
THE BRECHNER REPORT

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Judge orders convicted official to pay \$5,000 in fines, fees

PENSACOLA – A judge refused to overturn a Sunshine Law verdict against suspended Escambia County Commissioner W.D. Childers, and cleared the way for a retrial of Childers on a second Sunshine Law charge. The judge also ordered suspended Commissioner Terry Smith to pay almost \$5,000 in fines and legal costs for violating the Open Meetings Law.

Childers was convicted in June of violating the state's Open Meetings Law. (*Brechner Report*, September 2002) He was acquitted on two other counts, and the jury deadlocked on a fourth charge.

Okaloosa County Judge T. Patterson Maney let the mistrial stand, and Childers will be retried on the charge on

Oct. 7. Childers also is facing a felony trial on charges of bribery and money laundering. At a sentencing hearing, Maney rejected the prosecutors' recommendations that Smith spend 60 days in jail. Maney ordered Smith to pay \$4,987.64 in fines and fees and ordered him to perform 250 hours of community service. (9/11/02–9/19/02)

ACCESS MEETINGS

Court weighs taking photo case

TALLAHASSEE – The Florida Supreme Court has asked lawyers involved in the challenge of the state's autopsy photo law to file briefs outlining their arguments.

The *Independent Florida Alligator* has sued to gain access to the autopsy photographs of race car driver Dale Earnhardt, challenging a law barring public access to autopsy photographs that passed in the wake of Earnhardt's death. The state Supreme Court was asked to rule on the issue after the 5th District Court of Appeal upheld the law, citing privacy concerns. However, the appeals court also certified the question to the Supreme Court.

The Supreme Court said it would not make an immediate decision on whether to take the case and, instead, directed the opposing attorneys to submit briefs of their arguments in the case.

The *Orlando Sentinel* and the *South Florida Sun-Sentinel* have filed a separate challenge to the law, which is currently before the 4th District Court of Appeal. Tom Julin, the *Alligator's* attorney, said *Sentinel* attorneys are trying to get their case merged with the *Alligator's* case. (7/31/02)

ACCESS RECORDS

NEWS NOTES

Question political candidates about opinions on access issues

In preparation for the November 2002 general election, the Brechner Center for Freedom of Information and the First Amendment Foundation encourage citizens and the media to question local candidates about their stances on public access to records and meetings.

The organizations suggest that political candidates be asked the following questions:

■ What are your views on the public's right to oversee its government through access to government records and meetings? What would you do, if elected, to strengthen and support this right?

■ The state Legislature continues to pass new exemptions to the state's Public Records and Open Meetings Laws. What, if any, records or meetings that are currently open would you like to see closed? What, if any, records or meetings that are currently closed would you like to see opened?

■ Do you support the proposed constitutional amendment (Amendment 4) to require that any future public records or public meetings exemption pass the Legislature only with a two-thirds majority?

Amendment 4 Ballot Summary

"Requires that laws providing exemptions from public records or public meetings requirements must, after the effective date of this amendment, be passed by a two-thirds vote of each house of the Legislature."

■ What are your views on electronic access to public records, including a public agency's e-mail? Should the public be asked to pay for electronic access to public records?

■ Do you think it is possible for the state to provide online access to public records while respecting an individual's right to privacy?

■ Should the government be allowed to sell public records, or should it be limited to recovering only the cost of disseminating public records?

Panel rules notes are not public

TALLAHASSEE – A three-judge panel for Florida’s First District Court of Appeal upheld a trial court opinion that vote sheets and handwritten notes used by judicial nominating commissions are exempt from Public Records Law and that judicial nominating commissions do not have to comply with the Public Records Law.

The Justice Coalition and its founder, Ted Hires, sued in February 2001 to get access to notes, vote sheets, ballots and tally sheets used by the judicial nominating commission for the First District Court of Appeal.

Judge L. Ralph Smith, 2nd Judicial Circuit, dismissed the lawsuit in July

2002, ruling in part that the Public Records Law did not apply to the commission and that the written records were part of the commission’s deliberations and thus were exempt under the Florida Constitution.

Hires and the Coalition appealed the dismissal, but the appellate panel affirmed the lower court’s decision.

The appeals court rejected The Justice Coalition’s argument that deliberations are oral only and cannot include vote sheets or committee members’ notes.

(8/1/02; *The Justice Coalition v. The First District Court of Appeal Judicial Nominating Commission*, Case No. 1D01-3484).

AGO: Probable cause needed for release

TALLAHASSEE – Complaints filed with the Florida Real Estate Commission of the Department of Business and Professional Regulation are exempt until 10 days after probable cause has been found, according to Attorney General Bob Butterworth.

Butterworth issued an Advisory Legal Opinion after receiving a question from the Town of Ponce Inlet.

If a town files a complaint against a licensed professional that complaint is

exempt from the state’s Public Records Law until 10 days after a probable cause panel decides that probable cause exists, Butterworth wrote.

The complaint can be released earlier if the subject of the investigation waives confidentiality. If the panel decides probable cause does not exist, the complaint remains exempt.

However, other files related to the complaint may not be exempt, he wrote. (AGO2002-57, 8/21/02)

Opinion: Precinct register signatures cannot be copied

TALLAHASSEE – Voter signatures on precinct registers are exempt from copying, according to an Advisory Legal Opinion from Attorney General Bob Butterworth.

Butterworth issued the opinion in response to a question from Flagler County Attorney Carl E. Kern.

The Flagler Elections Office was approached by a member of the media who wished to copy the signature of a particular voter in connection with an investigation into alleged voter fraud.

Citizens can inspect, but not copy, county voting registers under Florida Statutes, section 98.095.

Brechner Center wins national Sunshine award

The Brechner Center for Freedom of Information was honored by the Society of Professional Journalists (SPJ) with its Sunshine Award at the organization’s national

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convention in Fort Worth, Texas. The award recognizes outstanding contributions to freedom of the press.

Terry Hynes, Dean of UF’s College of Journalism and Communications, and Sandra Chance, director of the Brechner Center, were recognized for the Center’s efforts to protect the First Amendment and the free flow of information and the creation of a public service ad campaign promoting freedom of information. SPJ, with 10,000 members around the U.S., is considering adopting the public service ad campaign as a model for the rest of the country.

Newspaper settles lawsuit with DCF

MIAMI – *The South Florida Sun-Sentinel* settled a lawsuit with the Department of Children and Families that the newspaper filed to get copies of 22 missing children’s case files.

Under state law, files concerning children in DCF care are confidential, but the newspaper argued in its lawsuit that the law allows for exceptions in cases where access to the files benefits the public and outweighs privacy concerns.

“The public needs to know why DCF was unable to locate these children,”

according to the lawsuit.

When the paper and the DCF faced off in Judge Phil Bloom’s courtroom, the judge scolded both sides and sent them off for further negotiation. Bloom said the newspaper lawsuit was intended “to inflame the judge and to inflame the community.” The judge ordered the two sides to confer before he ruled in the case. The agency and the paper settled, and the DCF released the documents about 10 days after the hearing in front of Bloom. (8/14/02 – 8/27/02)

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.

Golf course will follow opinion

STUART – The Martin County Golf and Country Club will not challenge an opinion from Attorney General Bob Butterworth that it should operate in the open, said Bob Sokel, the golf board president.

Stephen Fry, an attorney for Martin County, requested the official opinion from Butterworth, asking if the not-for-profit corporation that runs the golf course must abide by the state’s Open Meetings and Public Records Laws. (*Brechner Report*, September 2002)

Butterworth said since the not-for-profit corporation is operating the golf course in place of the county and since

the lease agreement states that the records of the corporation should be “fully accessible” to the county, the corporation’s records and meetings should be open to the public.

“We’re definitely going to comply,” Sokel told *The Stuart News*. “We’re not going to evade anything.”

A former golf course board was accused of not allowing county representatives to attend meetings.

“You’re not allowed to call a special board meeting, close the doors and not take minutes,” said Commissioner Dennis Armstrong. “That’s all we were really concerned about.” (8/21/02)

Commission insists on panel openness

LEE COUNTY – At the insistence of the chairman of the Lee County Commission, the Southwest Florida International Airport’s Qualifications Committee will be open to the public.

The Qualifications Committee, which is made up of airport employees, has met in private for 10 years. However, the committee now will select contract finalists in public following a meeting airport officials had with Commission Chairman Bob Janes and County Attorney Jim Yaeger.

The five members of the Lee County Commission operate the airport as the Port Authority Board. The commissioners said they were not aware that the Qualifications Committee was meeting in private.

Yaeger said he believes the county could defend the closed meetings in court, but recommended that the meetings take place in public and record of the meeting be maintained.

“I told them I don’t want to get into whether it’s legal or not to do it in private. I told them it’s a matter of public perception. It’s particularly so since we are about to go through a one-half billion dollar bidding process in the expansion project,” Janes said. (8/9/02 – 8/10/02)

COURTS

Judge denies request for gag order

BARTOW – A circuit court judge denied a gag order request by the Polk County Sheriff’s Office to keep *The Ledger* of Lakeland from publishing the name of an undercover deputy who shot and killed a suspect during a drug raid.

Circuit Judge Charles Curry granted a temporary injunction against the publication of the deputy’s name.

However, at a hearing for a permanent injunction, Judge Ron Herring denied the request for permanent injunction and lifted the temporary injunction, saying the Sheriff’s Office had not met the

government’s “extremely heavy burden” of proving the need for a gag order.

Herring, a former police officer and prosecutor, said we “live in an open society. We don’t have a secret police in our society.”

Herring also noted that the officer’s name could become public when the drug case that led to the raid and the shooting goes public.

The Ledger published the name of the deputy after the state attorney cleared him of wrongdoing in the suspect’s shooting. (8/21/02)

Court: Immigration hearings should be open

CINCINNATI – A federal appeals court ruled that the Department of Justice cannot automatically close all post-September 11 immigration proceedings it deems “special interest” cases.

The ruling by the 6th Circuit U.S. Court of Appeals affirmed a trial court order in the case of Rabih Haddad, who was detained after September 11.

The Detroit News, *The Detroit Free Press* and Rep. John Conyers challenged the closure of hearings involving Haddad.

The Justice policy of closing “special interest” proceedings without first holding a hearing to determine if closure was necessary to protect a compelling interest was unconstitutional, the appeals court wrote.

Public oversight was the only way to

check “extraordinary governmental power,” according to the three-judge panel.

“Today, the Executive Branch seeks to take this safeguard away from the public by placing its actions beyond public scrutiny. Against non-citizens, it seeks the power to secretly deport a class if it unilaterally calls them ‘special interest’ cases. The Executive Branch seeks to uproot people’s lives, outside the public eye, and behind a closed door. Democracies die behind closed doors,” the court wrote.

Immigration hearings are administrative proceedings.

However, the court said the hearings have judicial characteristics and judicial openness protections should apply. (8/26/02)

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Support initiative to require two-thirds vote on exemptions

Access to public information is a basic right in Florida. Our constitution guarantees us the right to attend public meetings and see public records.

Florida voters passed the Public Records and Meetings Constitutional Amendment by a landslide in 1992. They understood the importance of this amendment, which guarantees us the right to attend

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By Sandra Chance

public meetings and see public records so we can make the best decisions for ourselves, our families and our communities.

The voters understood that legislators would be susceptible to special interest groups to keep more information secret. The constitutional amendment makes it more difficult for them to pass new exemptions to the law.

On Nov. 5, another constitutional amendment to promote open government will be on the ballot. This amendment doesn't really add a new amendment to our constitution. It simply strengthens the existing Public Records and Meetings Constitutional Amendment.

The "Protect Open Government" Amendment is the fourth amendment on the ballot and is sometimes referred to as Amendment Four. This amendment will make it harder to restrict the public's constitutional right of access by requiring that exemptions to the open government policy be passed by two-thirds vote of each chamber. The joint legislative resolution, sponsored by Sen. Jack Latvala and Rep. John Carassas, passed the Senate unanimously with only four dissenters in the House.

It seems even the members of the Legislature realized how quickly legislators were passing new exemptions during the past few years, weakening one of the country's strongest open government laws. Last year, 136 bills were introduced that would have restricted our right to know about government activities. Many of these proposals were hastily considered, rarely debated and passed with blinding speed. While most of them didn't pass both chambers this legislative term, they'll be back next session. In a state that has always taken great pride in its century-old tradition of open government, one legislator even suggested removing the word "Sunshine" from our signs on the state's borders. The signs would then read, "Welcome to the State."

If it weren't true, it might be funny. That's why it is so



Sandra Chance

important for voters to understand this amendment and why they should vote for it in November. Not much has been written about the amendment in the state's newspapers. In fact, one of the state's leading newspapers reviewed the ballot amendments and completely overlooked Amendment Four. It ran a correction a week later endorsing the amendment, calling it an easy call.

This past summer, the state's media groups, including the Florida Society of Newspaper Editors, the Florida Press Association, the Florida Press Club, the Brechner Center for Freedom of Information, the Florida First Amendment Foundation, and representatives from the National Association of Black Journalists, the National Association of Hispanic Journalists, and the Florida Bar Media Law Committee, gathered at the Poynter Institute in St. Petersburg to explore the creation of a coalition. The Sunshine Coalition's primary mission will be to educate the public about the importance of access to information.

This group decided to focus on Amendment Four as its first project. The Brechner Center is coordinating these efforts. We hope you'll support us by covering the amendment, writing editorials endorsing it and encouraging your readers to support this important referendum on open government.

The Coalition is also working on a Web page, more public service ads, sample editorials, information about the amendment and talking points for editors who are speaking to civic groups. The Web site's address will be: www.sunshinecoalition.org and should be launched the first part of October. If you'd like more information about the Coalition, please call the Brechner Center.

In the words of one of Amendment Four's sponsors: "An open government is the best government." Write an editorial, give a speech, run a public service ad, explain the amendment to your friends and neighbors, challenge candidates to support open government. The proposed amendment gives us a wonderful opportunity to remind many of our legislators that the citizens of Florida cherish their Sunshine Laws and understand that an open government is the best government.

Sandra Chance is the director of the Brechner Center for Freedom of Information, an associate professor of media law in the College of Journalism and Communications and coordinator of the new Sunshine Coalition.