independent from the university since 1973.

Source: The Miami Herald, The Associated Press

Zimmerman prosecutors mistakenly release records

ORLANDO – Prosecutors released 76 new documents in the case against George Zimmerman, the man accused of shooting and killing 17-year-old Trayvon Martin, including confidential records the state did not intend to release.

Among the records disclosed as evidence were 217 photos from the Florida Department of Law Enforcement, eight photos taken by a private investigator, eight incident reports, several crime scene drawings made by witnesses and Martin's cell phone records, according to the *Orlando Sentinel.*

ACCESS RECORDS

A grainy cell phone photo of Trayvon Martin's body and George Zimmerman's academic records were also included, which prosecutors say was inadvertent, according to the *Sentinel*.

Special Prosecutor Angela Corey's office later issued a statement asking reporters to "disregard" the documents mistakenly attached and sent a redacted version, which did not include the photo or school records, *CNN.com* reported.

In June, Circuit Judge Kenneth R. Lester Jr. ruled that photographs of Trayvon's body would not be released to the public, according to *CNN.com*.

Zimmerman's school records and Martin's cell phone records are also not likely to be released to the public, as they are typically exempt from the Public Records Law, according to the *Sentinel*.

Source: Orlando Sentinel, CNN.com

RNC surveillance cameras could remain in downtown Tampa

TAMPA – About 60 surveillance cameras purchased to provide security during the Republican National Convention held in downtown Tampa in August could remain downtown.

City officials met to discuss the fate of the cameras, purchased with $2 million of the budget earmarked by Congress for convention security, according to the *Tampa Bay Times*. The city council approved the cameras on the condition that a workshop be held after the convention to decide what to do with the cameras.

Authorities have not yet answered how and where the cameras will be used, according to the *Times*.

Some officials suggested moving the cameras to other parts of the city, such as areas of higher crime rates. Others expressed concern about the cameras remaining and being used for surveillance, the *Times* reported.

The American Civil Liberties Union (ACLU) wants the cameras taken down.

"Almost every time, the system stays in place longer than it was intended for," said Baylor Johnson, spokesman for the Florida chapter of the ACLU. "This is an impulse to blanket public spaces with surveillance. But that impulse is wrong."

Source: Tampa Bay Times

Lakeland man files suit against Polk County School Board

LAKELAND – A Lakeland man filed a lawsuit against the Polk County School Board, alleging a violation of Florida's Public Records Law.

Joel Chandler, an open government "activist," filed suit against the School Board to get access to hundreds of emails exchanged between School Board members Frank O'Reilly and Kay Fields during four months in 2011, according to *The Ledger (Lakeland)*.

The School Board identified 966 emails potentially responsive to Chandler's request, but forwarded only 21 of the emails to him. The Board's attorney, Wes Bridges, cited the Family Educational Rights and Privacy Act, as prohibiting release of some of the emails, according to the paper.

Chandler previously won a records lawsuit he filed against Bridges.

The Board's attorney pleaded no contest in May 2009 to a misdemeanor charge of violating the Public Records Law after the State Attorney's Office concluded that Bridges failed to release records to Chandler in a timely manner, *The Ledger* reported. The records related to information about people covered under health insurance plans provided by the Board, including names, addresses, employment status, job title, gender and telephone numbers.

Source: The Ledger (Lakeland)

Minutes missing for city workshops

WINTER HAVEN – The city of Winter Haven is playing catch-up to create meeting minutes for 34 commission workshops for which no minutes had been kept. According to city spokeswoman Joy Townsend, it is unclear how long it will take the city to complete the task of creating the minutes while "working around current priorities," *The Ledger (Lakeland)* reported.

"We realize the importance of having minutes available for the record," Townsend said.

In the two weeks since *The Ledger* discovered the city had not kept minutes for the workshops dating back to a December 2009 commission retreat, the city clerk in charge of creating the minutes had completed the task for only five of the workshops using recordings taken at the meetings, *The Ledger* reported.

Sunshine Law requires minutes to be available for inspection by the public when two or more government officials meet to discuss public business.

Source: The Ledger (Lakeland)

5th Circuit upholds warrantless cell phone searches

BREVARD COUNTY – A Florida appellate court ruled that a law enforcement officer can search the contents of a suspect's phone after an arrest without first obtaining a warrant.

In *State v. Glasco*, the defendant, Richard Glasco, was arrested for possession of cocaine and marijuana and intent to distribute cocaine.

Text messages subsequently retrieved from the defendant's phone "revealed that Glasco had cocaine he intended to sell," according to the opinion. Glasco moved to suppress the evidence obtained as a result of the warrantless search and the trial court granted the motion.

On appeal, the 5th District Court of Appeal in Daytona Beach reversed, concluding that the search was not unlawful but filed a certified question to the Florida Supreme Court, asking the court to determine whether earlier precedent allows "a police officer to search through information contained within a cell phone that is on an arrestee's person at the time of a valid arrest," according to the opinion.

In an earlier case, decided shortly after the trial court in *Glasco* entered its suppression order, the 1st District Court of Appeal held in *Smallwood v. State* that photographs found on the defendant's cell phone, providing evidence related to charges of possession of a firearm, were admissible where the officer had reason to believe the cell phone contained evidence related to that offense.

While the decision in *Smallwood* fell partly on the necessity to preserve evidence in cell phones that can be quickly erased, it also recognized the concern that granting law enforcement broad authority to conduct warrantless searches could result in violations of privacy, according to the *Law Firm News*.

Source: State v. Glasco, Law Firm News

Judge orders records released in James Greer case

ORANGE COUNTY – A judge ruled that a four-page report containing allegedly embarrassing details about witnesses who may testify in the trial against former Republican Party of Florida Chairman Jim Greer is subject to the Public Records Law, according to *The Miami Herald.*

Greer faces six felony corruption charges for money laundering and grand theft stemming from allegations that he was secretly involved in a company handling fundraising for the party in 2009.

Orlando attorney Richard E. Hornsby requested that the court seal the record on the behalf of non-party "interested persons" not charged in the case, but that request was rejected, according to *The Herald*.

The non-party interested persons argued that release of the material would subject them to "undue harassment, invasion of privacy and defamation of character." They also argued the statements were "neither material nor relevant to the prosecution of [Defendant] and would not be admissible as substantive evidence against him," according to the order.

Greer's defense attorney advised counsel for the interested persons that he would forego the material and not request the statements be produced in discovery.

In his ruling, Orlando Circuit Judge Marc L. Lubet, however, refused to limit the material Greer could subpoena from the state, saying that the records were likely to be "relevant and favorable to his defense," *The Herald* reported.

Lubet also noted Greer filed a notice of intent to participate in discovery and that Greer's defense attorney could not circumvent the Public Records Law by "picking and choosing the records he wants the State to disclose."

"Once criminal investigative or intelligence information is disclosed by the State to a criminal defendant, that information becomes a nonexempt public record subject to disclosure under section 119.07(1)," according to the order.

The judge also found that the statements were not defamatory, permitting their release, and ordered the document released within seven days.

Source: The Miami Herald

Former employees sue over access to public records

FORT PIERCE – Four Port St. Lucie police officers and two civilian employees, who were terminated from their positions, have filed suit against the city of Fort Pierce and its city manager, claiming they were denied access to public records.

Attorneys for the former city employees made a public records request for "an extensive and wide-ranging assortment of public documents, including emails dealing with the hiring and firing of high-ranking police officers over the last 20 years," according to *The Tribune (Fort Pierce)*.

City Attorney Rob Orr said the plaintiffs had a right to the documents, but said providing the requested emails would cost $3.5 million.

The lawsuit requests the city be compelled to "permit inspection, examination and copying of the requested public documents…or in the alternative, show cause to this court why (city officials) should not do so," *The Tribune* reported.

The underlying wrongful termination lawsuit alleges a violation of the former employees' due process rights under the 14th Amendment to the U.S. Constitution.

It also alleges the employees' termination violated the city charter and Florida Sunshine Law because elected officials allegedly met with the city manager to provide him with guidance on the firings, according to *The Tribune*.

Source: The Tribune (Fort Pierce)

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Court rules monument can remain

FIRST AMENDMENT

TALLAHASSEE – The 11th Circuit Court of Appeals in Atlanta ruled that a monument of the Ten Commandments can remain in front of a Dixie County courthouse. The lawsuit, initially filed by the American Civil Liberties Union (ACLU), requested the monument be removed, arguing that it violated the First Amendment Establishment Clause, according to *The Huntsville Times.*

The ACLU filed the suit on behalf of a part-time resident in a neighboring county, who complained that he was "deeply disturbed that the county openly embraced religious doctrine," according to the suit.

The resident visited the courthouse to review property records when he came upon the monument, *The Times* reported.

The 5-foot-tall monument had been donated to the county by a private citizen in 2006 with the approval of the county board of commissioners.

The lower court granted summary judgment for the ACLU, ordering the monument's removal, but the commission appealed, saying the plaintiff in the case did not have standing.

The 11th Circuit vacated and remanded the case back to the district court for an evidentiary hearing on whether the plaintiff in the case could demonstrate an actual injury suffered as a result of the display.

Source: The Huntsville Times, American Civil Liberties Union of Florida v. Dixie County, Courthouse News

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UF UNIVERSITY of FLORIDA

Impersonating a cop vs. pretending to be a war hero

The Back Page
By Ken Paulson

When the U.S. Supreme Court in *United States v. Alvarez* struck down the Stolen Valor act, concluding that lying about receiving high military honors was protected under the First Amendment, many analysts made a point about the laws the Court's decision would not invalidate.

Most believed that state laws prohibiting the impersonation of police officers would stand.

That view was put to the test in a case decided yesterday by the 4th U.S. Circuit Court of Appeals.

In a 2-to-1 decision, the court upheld the constitutionality of a Virginia statute barring the impersonation of a police officer.

The case stemmed from an incident in 2009 when Douglas Chappell was stopped for speeding and falsely told a U.S. Park Police officer that he was a deputy sheriff.

In fact, Chappell was no longer employed as an officer.

In upholding Chappell's conviction in the case, the 4th Circuit noted language in the *Alvarez* case in which the justices made a clear distinction between lies and criminal impersonation.

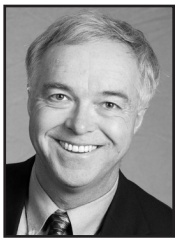
"The Court recognized, for example, the general validity of laws prohibiting 'the false representation that one is speaking as a government official or on behalf of the government'," Judge Harvie Wilkinson wrote in the majority opinion.

"Falsely identifying oneself as a policeman in order to get out of a speeding ticket is simply not the kind of expressive conduct the Framers of our first and one of our greatest amendments had in mind," Wilkinson wrote.

Judge James Wynn saw it differently in his dissent.

In Wynn's view, the Virginia statute was too broad to be upheld.

Courts have frequently struck down statutes that are so broad that they prohibit speech or conduct beyond the reach of government.



Ken Paulson

Wynn acknowledges that the state has an interest in preventing the impersonation of officers, but can do it in a narrowly tailored way that would prohibit only efforts to deceive for criminal purposes.

The Virginia statute would apply to "not only someone asserting that he is a police officer in the hopes of avoiding a ticket, but also among other things: children playing cops and robbers on the front lawn; trainees at a police academy role playing; and actors in plays in which peace officers are characters," Wynn wrote.

Wynn went on to suggest that someone in a bar falsely bragging about being a police officer or lying as part of a political campaign could be punished under the Virginia law.

It's a spirited dissent that challenges conventional wisdom about the constitutionality of police-impersonation laws.

One distinction from the military bragging in *Alvarez*, of course, is that police officers have a current ongoing role in society; military heroes do not.

Consider the way even speed-limit-abiding drivers adjust their driving when a police car is parked at the curb. A police officer walking into a public place inevitably causes anxiety for some and brings comfort to others.

There's certainly a strong argument that citizens have a right to know whether the person sitting next to them on that bar stool has the power to take them into custody or whether they can turn to that bar mate for protection if violence breaks out.

Even when off duty, police officers are "on."

Ken Paulson is president and chief executive officer of the First Amendment Center. Previously, Paulson served as editor and senior vice president/news of USA Today and USATODAY.com.