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13 August 2014

The Honorable Jim Boyd, Chair
State Affairs Committee, The Florida House of Representatives
402 S. Monroe Street
Tallahassee, FL 32399-1300

The Honorable Jeremy Ring, Chair
Committee on Government Oversight and Accountability, The Florida Senate
404 S. Monroe Street
Tallahassee, FL 32399-1100

Re: 2015 Exemptions Subject to Open Government Sunset Review

Dear Representative Boyd and Senator Ring:

The First Amendment Foundation has conducted its initial review of the exemptions from public records and meetings requirements subject to review and repeal under the Open Government Sunset Review Act during the 2015 legislative session. Our comments on each follow below:

Section 97.0585(3) – Provides a public record exemption for the names, addresses, and telephone numbers contained in the voter registration records of persons who are victims of stalking or aggravated stalking if the victim complies with procedures for registering with the Office of the Attorney General under ss. 741.401 – 741.409, F.S. Sections 97.0585(1) - (2) also provide an exemption for certain information regarding voters and voter registrations; these exemptions were subject to sunset review in 2010. At that time, the exemption was expanded to include the exemption for stalking victims. (Chapter No. 2010-115) The First Amendment Foundation expressed its concerns regarding the expanded exemption, and ultimately requested a veto of the bill.

Specifically, chapter 97, F.S., relates to electors and elections, qualification and registration of electors, and to voting processes. The original exemption under sunset review, ss. 97.0585(1) – (2), protected information *concerning voters and voter registration* held by an agency, and limited the use of that information for purposes of voter registration. The exemption, as amended by HB 7079, no longer protects specific information related to voters and voter registration but it still limits the use of the specified information held by any agency “*only for purposes of voter registration....*” Arguably, the exemption, as the latest expression of the Legislature, prohibits the use of social security numbers, driver’s license numbers, and Florida identification numbers for any purpose other than voter registration.

In addition, the exemption in s. 97.0585(3) for information of persons who believe they are being stalked results in some inconsistencies and application problems with two other exemptions. Section 741.465, F.S., provides two public record exemptions for victims of domestic violence, many of whom are also subject to stalking. The first provision makes exempt the addresses, corresponding telephone numbers, and social security numbers of program participants in the Address Confidentiality Program for Victims of Domestic Violence held by the Office of the Attorney General, but not the names of the domestic violence victims. The exemption that was created by HB 7079, however, exempts the *names* of persons who believe they are victims of stalking. As such, a person who believes he or she is being stalked receives anonymity, but a domestic violence victim does not.

We respectfully request that s. 97.0585, F.S., be amended to address our concerns, clarifying that the lawful use of the protected information is not limited to voter registration purposes and eliminating the exemption for the names of stalking victims.

Section 341.3026 – This exemption for personal identifying information held by a public transit provider for the purpose of prepaying fares is sufficiently narrow and the First Amendment Foundation is not opposed to its reenactment as currently drafted.

Section 383.412 – Section 383.412(2), F.S., provides a public record exemption for identifying information of family members or others living in the home of a deceased child whose death is the subject of review by the State Child Abuse Death Review Committee; s. 383.412(3) exempts those portions of committee meetings at which such exempt information is discussed. The exemption was amended in 2010 to require that closed portions of committee meetings be recorded, and to create a public record exemption for the recordings. (Chapter No. 2010-40) In the past few years, there have been attempts to remove the requirement that closed meetings be recorded, and the Foundation has consistently opposed such efforts. We do not object to the reenactment of s. 383.412 as currently drafted, however.

Section 390.0116(2) – This exemption for information that would identify a minor petitioning a circuit court for a judicial waiver under the Parental Notice of Abortion Act is sufficiently narrow and the First Amendment Foundation is not opposed to its reenactment as currently drafted.

Section 494.00125(3) – At the time this exemption was created, the federal government had recently enacted the S.A.F.E. Mortgage Licensing Act of 2008 (S.A.F.E.) in an attempt to provide greater accountability and regulation of loan originators, defined to include mortgage brokers and lenders, and enhance consumer protections. Section 494.00125(3), providing a public record exemption for credit history information and credit scores related to licensing of mortgage brokers and lenders held by the Office of Financial Regulation, was part of a larger effort to bring Florida into compliance with S.A.F.E. The Foundation expressed some concerns regarding transparency and accountability at the time the exemption was created, and we would ask that staff conduct a thorough review of the federal legislation prior to reenactment of this exemption.

Section 497.172(1) – This limited exemption for portion meetings of the Funeral, Cemetery, and Consumer Services Board at which licensure questions and answers are discussed is sufficiently narrow, and the Foundation doesn't object to reenactment of the exemption as currently drafted.

Section 517.2016 – Provides a public record exemption for information that would reveal examination techniques or procedures used by the Office of Financial Regulation. The exemption is sufficiently narrow and the First Amendment Foundation is not opposed to its reenactment as currently drafted.

We appreciate the opportunity to comment on the exemptions under review, and only wish there were fewer. If we can provide additional information or answer any questions, please don't hesitate to contact us.

Sincerely,

A handwritten signature in blue ink, appearing to be 'B.A.P.', written in a cursive style.

Barbara A. Petersen, President

cc: Heather Williamson, Policy Chief, H. Government Operations Subcommittee
Joe McVaney, Staff Director, S. Governmental Oversight & Accountability Committee
Jon Kaney, FAF General Counsel, Kaney and Olivari, P.A.
Sam Morley, General Counsel, Florida Press Association
Gil Thelen, Executive Director, Florida Society of News Editors