
THE BRECHNER REPORT

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Nation follows Florida's lead with Sunshine Week

WASHINGTON — What began four years ago as Sunshine Sunday in Florida has grown into a nationwide initiative for open government and freedom of information. The first national Sunshine Week was celebrated March 13-19 with participation in every state.

Following Florida's lead, the American Society of Newspaper Editors encouraged media outlets across the country to emphasize the role of access to public records and open government

meetings in a democracy and about continuing challenges to state and federal freedom of information laws.

Andy Alexander, Chairman of the ASNE Freedom of Information Committee, said support far exceeded expectations.

He made a conservative estimate that more than 1600 newspapers published something in support of Sunshine Week. Radio and television broadcasters aired commentary and public service announcements.

The national campaign was modeled after Florida's event, initiated in 2002 by Florida's Society of Newspaper Editors.

Two advertising professors in the College of Journalism and Communications at the University of Florida designed three public service advertisements as a part of the public awareness campaign.

More information on the national Sunshine Week is available at www.sunshinesunday.com.

-Anaklara Hering

Accutane files remain under seal in medical malpractice lawsuit

TAMPA – U.S. District Judge James Moody refused to make public nearly one million documents in the possession of pharmaceutical manufacturer Hoffman-La Roche Inc.

The records, which contain information about the drug Accutane, have been sought in connection with dozens of lawsuits against the acne

drug's makers. As a result of the order, Hoffman-La Roche will not be required to redact documents and submit them to attorneys handling the

numerous civil suits filed against the drug manufacturer.

Attorneys representing deceased Accutane users have asked the court to rescind a confidentiality order because of public safety concerns regarding the drug's connection to numerous incidences of suicide, birth defects and other severe side effects.

Hoffman-La Roche contends it is trying to protect the chemical composition of Accutane. Its attorneys have argued that the Food and Drug Administration already has access to internal documents that are needed to evaluate the drug's safety.

Attorneys request Deltona records not be public

DAYTONA BEACH – Attorneys in the Deltona mass murder case have asked Circuit Judge J. David Walsh to withhold records from the public.

Defense Attorney Jeffrey Dees, who represents accused Deltona murder suspect Michael Salas, asked that witness statements, photographs and other investigatory documents remain closed. State Attorney John Tanner sought to prevent the public from viewing crime-scene and autopsy photos.

Salas, and four others, face six counts of first-degree murder and eight other felonies stemming from an August 2004 disagreement over a video-game system.

Dees said that release of the records would prevent the defendants from receiving a fair trial and could violate due process by making it nearly impossible to select an impartial jury.

Tanner said the victims' families would suffer great anguish over the release of the gruesome photos, which he called the worst he has ever seen. Tanner said he expected the media to oppose his petition for closure.

The motion comes shortly after the expiration of a gag order restricting the release of evidence in the case.

Judge denies access to hospital records

TAMPA – A Pinellas circuit judge refused to order St. Anthony's Hospital to turn over records on a doctor who is the subject of a malpractice suit.

Anita Richardson, who is suing Dr. Dwarka G. Nath over a colonoscopy, argued that Amendment 7 gave her the right to access the records.

Amendment 7 gives patients the right to review, upon request, the records of health care providers' adverse incidents, including those leading to injury or

death.

Judge James R. Case refused to release the records, stating that state lawmakers would have to set guidelines for the amendment's use before it can be applied in court cases.

This is the first ruling to address the recently enacted constitutional amendment, passed by voters in November 2004. The provision is currently the subject of numerous legal challenges across the state.

COURTS

Activists pay to gain access to 2004 voting records

PALM BEACH – A voting-rights activist paid \$4,500 as a down payment to access internal logs from voting and tabulating machines used in the 2004 presidential election.

Bev Harris, the founder of Black Box Voting, traveled to Florida to initiate the group's attempt to document voter fraud in Palm Beach County.

The group filed suit in November accusing former Elections Supervisor Theresa LePore of wrongly denying the group's public records request for the information.

Since being served with notice of the legal action, the elections office determined that it would cost the agency more than \$4,000 for copying and staff

time to locate the records that Black Box Voting sought.

The group has not dropped the suit, but Harris said that newly elected Elections Supervisor Arthur Anderson has been more cooperative.

The organization's efforts to obtain access will be part of a documentary, preliminarily titled *Votergate*.

Hospitals must release records of infection

ORLANDO – Members of the public can now access records that show how well Florida hospitals carry out infection prevention.

The patient safety information is being released following the passage of a 2004 law.

For the first time, information detailing whether Florida hospitals comply with measures designed to prevent surgical infections will be posted online.

State officials were scheduled to begin placing the information online in March, allowing the public to see what percentage of surgical patients receive the required amount of antibiotics within 60 minutes of their operations.

However, they have said that more time will be required before the records are accessible.

The state plans to release additional information in 2006, including how many people are infected at individual hospitals across the state.

Newspaper claims partial victory after court agrees to release records

TALLAHASSEE – The 1st District Court of Appeals ruled that the Social Security numbers of Florida's public school teachers must be released in some circumstances.

The ruling is a partial victory for the *Sarasota Herald-Tribune*, which last year sought to access the numbers stored in the state Department of Education's computer database.

The newspaper did not intend to publicly release the information after it was obtained.

Instead it wanted to use the Social Security numbers to verify teacher performance on state-required competency tests as part of its investigation into teaching quality.

The appeals court ruled that the newspaper was entitled to access the information only for this limited purpose.

However, the court's decision is quite narrow and is based on the fact that the Social Security numbers will not be publicly released by the newspaper.

In the same decision, the court refused access to a list of Social Security numbers held at the University of South Florida.

It said that a federal law allows the numbers to be used only for the enforcement of child support payments, and, therefore, they cannot be released publicly.

PRIVACY

Date company admits to buying records from state, local agencies

TALLAHASSEE – ChoicePoint, Inc., has admitted that it purchased the records of more than 10,000 Floridians from public databases, and state and local government agencies.

Some of the data from the Florida records is likely included in the sensitive personal information on more than 145,000 people nationwide that ChoicePoint has admitted to selling.

The company has faced more than 11 lawsuits related to improper disclosure of information.

The most recent allegations include accusations that the company illegally sold or posted motor vehicle information,

erroneous insurance information and incorrect criminal history information.

Several Florida agencies, including Business and Professional Regulation, Health, and Highway Safety and Motor Vehicles, regularly provide or sell information to ChoicePoint.

Last year, ChoicePoint paid the Florida Department of Motor Vehicles more than \$13.7 million for driver records. However, department officials maintain that these records were not among those ChoicePoint sold to fraudulent businesses.

The Atlanta-based company is the largest data warehousing business in the country.

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.

Broadcaster seeks relief in prior restraint lawsuit

TALLAHASSEE—First Coast News has asked the Florida Supreme Court to compel a lower court to hear its petition in a high-profile murder case.

The broadcast news organization, a Gannett duopoly of ABC and NBC affiliates, had requested that the 5th District Court of Appeal hear a motion to quash a prior restraint that had been issued by a state trial court.

In July, First Coast reported the contents of a grand jury transcript in the case of murder suspect Justin Barber. The transcript was released by members of the state attorney's office.

Two days later, Jacksonville Circuit Judge Robert Mathis issued an order prohibiting the release of information from the document.

First Coast then asked the appeals

court to set aside the lower court order, arguing that the U.S. Supreme Court has declared prior restraints to be presumptively unconstitutional.

More than six months have passed, prompting First Coast to ask the state Supreme Court to issue a writ of mandamus ordering the appeals court to rule on the news organization's motion to set aside the prior restraint order.

ACCESS RECORDS CONTINUED

Judge to hear suit in 2004 election records dispute

MANATEE COUNTY—Circuit Judge Marc Gilner will now hear a case involving the November 2004 election for sheriff and court clerk.

The case, filed by losing candidates Kevin Murphy and Dan O'Connell, concerns a 2004 public records request.

Murphy and O'Connell sued Manatee County Circuit Court Clerk R. B. Shore, claiming that his office conducted a secret probe into actions taken by the Manatee Sheriff's Office.

Murphy and O'Connell requested the complete documentation of the investigation but were denied access.

FEMA withholds hurricane records

MIAMI—Federal officials have refused to release the names of the Miami-Dade County residents who have received nearly \$31 million in emergency hurricane assistance funds.

The Federal Emergency Management Agency claims that federal privacy law prohibits the release of the information, which has been collected from the victims of Hurricane Frances.

Four Florida newspapers have sued FEMA and the Department of Homeland

Security to gain access to the information under the federal Freedom of Information Act. Three Gannett newspapers and the *South Florida Sun-Sentinel* are the parties.

FEMA officials are defending their decision despite an investigation by the U.S. Senate Committee on Homeland Security and Governmental Affairs. The Inspector General's Office, which oversees FEMA, also is examining individual allegations of fraud in the Miami-Dade grants.

Law requires hospital's meetings, records be accessible to public

DAYTONA BEACH—Florida Hospital Deland may not close its meetings and records, according to a decision by Circuit Judge John W. Watson III.

The decision said the Public Records Law applied to the hospital when it cared for indigent people in the West Volusia Hospital Authority taxing district.

Memorial Hospital-West Volusia, a not-for-profit organization, claimed that it should be exempt from the Government in

the Sunshine laws because it bought and operated the hospital as a private entity.

The court ruled against the hospital because it carries out a government function by expending more than \$10-million annually in public tax money.

Because it receives public reimbursement for its services and acts pursuant to government authority, the hospital's meetings and records will be required to be open in the future, according to the court.

BROADCAST

Owners appeal federal court ruling

WASHINGTON—The Tribune Company, along with Fox, CBS, and NBC, will appeal a federal appeals court ruling that limits their ability to acquire newspapers and broadcast outlets.

The lower court ruling overturned the Federal Communications Commission's attempts to loosen restrictions on media ownership by allowing newspapers to

own local television stations and increasing the number of media entities that one corporation could own.

The media companies' appeal claims that the ruling abridged their First Amendment and due process rights.

The Tribune Company owns *The Orlando Sentinel*, *South Florida Sun-Sentinel* and WBZL-TV in Florida.

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Don't let Tallahassee pull the shades

The lights are back on in the Florida Capitol, so brace yourself for news of a brownout at your place.

It happens every year when legislators return to Tallahassee: Inevitably, some of them file bills intended to dim the light and make it more difficult for their constituents to see what they're doing.

Just as regularly, the press makes a concerted effort to ensure that the public understands what will fade from view if those bills pass - and why that might put people at a disadvantage.

The Florida Society of Newspaper Editors began coordinating that effort three years ago, dubbing it Sunshine Sunday. This year, the American Society of Newspaper Editors took the effort nationwide and extended it to an entire Sunshine Week.

Whether nationally or here in Florida, some elected officials find it more convenient to do their business without you looking over their shoulder, particularly if their business is something you wouldn't approve. So, to make pulling down the shade seem like a good thing, they'll often say that it's either to protect your privacy or to protect you from terrorism - both pretty good ideas, if that's what they really would do.

Those measures often do offer protection - unfortunately, just not for you. Here are some examples, culled from the hopper of the Florida Legislature:

- Sen. Mike Haridopolos and Rep. Charlie Dean want to require any police agency that arrests someone mistakenly to apply to have that record expunged.

That doesn't seem like such a bad idea. What's the problem? Barbara Petersen, president of the First Amendment Foundation, pointed out that it "would preclude any opportunity for public oversight of law-enforcement officers."

She noted that, under this bill, if a public official interceded to have a relative's drunk-driving arrests thrown out or a rogue police officer repeatedly stopped people without filing charges, there would be no way to find out that was happening.

- Sen. Nancy Argenziano wants to use state money to start something called the Florida Vaccine Research Institute to avoid a



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repeat of last year's flu-vaccine shortage. It would create jobs, too.

Good idea?

Maybe, but Petersen noted that Argenziano also wants to make the institute's records confidential. No word on where taxpayers go to get inoculated against mismanagement.

- Sen. Burt Saunders has a bill that purports to "implement" the constitutional amendment Floridians approved in November that requires hospitals and doctors to provide records of medical mistakes to patients who request them.

Petersen said its real effect would be to prevent anyone who is not a patient from seeing a doctor's "adverse incident" records - hardly a benefit for anyone looking for a reliable physician.

There are other bills that offer cause for concern but also some that would shed needed light on government:

- Rep. Susan Bucher wants to give patients more knowledge about and control over their medical records that private companies might transmit overseas. That should please anyone concerned about the recent loss by ChoicePoint of the personal and financial records of 145,000 Americans.

- Sen. Tony Hill and Rep. Audrey Gibson want to require that electronic voting systems be capable of producing paper records. Any voter who wonders if his or her vote was counted should find that appealing.

- Sen. Skip Campbell and Rep. Jack Seiler want to require the state to produce a monthly report of how taxpayer money is being spent with private companies. In an age of increasing government "outsourcing," taxpayers ought to know if they're getting their money's worth.

Those illuminating measures, however, won't protect Floridians from the darkness that others would impose.

Anyone fearful of identity theft or terrorism - and ready just to let government operate without scrutiny - should consider a question posed by the Society of Professional Journalists:

Do you feel safer in the dark?

Manning Pynn is the Public Editor for The Orlando Sentinel. His editorial originally appeared as a part of the newspaper's coverage of Sunshine Week and is reprinted with permission.