
THE BRECHNER REPORT

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Florida Senate committee holds secret meeting

TALLAHASSEE – For the first time in 30 years, a Senate committee met in a closed door session authorized under a new Sunshine Law exemption. The committee is responsible for funding the state’s counterterrorism effort and met in a closed meeting to review plans to expand Florida’s homeland security technology.

The newly created Home Defense, Public Security and Ports Committee

closed the meeting with unanimous support from members, invoking its post Sept. 11 rule for such a meeting.

Discussed at the meeting was the “threat net” program, which is an intelligence system that takes tips and leads to see if there is reasonable suspicion to include that information in the intelligence base. The Florida Department of Law Enforcement has requested \$1.6 million to expand the

program.

“The meeting was closed so that information that was provided in the meeting could not become available to those who could harm us by having some of that information,” said Sen. Paula Dockery, R-Lakeland, the committee chair. “Our top priority, even though all of us believe very strongly in the public’s right to know, we think their security and safety are paramount.” (3/6/03)

ACCESS MEETINGS

Question raised in open meeting case

NEW SMYRNA BEACH – Attorney James Markel has asked County Judge Mary Jane Henderson to dismiss charges that two Oak Hill city commissioners violated the Open Meetings Law, arguing the commissioners did not violate the law because there weren’t enough commissioners present to take a vote.

Current City Commissioner Bob Jackson and former Commissioner Ron Mercer are accused of violating the Open Meetings Law after discussing in person or over the telephone issues expected to come before the City Commission, according to the State Attorney’s Office. The two men could be fined up to \$500 each if convicted of non-criminal violations.

In his argument, Markel said he believes it is OK for two officials to discuss city business because it takes three commissioners to make a quorum and vote on an issue. Assistant State Attorney Christopher Kelly disagreed, saying that it doesn’t matter if it is two people or the entire council. The intention of the law is to prevent board members from discussing issues without public dissemination and discussion. (2/25/03)

Judge rules suicide note is secret

PINELLAS PARK – A Pinellas-Pasco Circuit judge ruled that a suicide note by former City Manager Jerry Mudd is part of an ongoing investigation and can be withheld by the city.

The *St. Petersburg Times* sued Pinellas Park after the city refused to release a copy of the note, as well as reports from the day of the incident.

The city is claiming the information the *Times* requested is part of an ongoing criminal investigation until the written autopsy and toxicology reports are available to decide if suicide was the cause of death.

Mudd had undergone gall bladder

surgery the week before his death and was known to be in severe pain. He died of a stab wound to his chest.

“There are many, many cases that appear to be one thing and turn out to be another. There is no question this is an open criminal investigation,” City Attorney Ed Foreman said.

Although the city attorney did not rule out the possibility of murder at the hearing, officials have not said they think Mudd’s death was a result of foul play.

Judge John Lenderman ruled that the note would remain secret until the investigation is complete or until he releases it. (2/25/03)

ACCESS RECORDS

Florida Supreme Court asked to review appeal in access case

MIAMI – The 3rd District Court of Appeals has asked the Florida Supreme Court to rule on whether police records in the spousal abuse case of former Miami Mayor Joe Carollo should be released to the news media.

WPLG-TV requested a copy of the picture police took of Carollo’s wife after she accused him of hitting her with a cardboard tea holder in 2001 during an argument, but the photo was never

released.

The appeals court denied to rehear the case and asked the Supreme Court to sort out the competing legal issues.

“It’s our position that the Public Records Act means what it says, and we are hopeful that we can get this issue resolved in the Florida Supreme Court,” said Karen Kammer, the station’s attorney. (2/26/03)

Parents able to withhold records from military recruiters

SANTA ROSA COUNTY – Parents of students at Navarre High School and other high schools in Santa Rosa County will now be able to restrict military recruiters from collecting information about their children without their permission.

The county School Board approved a change in the Student Records Handbook allowing parents to block the names, addresses and telephone numbers of students.

The laws allowing recruiters to collect such information are the No Child Left Behind Act of 2001 and the National Defense Authorization Act for Fiscal Year 2002.

To request certain information be withheld, parents must fill out a form which includes stipulations that no outside organization be allowed to collect information in order to compile databases for mass mailing or telephone solicitation. The form does not, however, prevent students' names from appearing in school publications.

Assistant Superintendent for Curriculum and Instruction Richard Mancini doubts many parents will use the form to prevent access to their children's information.

"Actually, based on history, no more than 1 percent (of parents) actually take advantage of that," Mancini said. (2/1/03)

DECISIONS ON FILE

Copies of case opinions, Florida Attorney General opinions, or legislation reported in any issue as "on file" may be obtained upon request from the Brechner Center for Freedom of Information, College of Journalism and Communications, 3208 Weimer Hall, P.O. Box 118400, University of Florida, Gainesville, FL 32611-8400, (352) 392-2273.

Florida newspapers unite in support of open government

TALLAHASSEE – Florida's daily newspapers united on March 16 in support of an open government, publishing articles and editorials reminding readers of the state's strong public-records laws at a time when lawmakers are proposing an increasing number of exemptions.

The "Sunshine Sunday" initiative was led by the Florida Society of Newspaper Editors and the Tallahassee-based First Amendment Foundation, with 36 papers participating.

Broadcasters also responded to the initiative with a 30-second public service

announcement recorded by *The Miami Herald* columnist and author Carl Hiaasen.

"Government is made better by exposure to the people it serves, and each year, as some legislator tries to dim that view, the question must be asked: What are you trying to hide?" the *St. Petersburg Times* asked in one of its editorials.

Lawmakers have already filed more than two dozen bills seeking new exemptions to the state's Public Records and Open Meetings laws this session. (3/17/03)

Lawsuit filed against Citrus Dept.

LAKELAND – *The Ledger* is suing the Florida Department of Citrus, claiming the department violated the state's Sunshine Law after withholding records from a study on generic citrus advertising.

The department hired the research firm, Forecasting and Business Analytics LLC of College Station, Texas, at the urging of Lakeland-based citrus grower organizations that question the effectiveness of generic advertising. The research firm is owned by agriculture economists from Texas A&M University.

The Ledger was denied access to a Jan. 16 meeting of a peer-review panel consisting of five economists who are reviewing technical aspects of the firm's research. The department also declined to release requested records regarding activities at that meeting and other work done by the peer group.

The Citrus Department contends that the Advertising Review Committee that commissioned the study is subject to the Sunshine Law. However, the department also maintains that a peer review panel reporting to the committee is not subject to the Open Meetings or Public Records requirements.

The lawsuit argues that the Sunshine Law should extend to the peer-review committee panel because its oversight will directly impact the recommendations of the Advertising Review Committee.

"Whatever actions, deliberations and discussions that occur during meetings of the peer review panel will affect the outcome of the study," said Susan Bunch, an attorney with Holland & Knight, *The Ledger's* law firm. "Recommendations on generic advertising could make or break the Citrus Department." (2/26/03)

FIRST AMENDMENT

Worker fired over license plate sues city

TAMPA – A former city employee has sued the city of Tampa arguing his First Amendment rights have been violated after he was fired for refusing to remove his Confederate flag license plate.

Last year, Larry A. Carpenter was ordered by supervisors in the city's Public Works Department to either remove his license plate or park his truck off city property.

After Carpenter refused the city's order, he was cited for insubordination, fired from his job as a traffic maintenance

specialist in September and denied unemployment benefits.

Carpenter, 47, is a member of the Sons of Confederate Veterans and is proud of his heritage, according to his attorney J. Benton Stewart II. Stewart also noted that other city workers park on city property with political slogans and offensive statements on their vehicles as well.

Stewart says his client does not promote white power and merely wants the city to develop a written policy that is fairly and uniformly applied. (3/12/03)

Settlement reached between library and religious group

DUNEDIN—Dunedin officials agreed to pay more than \$3,600 in legal fees to the Liberty Counsel of Orlando in a settlement reached after the Liberty Counsel sued the library for not allowing the group to use its public meeting room.

The public library denied the religious group access to its meeting room on two occasions, citing that the library's policy did not allow political, religious and formal social meetings and programs to use the room, exercising separation of church and state. The city will now change its policy, allowing programs of a political or religious nature to use the room.

"We're very pleased with the settlement and pleased that other people, as well, will benefit from this," said Mathew D. Staver, president and

general counsel for the Liberty Counsel. "Our position has always been that in a library community room that's open for anyone from the public to conduct a meeting, you can't censure a speech because it deals with a religious viewpoint."

In the past, the U.S. Supreme Court has ruled that when government creates a platform or forum for all comers, it is a violation of the First Amendment's free-speech guarantees to pick and choose speakers on the basis of their message.

City Attorney John Hubbard told city commissioners that the settlement was "highly desirable."

"We have agreed to take out of our policy the present limitations on political and religious viewpoints," Hubbard said, adding that he plans to

Appeals Court dismisses "Choose Life" challenge

ATLANTA – The Federal Appeals Court for the 11th Circuit has ruled against several pro-choice groups that contended the Florida Choose Life license plate was unconstitutional.

The abortion rights groups, represented by New York-based Center for Reproductive Law and Policy, challenged the state law claiming it reserves tag profits for agencies offering adoption services, but not abortions.

The lawsuit challenged the Florida law which authorizes the Choose Life plates. It also requested some of the private funds from the sale of the specialty plates be given to the abortion rights groups.

On July 17, 2002, Federal District Court Judge K. Michael Moore dismissed the lawsuit, stating that the abortion rights groups lacked standing to challenge the law because they had never applied for and been denied their own specialty plate. The 11th Circuit upheld the lower court's ruling, stating, "the First Amendment does not require states to authorize the speech of those who have expressed no interest in speaking; it only protects the rights of those who wish to speak." (3/13/03)

NEWSGATHERING

U.S. Supreme Court refuses case

WASHINGTON—The U.S. Supreme Court refused to review a New Jersey Supreme Court decision that upheld a trial court judge's order preventing journalists from interviewing jurors after they are discharged.

The original order resulted from the trial of Fred Nuelander, who was charged and later convicted in a second trial of arranging his wife's murder in New Jersey.

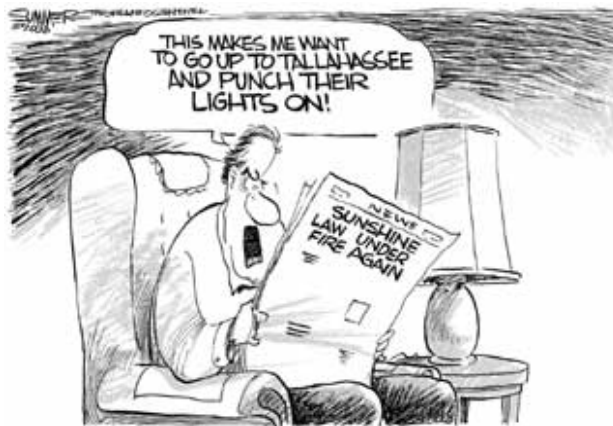
The Philadelphia Inquirer, joined by multiple media organizations including The Reporters Committee for Freedom of the Press, petitioned the Court to review the case, arguing it was "an expansive prior restraint on the press."

"The order barred the press from contacting or attempting to interview discharged jurors for any reason, regarding any subject, and even if the juror initiated such contact," the *Inquirer* wrote in its petition to the Court.

"The public and the press rely on interviews of discharged jurors to explain the outcome of a particular

trial, the experience of serving on a jury and the operation of the judicial system. Such stories often lead to exposure of misconduct or abuse," the Reporters Committee wrote in its friend-of-the-court brief.

The petition to the U.S. Supreme Court was rejected, but the *Inquirer* intends to continue fighting the contempt charges issued against four of its reporters for investigating and publishing an article regarding whether the forewoman of the first jury was a Pennsylvania resident and properly served on the New Jersey panel. (2/24/03)



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Florida newspapers support “Sunshine Sunday”

Editor’s Note: This editorial was originally published by the Orlando Sentinel as part of Sunshine Sunday. More than 30 Florida newspapers participated in this annual effort to educate their readers on the importance of open government.



Paul Owens

legislative graveyard. Among the worst are bills that would hide reports of serious - even deadly - mistakes made by doctors and pharmacists. Consumers would be deprived of that vital information. Another bad bill would conceal numbers and billing records for government-issued cell phones and pagers carried by law enforcement officers and many other government employees. Those public servants would be less accessible to citizens and unaccountable for their use of taxpayer-funded equipment.

In their first week in session, senators held an unprecedented secret meeting to examine a new anti-terrorist computer system. They could have used individual briefings to protect sensitive security details while addressing costs and other general issues in public. Instead, they met as group behind closed doors, stoking suspicions about their activities in the process. That’s a typical consequence of government secrecy.

Open government, by contrast, instills confidence among citizens. It invites them to participate. It leads to better decisions, as ideas are questioned, then refined. Open government also promotes better use of tax dollars. It holds government accountable. To cite just one recent example, an *Orlando Sentinel* report using government records showed that criminals in Florida’s house-arrest program had killed at least 234 people and committed at least 538 sexual crimes. Lawmakers are now vowing to make changes to protect the public.

Open government doesn’t just benefit the press or other watchdogs. Public records are a primary source of health, safety and other consumer information for Floridians - from inspection reports for day care centers or nursing homes; to the names and addresses of sex offenders; to the license status and disciplinary records of contractors, doctors and other professionals. Yet Florida’s legacy of open government won’t be safe unless citizens demand that lawmakers honor it.

Together with beaches, oranges and the Everglades, open government belongs on a list of things to treasure about Florida.

The Back Page

By Paul Owens

For decades, Florida has been a national leader in ensuring citizens access to their government. In 1992, state voters enshrined that legal tradition in the Florida Constitution. By a vote of 83 percent to 17 percent, they approved an amendment declaring all government records and meetings open to the public unless the Legislature makes an exception.

But in the ensuing 10 years, lawmakers made more than 100 exceptions. So last fall, voters weighed in again. By a 3-to-1 margin, they passed an amendment to require that exceptions be approved by two-thirds of the members in both houses of the Legislature, rather than majorities.

Those election results leave little doubt that Floridians hold open government dear. They want to know how their government is spending their tax dollars. Yet many lawmakers still aren’t listening. Government in the sunshine remains under siege in the Sunshine State. Lawmakers have picked up the pace since the terrorist attacks on Sept. 11, 2001. Some of the exceptions they have approved, such as concealing the blueprints of public buildings, make sense. But many, such as hiding information used by businesses to get state tax breaks, have nothing to do with security.

With this year’s legislative session less than two weeks old, lawmakers already have introduced at least 37 bills that could limit public access to government information. Most insidious are more than a dozen “shell bills” that would allow exceptions to the constitution without including any details. Such bills are stealth weapons targeting the public’s right to know. Other threats to open government include some discredited ideas that died in last year’s session, only to return like zombies from the

Paul Owens, the author of this editorial, writes on international, national, economic and First Amendment issues for the Orlando Sentinel’s editorial board. The editorial reflects the views of the board and its long-standing commitment to open government.